**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Establishing New Reliability Standards.  | )))) | Case No. 21-0956-EL-ESS |

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**MEMORANDUM CONTRA MOTION OF AES OHIO TO ESTABLISH A PROCEDURAL SCHEDULE AND REQUEST FOR EXPEDITED RULING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# I. INTRODUCTION

Consumers need reliable electricity. Ohio law requires every public utility to furnish “necessary and adequate service” that is in “all respects just and reasonable.”[[1]](#footnote-2) Unannounced outages disrupt medical devices, interrupt communication, spoil food, and leave Ohioans in the dark and vulnerable to extreme weather. Dayton Power and Light Company (“DP&L”) has struggled to protect consumers from electric outages. Rather than reduce electric outages and improve restoration times, DP&L proposes that the PUCO allow it to provide consumers with less reliable service. The PUCO should reject DP&L’s request.

Now, DP&L also asks the PUCO to adopt a procedural schedule that truncates the parties’ discovery rights.[[2]](#footnote-3) DP&L’s schedule violates Ohio law and PUCO rules, which

explicitly provide for “ample rights of discovery.”[[3]](#footnote-4) DP&L’s proposal also prevents OCC from preparing to represent consumers. OCC asks the PUCO to reject or modify DP&L’s proposed schedule.[[4]](#footnote-5)

# II. LAW AND ARGUMENT

1. DP&L’s schedule violates the parties’ discovery rights, which Ohio law and the Ohio Administrative Code guarantee.

Ohio law provides that “[a]ll parties and intervenors shall be granted ample rights of discovery” in PUCO proceedings.[[5]](#footnote-6) In accordance with this law, the PUCO adopted discovery rules designed to “facilitate thorough and adequate preparation for participation in commission proceedings.”[[6]](#footnote-7) A party that moves to intervene in a proceeding before the PUCO is entitled to immediately participate in the discovery process on equal footing with all other parties.[[7]](#footnote-8)

DP&L’s schedule undercuts the parties’ discovery rights. The right to participate in discovery includes the right to serve interrogatories and requests for production of documents.[[8]](#footnote-9) A party served with written interrogatories usually has 20 days to answer or object.[[9]](#footnote-10) A party served with requests for document production can usually take 20 days to produce the documents, permit their inspection, or object.[[10]](#footnote-11) Yet DP&L’s proposed schedule requires OCC and PUCO Staff to file testimony *just 21 days* after DP&L does.[[11]](#footnote-12) This does not leave the parties time to conduct discovery on DP&L’s testimony, analyze DP&L’s responses, and consider the responses in preparing their own testimony.

Denying the parties discovery upsets the purposes of the PUCO’s discovery rules: to encourage thorough and adequate preparation for hearings. Without answers to discovery requests about DP&L’s testimony, OCC cannot fully prepare to represent Ohio consumers. The PUCO will lack the full and complete record necessary to make its required findings of fact and conclusions of law. To protect consumers, preserve the intent of its discovery rules and resolve this matter justly, the PUCO should reject DP&L’s proposed schedule.

1. In consumers’ interest, the PUCO should adopt a schedule that guarantees the parties time to conduct discovery on DP&L’s testimony.

The PUCO should guarantee the parties time to conduct meaningful discovery in one of two ways. First, the PUCO should extend OCC and PUCO Staff’s testimony deadline to November 14, 2022, one month after DP&L’s own deadline. This would give the parties time to serve discovery about DP&L’s testimony, analyze the responses, and use them in preparing their own testimony. Alternatively, if the PUCO adopts DP&L’s schedule, it should also direct DP&L to respond to discovery requests within 7 days of service.[[12]](#footnote-13) This would give the parties time to conduct, analyze, send follow-up discovery and use the discovery in their testimony to the PUCO.

# III. CONCLUSION

In protecting consumers right to reliable electricity, OCC is entitled to conduct discovery on DP&L’s testimony. The PUCO should give the parties until November 14, 2022 to file testimony so they have time to conduct discovery about DP&L’s testimony. Alternatively, if the PUCO adopts DP&L’s proposed schedule, the PUCO should require DP&L to answer discovery requests within 7 days of service.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra AES Ohio’s Motion to Establish a Procedural Schedule and Request for Expedited Ruling was served on the persons stated below via electronic transmission, this 12th day of October 2022.

 */s/ William J. Michael*

 William J. Michael

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. R.C. 4905.22. [↑](#footnote-ref-2)
2. *See* Motion of AES Ohio to Establish a Procedural Schedule (October 5, 2022) (“Motion”). [↑](#footnote-ref-3)
3. R.C. 4903.082. [↑](#footnote-ref-4)
4. OCC does not oppose DP&L’s request for an expedited ruling. [↑](#footnote-ref-5)
5. R.C. 4903.082. [↑](#footnote-ref-6)
6. O.A.C. 4901-1-16(A). [↑](#footnote-ref-7)
7. O.A.C. 4901-1-16(H). [↑](#footnote-ref-8)
8. O.A.C. 4901-1-19; 4091-01-20. [↑](#footnote-ref-9)
9. O.A.C. 4901-1-19(A). [↑](#footnote-ref-10)
10. O.A.C. 4901-1-20(C). [↑](#footnote-ref-11)
11. *See* Motion. [↑](#footnote-ref-12)
12. O.A.C. 4901-1-19(A), O.A.C. 4901-1-20(C). [↑](#footnote-ref-13)