**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission's Review of the Distribution Investment Rider Work Plan for 2024 of the Dayton Power and Light Company d/b/a AES Ohio. | )  )  )  )  ) | Case No. 23-1176-EL-RDR |

**REPLY MEMORANDUM**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

AES Ohio has declined to respond to OCC’s reasonable discovery regarding how AES Ohio plans to spend the money it charges consumers under its Distribution Investment Rider (“DIR”). OCC filed a motion to compel responses after all reasonable means of resolving differences with AES. OCC’s motion should be granted, and AES should be ordered to immediately respond to OCC discovery.

Under Ohio law and the PUCO’s rules “ample discovery,” is permitted. Under PUCO rules, a party that moves to intervene in a proceeding before the PUCO may immediately begin participating in the discovery process.[[1]](#footnote-1) The right to participate in discovery includes the right to serve interrogatories and requests for the production of documents.[[2]](#footnote-2)

Yet AES Ohio continues to withhold information about its DIR workplan, impeding OCC’s efforts to advocate for AES Ohio’s residential utility consumers. AES Ohio concedes that Ohio law provides that “[a]ll parties and intervenors shall be granted ample rights of discovery” in proceedings before the PUCO.[[3]](#footnote-3) AES Ohio also acknowledges that discovery is permitted in cases where no hearing is scheduled. Despite the well-settled law and rules, AES Ohio has unilaterally decided that OCC’s discovery is not permitted.[[4]](#footnote-4) AES Ohio’s claims should be rejected.

The Supreme Court of Ohio recognizes and upholds a broad right of discovery on behalf of intervenors in proceedings before the PUCO.[[5]](#footnote-5) There are no exceptions for situations in which a party to whom discovery is submitted can unilaterally determine that discovery is inappropriate in certain types of cases.[[6]](#footnote-6) But that is exactly what AES Ohio has done here.

AES Ohio has unilaterally determined that OCC’s discovery in this matter is not warranted and that how AES Ohio plans to spend the money it charges consumers through the DIR is not relevant. AES Ohio claims that OCC has no right to discovery in this case because AES Ohio’s filing “is merely informational, and nothing is at stake in this docket.”[[7]](#footnote-7)

Nothing could be further from the truth. Residential utility consumers, who pay a return on and of AES Ohio’s DIR investments, should be permitted reasonable discovery regarding AES Ohio’s DIR workplan. Consumers should have input and a right to challenge how their money is spent. This is especially true when the utility investments are to address reliable service to consumers, something AES has repeatedly failed to achieve in the last few years. AES Ohio’s argument is not well-taken. OCC has a right to inquire whether the projects described in the work plan are reasonable, will address AES’s reliability issues and are within the scope of Rider DIR.

AES Ohio’s broad, conclusory objections to OCC’s discovery requests do not meet the burden of demonstrating that the requested information is not relevant or falls outside the scope of discovery in this matter. AES Ohio argues that OCC’s discovery requests are overly broad and/or unduly burdensome,[[8]](#footnote-8) yet provides no specified basis or justification for this claim in any way. Rather, AES Ohio raises only generalized objections regarding OCC’s discovery requests being “overly broad” or “undue burdens,” effectively indicating that *any* discovery requests in this matter would fall outside the scope of the proceedings and/or prove to be “unduly burdensome.”[[9]](#footnote-9)

As opposed to these general objections, AES Ohio, as the objecting party, must show specifically how, despite the broad and liberal interpretation granted to discovery rules, *each* interrogatory is overly broad, burdensome, or oppressive.[[10]](#footnote-10) AES Ohio has not done so. Accordingly, AES Ohio’s objections lack necessary specificity and must be overruled. The PUCO should order AES Ohio to respond to OCC’s discovery requests.

For these reasons, the PUCO should grant OCC’s Motion to Compel and direct AES Ohio to respond immediately to OCC’s discovery.

Respectfully submitted,

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*/s/ John Finnigan*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply Memorandum by Office of The Ohio Consumers’ Counsel was served on the persons stated below via electronic transmission this 29th day of April, 2024.

*/s/ John Finnigan*

John Finnigan

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. O.A.C. 4901-1-16(A); O.A.C. 4901-1-17(A). [↑](#footnote-ref-1)
2. O.A.C. 4901-1-19; 4901-1-20. [↑](#footnote-ref-2)
3. R.C. 4903.082. [↑](#footnote-ref-3)
4. AES should have moved for a protective order to preserve its position that discovery should not be had, rather than rely on its assertion that it can unilaterally decide not to answer discovery. See O.A.C. 4901-1-24. This is another reason for the PUCO to grant OCC’s motion to compel. [↑](#footnote-ref-4)
5. *In re Suvon, L.L.C.*, 166 Ohio St.3d 519, 2021-Ohio-3630, 188 N.E.3d 140, ¶ 42 (citing *Ohio Consumers’ Counsel v. Pub. Util. Comm.,* 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213. ¶¶ 82-83). [↑](#footnote-ref-5)
6. *Twism Ents., LLC v. State Bd. Of Registration*, 1st Dist. Hamilton Nos. C-200411 and C-210125, 2021-Ohio-3665, ¶ 20 (citing *State ex rel. Fire Rock, Ltd. V. Ohio Dept. of Commerce*, 163 Ohio St.3d 277, 2021-Ohio-673, 169 N.E.3d 665, ¶ 13). [↑](#footnote-ref-6)
7. Memorandum Contra at 2. [↑](#footnote-ref-7)
8. *In the Matter of the Commission’s Review of the Distribution Investment Rider Work Plan for 2024 of the Dayton Power and Light Company d/b/a AES Ohio*, Case No. 23-1176-EL-RDR, Memorandum In Opposition to Motion to Compel (April 22, 2024) at 3-4. [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. *Gulf Oil Corp., v. Schlesinger*, (E.D.Pa. 1979), 465 F.Supp. 913, 916-917; *Trabon Engineering Corp.* *v. Eaton Manufacturing Co.,* (N.D. Ohio 1964), 37 F.R.D. 51, 54. [↑](#footnote-ref-10)