

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 08-1094-EL-SSO
Approval of its Electric Security Plan.)	

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 08-1095-EL-ATA
Approval of Revised Tariffs.)	

In the Matter of the Application of The)	
Dayton Power and Light Company for)	
Approval of Certain Accounting)	Case No. 08-1096-EL-AAM
Authority Pursuant to Ohio Rev. Code)	
Section 4905.13.)	

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 08-1097-EL-UNC
Approval of its Amended Corporate)	
Separation Plan.)	

**MOTION FOR PROCEDURAL SCHEDULE
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The February 24, 2009 Settlement of DP&L's first electric security plan ("ESP I") sets forth the procedure if a signatory party withdraws from the Settlement. That procedure is now applicable because, for protecting the benefit of the broken bargain to consumers, OCC filed a Notice of Termination and Withdrawal from the 2009 Settlement.¹ Specifically, the Settlement's required procedure is that the PUCO "*will* convene an evidentiary hearing to afford the Signatory Parties the opportunity to present evidence through witnesses, to cross-examine witnesses, to present rebuttal

¹ OCC Notice (September 10, 2021).

testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed."²

Accordingly, under Ohio Adm. Code 4901-1-12(A) and 4901-1-27, the Office of the Ohio Consumers' Counsel ("OCC") moves for the PUCO to adopt the procedural schedule now required for this case. OCC's proposed procedural schedule is:

- Discovery Response Period: 7 calendar days
- OCC testimony due: January 14, 2022
- Prehearing Conference: January 21, 2022
- Evidentiary Hearing: January 28, 2022

For the reasons set forth above and in the accompanying Memorandum in Support, the PUCO should grant this motion and adopt the proposed procedural schedule.

² *In the Matter of the Application of the Dayton Power and Light Company for approval of Its Electric Security Plan*, Case No. 08-1094-EL-SSO, Stipulation and Recommendation at ¶37 (Feb. 24, 2009).(emphasis added).

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis

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MEMORANDUM IN SUPPORT

On February 24, 2009, parties (including OCC) submitted a Stipulation and Recommendation ("Settlement") for PUCO approval in this proceeding involving DP&L's first electric security plan. The PUCO approved the Settlement. The Settlement struck a delicate balance between the interests of the utility and the interests of consumers.

To the detriment of consumers, the PUCO ultimately broke the balance of the Settlement. The PUCO materially modified the Settlement that OCC signed, relieving DP&L of its agreement to freeze distribution rates during the electric security plan, which was a key consumer protection.³ To protect consumers, OCC applied for rehearing from

³ See Case No. 08-1094-EL-SSO, Second Finding and Order (Dec. 18, 2019).

that decision.⁴

On June 16, 2021, sixteen long months after OCC's rehearing request and in apparent response to OCC filing a writ at the Supreme Court,⁵ the PUCO belatedly issued an Entry on Rehearing. In its Fifth Entry on Rehearing, it granted in part, and denied in part, OCC's rehearing requests. The PUCO's June 16, 2021 Entry, with its new rulings, including its ruling granting rehearing (in part), modified the PUCO's Second Finding and Order. Those modifications spurred additional applications for rehearing by DP&L and OCC.

On August 11, 2021, the PUCO issued a final rehearing order where it disposed of both DP&L's and OCC's application for rehearing, ending the rehearing process. The PUCO failed to adopt the 2009 Settlement "without material modification upon rehearing." The PUCO denied OCC's application for rehearing that sought to preserve consumers' rights under the 2009 Settlement to a distribution rate freeze while ESP I is in effect.

With the PUCO's August 11, 2021 Entry on Rehearing, the rehearing process, addressing OCC's and DP&L's latest applications for rehearing, is no longer ongoing, but complete. The ability of the PUCO to modify or abrogate its Orders excusing DP&L from its commitment to freeze distribution rates to consumers is at an end with the issuance of the PUCO's final rehearing Order of Aug. 11, 2021. After being denied access to judicial review and consumer justice by the PUCO's rehearing delay, OCC has

⁴ OCC Application for Rehearing (Jan. 17, 2020).

⁵ *State ex rel Office of the Ohio Consumers' Counsel v. Jenifer French, et al.*, S.Ct. 2021-0456, Complaint in procedendo (Apr. 14, 2021). The Court denied the writ after the PUCO filed a motion to dismiss, following the PUCO's ruling on OCC's application for rehearing in the Fifth Entry on Rehearing. 2021-Ohio-2795.

filed its Notice of Appeal with the Ohio Supreme Court,⁶ which, consistent with R.C. 4903.10, is taken from a final, appealable PUCO order. The PUCO has failed to adopt the Settlement “without material modification upon rehearing,” triggering OCC’s right to terminate and withdraw from the Settlement.

On September 10, 2021, OCC exercised its right to file (and did file) a Notice of Termination and Withdrawal from the 2009 Settlement. OCC has provided the details of its withdrawal from the Settlement in our Notice of Termination and Withdrawal filed on September 10, 2021, which can be referenced for background here.

According to the Settlement, if a party withdraws as a signatory party, the PUCO “will convene an evidentiary hearing to afford the Signatory Parties the opportunity to present evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed.”⁷

Consistent with the PUCO’s obligations under the 2009 Settlement, it must establish a procedural schedule. The PUCO should schedule an evidentiary hearing to permit OCC to cross-examine witnesses supporting the Settlement, to permit OCC to present its own witnesses, and to brief all issues so that the PUCO may issue an order based upon the record and briefs in consumers’ interests.

⁶ *In re Dayton Power and Light Co.*, S.Ct. No. 2021-1068.

⁷ *In the Matter of the Application of the Dayton Power and Light Company for approval of Its Electric Security Plan*, Case No. 08-1094-EL-SSO, Stipulation and Recommendation at ¶37 (Feb. 24, 2009).

Under Ohio Adm. Code 4901-1-12(A), OCC respectfully moves for the adoption of the procedural schedule outlined below:

- Discovery Response Period: 7 calendar days
- OCC testimony due: January 14, 2022
- Prehearing Conference: January 21, 2022
- Evidentiary Hearing: January 28, 2022

The PUCO should grant this Motion and establish a procedural schedule for this proceeding.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Procedural Schedule was electronically served via electric transmission on the persons stated below this 15th day of September 2021.

/s/ Maureen R. Willis

Maureen R. Willis
Counsel of Record

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

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Summary: Motion Motion for Procedural Schedule by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Willis, Maureen R.