

MEMORANDUM IN SUPPORT

In ruling upon a motion to dismiss for failure to state a claim upon which relief can be granted, an adjudicatory body “must presume that all factual allegations of the complaint are true and . . . it must appear beyond doubt that plaintiff can prove no set of facts warranting a recovery.” *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). The Complainant, Lee Poeppelmeier, filed this complaint regarding customer charges on his electricity bill. Specifically, Mr. Poeppelmeier alleges that “to charge a fee just to be a customer of said [company]. . . is wrong.” (Compliant at p. 2). Yet, Mr. Poeppelmeier goes on to concede that “a delivery charge may be warranted.” (Complaint).

Based upon the allegations contained in the Complaint, it appears as though Mr. Poeppelmeier is seeking relief from AES Ohio’s customer charge. At no point, however, does Mr. Poeppelmeier claim that his delivery charges are improperly calculated or not charged in accordance with AES Ohio’s Commission-approved tariffs. It is undisputed that AES Ohio charges a customer charge. AES Ohio’s customer charge is set forth in Tariff Sheet No. D17, which is a \$7.00 per month charge for residential customers that is assessed irrespective of usage. AES Ohio’s customer charge was approved by the Commission in the Company’s most recent base distribution rate case set forth in PUCO Case No. 15-1831-EL-AIR.¹

Because the Complainant only alleges allegations against a lawful charge, the Complaint fails to state a claim upon which relief can be granted. Therefore, AES Ohio respectfully requests that this matter be dismissed for failure to state a claim upon which relief can be granted.

¹ *In Re The Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case No. 15-1831-EL-AIR, Opinion and Order at ¶ 51 (September 26, 2018).

Respectfully submitted,

/s/ Michael J. Schuler

Michael J. Schuler (0082390)

*Counsel of Record

AES Ohio

1065 Woodman Drive

Dayton, OH 45432

Telephone: (937) 259-7358

Email: michael.schuler@aes.com

Attorney for AES Ohio

(willing to accept electronic service)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent via ordinary mail, postage prepaid, this 19th day of October, 2021 to the following:

Lee J. Poeppelmeier
237 E. Maplewood Dr.
Dayton, Ohio 45405

/s/ Michael J. Schuler

Michael J. Schuler (0082390)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/19/2021 3:12:49 PM

in

Case No(s). 20-1323-EL-CSS

Summary: Motion to Dismiss electronically filed by Mr. Michael J Schuler on behalf of The Dayton Power and Light Company d/b/a AES Ohio