

In the Matter of the Application of the)
Dayton Power and Light Company to) Case No. 20-1651-EL-AIR
Increase its Rates for Electric)
Distribution.)

In the Matter of the Application of Dayton) Case No. 20-1653-EL-ATA
Power and Light Company for Approval)
of Revised Tariffs.)

Bruce Weston (0016973)
Ohio Consumers' Counsel

John Finnigan (0018689)
Counsel of Record
Ambrosia E. Wilson (0096598)
Assistant Consumers' Counsel

March 30, 2022

TABLE OF CONTENTS

| | PAGE |
|---|-------------|
| I. INTRODUCTION | 1 |
| II. RATE FREEZE | 2 |
| A. The PUCO should not indulge DP&L’s excuses for dishonoring its rate-freeze agreement. For example, OCC did not and could not have waived its right to enforce DP&L’s commitment to freeze its distribution rates while ESP I is in effect, as DP&L claims. The PUCO has a duty to enforce DP&L’s rate freeze commitment for the benefit of 465,000 consumers. | 2 |
| B. DP&L’s commitment to consumers to freeze distribution rates while ESP I rates are in effect is a lawful provision, term, or condition of the utility’s electric security plan. And the PUCO’s enforcement of DP&L’s commitment is not unconstitutional as DP&L asserts. The PUCO should impress upon DP&L that words in the settlements that the PUCO approves are not just a game. | 5 |
| C. DP&L’s rate-freeze commitment to consumers was extended in 2012..... | 9 |
| D. DP&L’s 2015 distribution rate case did not modify its rate-freeze commitment to consumers | 14 |
| III. THE PUCO SHOULD ADOPT OCC’S CONSUMER PROTECTION RECOMMENDATIONS..... | 15 |
| A. Capitalized Bonuses (Incentive Compensation) should not be charged to consumers. | 15 |
| B. Capitalized Storm Costs should not be charged to consumers. | 17 |
| C. The adjustments to the Storm Cost Recovery Rider in OCC’s Rebuttal Testimony should be adopted. | 18 |
| D. OCC’s recommended Cost Allocation to residential consumers should be adopted. | 22 |
| E. OCC’s recommended Customer Charge should be adopted. Also, as a matter of equity, lower fixed charges are especially important as Dayton-area consumers, including at-risk consumers, emerge from the health and financial challenges of a once-in-a-century pandemic..... | 23 |
| F. The PUCO should adopt OCC’s expert witness rate of return recommendations. | 25 |

| | | |
|-----|---|----|
| 1. | The PUCO should not approve a return on equity (profit) greater than 9.7%. | 25 |
| 2. | Mr. Walters' testimony in other proceedings in other states is not relevant to DP&L's rate case in Ohio—the PUCO must rely on record evidence in <i>this proceeding</i> | 27 |
| 3. | The Federal Reserve Has Increased the Federal Funds Rate, But Such A Move Is Not Correlated to Utility Bond Yields or A Reasonable Rate of Return..... | 28 |
| IV. | CONCLUSION..... | 29 |

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|---|---|-------------------------|
| In the Matter of the Application of the |) | |
| Dayton Power and Light Company to |) | Case No. 20-1651-EL-AIR |
| Increase its Rates for Electric |) | |
| Distribution. |) | |

| | | |
|---|---|-------------------------|
| In the Matter of the Application of the |) | Case No. 20-1652-EL-AAM |
| Dayton Power and Light Company for |) | |
| Accounting Authority. |) | |

| | | |
|-------------------------------------|---|-------------------------|
| In the Matter of the Application of |) | Case No. 20-1653-EL-ATA |
| Dayton Power and Light Company for |) | |
| Approval of Revised Tariffs. |) | |

**CONSUMER PROTECTION REPLY BRIEF
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Dayton Power and Light Company (“DP&L”) seeks to charge its consumers an additional \$120.8 million per year for electric distribution service. But Dayton-area consumers should not be charged a penny more for their electric service. DP&L agreed, in a 2009 settlement with OCC and others, to freeze electric rates while it is charging consumers (\$79 million annually) for so-called “stability.” DP&L now argues that its rate freeze commitment is unlawful. DP&L is wrong. Those joining OCC for enforcing the rate freeze include the PUCO Staff, the Ohio Manufacturers’ Association, Kroger, and the Ohio Hospital Association.

For consumer protection and justice, the PUCO should order DP&L to honor its settlement with OCC (and others) for a rate freeze – which also means honoring the settlement for approximately 465,000 Dayton-area consumers. As a PUCO

Commissioner wrote in another case, settlement negotiations for electric security plans favor the utility against consumers.¹ DP&L is no exception to that. Here, the PUCO should not allow DP&L to put its finger on the already tilted scales of justice in electric security plan settlements by cherry-picking which of its agreements to honor.

Further, the PUCO should adopt other protections for Dayton-area consumers that OCC states in its brief and in this reply brief.

II. RATE FREEZE

- A. The PUCO should not indulge DP&L’s excuses for dishonoring its rate-freeze agreement. For example, OCC did not and could not have waived its right to enforce DP&L’s commitment to freeze its distribution rates while ESP I is in effect, as DP&L claims. The PUCO has a duty to enforce DP&L’s rate freeze commitment for the benefit of 465,000 consumers.**

DP&L is advancing an illusion that OCC somehow waived its right to enforce DP&L’s commitment to freeze its distribution rates while ESP I is in effect.² DP&L is wrong. OCC has addressed the issue of DP&L’s commitment to freeze rates during ESP I several times already both in this case and in DP&L’s ESP III case from which it withdrew.³ And OCC incorporates all arguments made in its Motion to Dismiss and Reply in Support of its Motion to Dismiss DP&L’s Application for a Rate Increase,

¹ *In re Application of [FirstEnergy] for Authority to Establish a Standard Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Sec. Plan*, Case No. 08-935-EL-SSO, Concurring in Part & Dissenting in Part Opinion of Commissioner Cheryl L. Roberto (Mar. 25, 2009) (Utilities have too much leverage in settlement negotiations. In electric security plan cases, that leverage is explicit and statutory. Because the utility can withdraw from its electric security plan when the PUCO modifies it, it essentially has full and complete power to veto any settlement proposal made by any other party. As former Commissioner Roberto noted in a PUCO opinion related to electric security plan cases, there is a “balance of power” favoring utilities such that intervenors “do not possess equal bargaining power.”).

² DP&L Brief at 13-20.

³ Case No. 16-395-EL-SSO, OCC’s Memorandum Contra DP&L’s Motion to Withdraw its Application and Implement Previously Authorized Rates (To Increase Charges to Consumers) (December 4, 2019).

OCC's Initial Brief in this case, OCC's expert testimony, and OCC's Memorandum Contra DPL's Motion for Oral Argument made in this proceeding.

This case is a rate case, not the ESP withdrawal case which is under appeal at the Supreme Court of Ohio (the "Court").⁴ DP&L's argument is premised on the concept of res judicata—or waiver. But it's argument is fundamentally flawed because res judicata must arise out of the same transaction with an identity of issues and an identity of parties. Neither is present here This is a rate case. Not an ESP case. The parties to the ESP case and the parties to this rate case differ. While both cases are related, that is not enough .

DP&L made these same arguments in response to OCC's Motion to Dismiss DP&L's Application. Very little is new in their claims except that now DP&L is asserting that it would be unconstitutional for the PUCO to enforce the rate freeze. Notably, the PUCO, in its decision denying OCC's Motion to Dismiss ruled that the rate freeze was still justiciable in this case ("The Commission further finds that the arguments raised in the motion to dismiss relating to DP&L's ability to implement any rate increase should be adjudicated, rather than dismissed, in this case").⁵ The PUCO further stated that it "appreciates the need for OCC to file the motion to dismiss in this proceeding in order to preclude any potential waiver of the issues raised in the motion."⁶ If OCC had waived the rate freeze issue, then there would have been no need for the PUCO to find it justiciable; nor would the PUCO have spoken of the motion being filed to preclude waiver.

⁴ See Supreme Court of Ohio, Case No. 2021-1068 (OCC has a pending appeal at the Ohio Supreme Court where it argues against DP&L's electric security plan case. DP&L should have reverted to its standard service offer when it withdrew from ESP III, not to its previous ESP. OCC is not waiving that argument by arguing the rate freeze is in effect while ESP I is in effect, rather that if DP&L's reversion to ESP I was proper, then the rate freeze commitment should stand.

⁵ Entry at ¶18. (October 20, 2021).

⁶ *Id.* at ¶19.

The PUCO also cited to *City of Parma v. Pub. Util. Comm.*, 86 Ohio St. 3d 144, 148, 712 N.E.2d 724 (1999) ("By failing to raise an objection until the filing of an application for rehearing, Parma deprived the commission of an opportunity to redress any injury or prejudice that may have occurred") and *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 941 N.E.2d 757, 2010-Ohio-6239 at ¶ 18 (Failure to challenge allegedly defective public notice at an earlier juncture constituted a forfeiture of the objection because it deprived the Commission of an opportunity to cure any error when it reasonably could have.). The PUCO's decision clearly refutes any argument by DP&L that OCC has waived the rate freeze commitment in this case. DP&L's arguments are without merit.

DP&L's arguments that OCC waived the rate freeze issue also overlook the fact that (i) DP&L must follow the PUCO orders, regardless of anything OCC does or does not do, and (ii) the PUCO must enforce its orders, regardless of anything OCC does or does not do.

Under R.C. 4905.54, every public utility, which includes DP&L, "shall comply with every order, direction, and requirement of the public utilities commission made under authority of this chapter and Chapters 4901., 4903., 4907., and 4909 of the Revised Code, so long as they remain in force." Under R.C. 4905.56 no officer, agent or employee of a public utility may knowingly violate or willfully fail to comply with, among other things, "any lawful order or direction of the public utilities commission made with respect to any public utility."

Thus, even if OCC had chosen to do nothing at all, DP&L had an affirmative duty to comply with the PUCO's Order approving the 2009 Settlement – including DP&L's

commitment to freeze rates to consumers. By seeking to reinstate its first electric security plan, without a rate freeze for consumers, DP&L is failing to comply with the PUCO's 2009 order.

Likewise, the PUCO has an independent duty to enforce its own rulings. For instance, the PUCO's general supervisory powers include examining public utilities' compliance with all laws and orders of the PUCO under R.C. 4905.06. The PUCO also has the power, whenever it is of the opinion that "any public utility or railroad has failed or is about to fail to obey any order made with respect to it," to direct the attorney general to "commence and prosecute such action or proceeding in mandamus, by injunction, or other appropriate civil remedies" under R.C. 4905.60. The PUCO may also assess forfeitures if a utility "fails to comply with an order, direction, or requirement of the commission that was officially promulgated" under R.C. 4905.54.

Thus, whether OCC may have "waived" its right to enforce DP&L's rate freeze commitment (it didn't) to its consumers is irrelevant—the PUCO should be enforcing its Orders on its own and DP&L should be obeying those orders.

B. DP&L's commitment to consumers to freeze distribution rates while ESP I rates are in effect is a lawful provision, term, or condition of the utility's electric security plan. And the PUCO's enforcement of DP&L's commitment is not unconstitutional as DP&L asserts. The PUCO should impress upon DP&L that words in the settlements that the PUCO approves are not just a game.

DP&L also argues that that its rate freeze commitment to consumers "was not an ESP term and was not reinstated when the Commission reinstated ESP I."⁷ According to DP&L, only those terms that are specifically authorized by the ESP statute can be "ESP

⁷ DP&L Brief at 7.

terms.”⁸ DP&L concludes that its rate freeze commitment to consumers is not a term found under Ohio’s ESP statutes.⁹ And according to DP&L, this makes the PUCO’s enforcement of DP&L’s commitment to freeze rates unlawful and unconstitutional.¹⁰ DP&L is wrong again. To DP&L, its words in agreements are apparently just a game.

Many parties, including the PUCO Staff, the Ohio Manufacturers’ Association, Kroger, the Industrial Energy Users Ohio, and the Ohio Hospital Association agree that the ESP I rate freeze, which DP&L agreed to, prohibits DP&L from implementing a rate increase until ESP I expires, or until DP&L implements a new electric security plan.¹¹ The rate freeze is not unlawful, and it is not unconstitutional. It may be “inconvenient” for DP&L, and it may reduce its profits, but it is not unlawful or unconstitutional. The PUCO should uphold DP&L’s agreement to freeze rates and stay any increase until ESP I expires or until DP&L implements a new electric security plan.

R.C. 4928.143(C)(2)(b) says that when a utility terminates its electric security plan, the PUCO “shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility’s most recent standard service offer *** until a subsequent offer is authorized.” The PUCO has interpreted this law to mean that when a utility withdraws from one ESP and reverts to a previous one, it reverts to the previous one in its entirety: “The Commission cannot arbitrarily choose some of the various provisions of

⁸ *Id.* at 7-8.

⁹ *Id.* at 12.

¹⁰ *Id.*

¹¹ Staff Brief at 3 (March 4, 2022); The Ohio Manufacturer’s Association (“OMA”) Brief at 18 (March 4, 2022); Kroger Brief at 11 (March 4, 2022); Industrial Energy Users (“IEU”) Brief at 1 (March 4, 2022); Ohio Hospital Association’s (“OHA”) Brief at 2 (March 4, 2022).

the ESP to continue after the termination date of the ESP and choose other provisions of the ESP not to continue.”¹²

DP&L’s argument should be rejected. DP&L should not be heard to assert in 2021 (twelve years later) that one portion of the Settlement (its rate freeze commitment to consumers) is unlawful because the PUCO lacked authority under the ESP statutes to implement it. DP&L cannot credibly complain of the unlawfulness of this ESP provision when it signed the stipulation and chose to be subject to it, while reaping the benefits of that Settlement time and time again (collecting millions and millions of dollars in stability charges from consumers).¹³

Indeed, back in 2009, DP&L submitted testimony urging the approval of the Settlement.¹⁴ Its Witness, Donna Seger Lawson, testified that the Settlement met the PUCO’s three prong standard for evaluating stipulations.¹⁵ Specifically, Ms. Seger Lawson testified that “[t]he Stipulation does not violate any important regulatory principle or practice.”¹⁶ Yet now, despite all this, DP&L wants to distance itself from a single part of the Settlement, claiming the PUCO had no authority to implement the rate freeze that DP&L agreed to. The PUCO should not stomach such claims.

But there is more. The PUCO has repeatedly treated the terms of an ESP settlement as part and parcel of the utility’s electric security plan. The PUCO has never separated settlement provisions into “ESP” provisions and “non-ESP” provisions. Rather,

¹² *In re Application of Dayton Power & Light Co. for Approval of its Electric Security Plan*, Pub. Util. Comm. No. 12-426-EL-SSO, Entry on Rehearing at ¶10 (February 19, 2013).

¹³ *Accord, In re Columbus S. Power Co.*, 134 Ohio St.3d 392, 2012-Ohio-5690, 983 N.E.2d 276, ¶24.

¹⁴ Case No. 08-1094-EL-SSO, Testimony of Dona R. Seger-Lawson at 13 (February 24, 2009).

¹⁵ *Id.*

¹⁶ *Id.*

the PUCO has approached ESP stipulations as a whole, adopting those stipulations in place of the utility's ESP application.

DP&L's ESP I Settlement was no different than any other settlement that sets out the parameters of an electric security plan. The PUCO adopted the Settlement to resolve DP&L's earlier rate plan, extending it through 2013.¹⁷ DP&L committed to freeze its distribution rates to consumers as a term of the 2009 Settlement. The Settlement adopted by the PUCO stated, in no uncertain terms, "[t]his Stipulation contains the entire Agreement among the Signatory Parties and embodies a complete settlement of all claims, defenses, issues and objects in these proceedings."¹⁸ Thus, when the PUCO approved the ESP I Settlement, DP&L's commitment to freeze rates to consumers became, *with DP&L's consent*, part of DP&L's electric security plan.¹⁹ DP&L's new claims disowning its rate freeze commitment should be flatly renounced.

Likewise, DP&L's remaining constitutional argument ("it would be unconstitutional for the ESP statute to authorize the Commission to implement a

¹⁷ Case No. 08-1094-EL-SSO, Entry (December 19, 2012).

¹⁸ Case No. 08-1094-EL-SSO, Opinion and Order (June 24, 2009) (quoting the 2009 Settlement at 17-18 (February 24, 2009); *See* Supreme Court of Ohio, Case No. 2021-1068 (OCC has a pending appeal at the Ohio Supreme Court where it argues against DP&L's electric security plan case. DP&L should have reverted to its standard service offer when it withdrew from ESP III, not to its previous ESP. OCC is not waiving that argument by arguing the rate freeze is in effect while ESP I is in effect, rather that if DP&L's reversion to ESP I was proper, then the rate freeze commitment should stand).

¹⁹ Accord, *In re Application of [FirstEnergy] for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Sec. Plan*, Pub. Util. Comm. No. 10-388-EL-SSO, 2010 Ohio PUC LEXIS 862, *97 (August 25, 2010) (the PUCO relied on the distribution rate freeze commitment in the settlement in its assessment of utility's electric security plan); *In re Application of [FirstEnergy] for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Sec. Plan*, Pub. Util. Comm. No. 12-1230-EL-SSO, 2012 Ohio PUC LEXIS 706, *133 (July 18, 2012) (the PUCO considered the stipulated rate freeze to be part of the utility's ESP); *In re Application of [FirstEnergy] for Authority to Provide a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Elec. Sec. Plan*, Pub. Util. Comm. No. 14-1297-EL-SSO, 2016 Ohio PUC LEXIS 270, *293 (March 31, 2016) (PUCO finding that FirstEnergy's settlement commitment to continue its distribution rate freeze ("stay out") was a qualitative benefit of the ESP).

distribution rate freeze”), should also be rejected.²⁰ DP&L claims that it has a constitutional right to a rate increase if its rates are not sufficient to earn a reasonable return.²¹ But DP&L fails to explain how the record supports a finding that its rates are not sufficient. (The sufficiency of DP&L’s electric security plan rates was not an issue put before the PUCO by DP&L). Absent record support, the PUCO should not (and need not) assess this claim that DP&L makes for the first time in its brief.

C. DP&L’s rate-freeze commitment to consumers was extended in 2012.

DP&L claims that “the rate freeze was terminated as part of ESP I years before the Commission reinstated ESP I in its Second Finding and Order.”²² Regarding the PUCO 2012 Order extending DP&L’s first electric security plan for an additional year, DP&L alleges that the PUCO’s Order did not affirmatively adopt its rate freeze commitment to consumers, much like the PUCO Order that OCC has appealed.²³ DP&L reasons that the “problem for OCC is that its argument—i.e., that the Commission erred by failing ‘to continue the distribution rate freeze while ESP I rates are being charged’ proves too much.”²⁴

But DP&L’s argument is based on a false underlying premise—that the PUCO in its 2012 Order did not affirmatively order DP&L to honor its rate freeze commitment to consumers.²⁵ To the contrary, the PUCO granted DP&L’s motion to continue all of DP&L’s current rates until the PUCO issued an order regarding its second electric

²⁰ DP&L Brief at 10-11.

²¹ DP&L Brief at 9.

²² DP&L Brief at 14.

²³ DP&L Brief at 15.

²⁴ *Id.*

²⁵ *Id.* at 16-17.

security plan application.²⁶ As a result, DP&L did not file replacement tariffs during the extension period but allowed its 2009 tariffs (with no distribution increases) to remain until replaced by DP&L's second electric security plan tariffs.

Under the 2009 Settlement, the provisions, terms, and conditions of DP&L's first electric security plan were to be in effect until December 31, 2012.²⁷ As this date approached, it became clear that there would not be enough time to approve a new ESP or a market rate offer ("MRO") before December 31, 2012, to replace DP&L's first electric security plan. DP&L filed a motion "to continue its current rates" under its first electric security until the PUCO issued an Order on its second electric security plan application.²⁸ Other parties to the settlement, including OCC, opposed the continuation of one portion of the settlement, the stability charge.²⁹

Over the non-utility parties' objections, the PUCO granted DP&L's motion.³⁰ In its Entry granting DP&L's motion, the PUCO relied on R.C. 4928.141 and 4928.143(C)(2)(b).³¹ According to the PUCO, "it would be consistent with both Section 4928.141 and Section 4928.143(C)(2)(b), Revised Code, to order that *the terms and conditions of the current ESP should continue until a subsequent offer is authorized.*"³²

²⁶ Case No. 08-1094-EL-SSO, Entry (December 19, 2012).

²⁷ Case No. 08-1094-EL-SSO, Opinion and Order (June 24, 2009); *See* Supreme Court of Ohio, Case No. 2021-1068 (OCC has a pending appeal at the Ohio Supreme Court where it argues against DP&L's electric security plan case. DP&L should have reverted to its standard service offer when it withdrew from ESP III, not to its previous ESP. OCC is not waiving that argument by arguing the rate freeze is in effect while ESP I is in effect, rather that if DP&L's reversion to ESP I was proper, then the rate freeze commitment should stand).

²⁸ Case No. 08-1094-EL-SSO, Entry at ¶4 (December 19, 2012).

²⁹ Case No. 08-1094-EL-SSO, Joint Motion Seeking Enforcement of Approved Settlement Agreements and Orders (September 26, 2012).

³⁰ Case No. 08-1094-EL-SSO, Entry at ¶4 (December 19, 2012).

³¹ *Id.* at ¶5.

³² *Id.*

The PUCO found that the stability charge provision of the 2009 Settlement “cannot be severed from the ESP and should continue with the ESP until a subsequent SSO is authorized.”³³ The PUCO subsequently explained in a later Entry on Rehearing that “[t]he Commission cannot arbitrarily choose some of the various provisions of the ESP to continue after the termination date of the ESP and choose other provisions of the ESP not to continue.”³⁴

And yet, eleven years later, that is just what the PUCO has allowed. The PUCO arbitrarily chose pro-utility provisions of DP&L’s first electric security plan to continue (the \$76 million annual stability charge to consumers), while choosing other, pro-consumer provisions (DP&L’s rate freeze commitment to consumers) to end.³⁵ Just like the stability charge was a provision, term, or condition of DP&L’s first electric security plan that continued when the plan was extended in 2012, DP&L’s rate freeze commitment to consumers was a provision, term, or condition of DP&L’s first electric security plan when the plan was continued in 2020.

Neither DP&L nor the PUCO can pick and choose which provisions, terms, and conditions continue. Nor can DP&L’s rate freeze commitment to consumers be severed from the electric security plan as DP&L suggests. DP&L’s rate freeze commitment to consumers was reinstated in 2016. DP&L argues that if its rate freeze commitment to consumers was not terminated in 2012, then it did not survive the PUCO’s 2016 Finding

³³ Case No. 08-1094-EL-SSO, Entry on Rehearing at ¶5 (February 19, 2013).

³⁴ Case No. 08-1094-EL-SSO, Entry on Rehearing at ¶10 (February 19, 2013).

³⁵ *Id.*

and Order that reinstated its first electric security plan after its third electric security plan was terminated.³⁶

DP&L says that OCC did not ask that DP&L honor its rate freeze commitment to consumers and thus, by OCC's reasoning, DP&L's rate freeze commitment to consumers was terminated when the PUCO failed to extend DP&L's rate freeze commitment in 2016.³⁷ DP&L is wrong.

In July 2016, DP&L did file a motion to withdraw from its second electric security plan and sought to revert to its first electric security plan.³⁸ DP&L withdrew from its second electric security plan in response to the Court's ruling that the stability charge it collected from consumers was unlawful.³⁹ (Unfortunately, for consumers, they had already paid close to \$300 million in stability charges—charges that were never refunded.)

It is true that OCC did not ask in that case that DP&L honor its commitment to consumers by extending the rate freeze. But there is reason for that: DP&L's proposed tariff filing to implement its withdrawal advised that its distribution tariffs "will not be

³⁶ DP&L Brief at 16.

³⁷ *Id.*

³⁸ Case No. 08-1094-EL-SSO, Motion to Implement Previously Authorized Rates (July 27, 2016).

³⁹ *Id.*; *In re: Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179.

changed from how they exist currently.”⁴⁰ When the PUCO allowed DP&L’s withdrawal, the PUCO ultimately approved DP&L’s unchanged distribution tariffs.⁴¹

Under R.C. 4928.143(C)(2)(b), “[i]f a utility terminates an application pursuant to division (C)(2)(a) of this section the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility’s most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized***. The PUCO has interpreted this law to mean that when a utility withdraws from one ESP and reverts to a previous one, it reverts to the previous one in its entirety: “The Commission cannot arbitrarily choose some of the various provisions of the ESP to continue after the termination date of the ESP and choose other provisions of the ESP not to continue.”⁴² Thus, regardless of anything that OCC or anyone else did or said in DP&L’s first or second electric security plan cases, the PUCO ruled that DP&L reverted to its first electric security plan in its entirety. And as explained above, DP&L’s rate freeze commitment to consumers was part of its first electric security plan. Consumers deserve the protection of the rate freeze commitment that was a provision, term, or condition of DP&L’s first electric security plan.

⁴⁰ Case No. 08-1094-EL-SSO, Notice of Filing Proposed Tariffs at 2 (August 1, 2016); *See also* Case No. 08-1094-EL-SSO, Reply of the Dayton Power and Lights Company in Support of Motion to Withdraw ESP III at 21 (August 18, 2016) (claiming that “DP&L’s current transmission and distribution rates should remain as they are today.”).

⁴¹ Case No. 08-1094-EL-SSO, Finding and Order (August 26, 2016); *See* Supreme Court of Ohio, Case No. 2021-1068 (OCC has a pending appeal at the Ohio Supreme Court where it argues against DP&L’s electric security plan case. DP&L should have reverted to its standard service offer when it withdrew from ESP III, not to its previous ESP. OCC is not waiving that argument by arguing the rate freeze is in effect while ESP I is in effect, rather that if DP&L’s reversion to ESP I was proper, then the rate freeze commitment should stand).

⁴² Case No. 08-1094-EL-SSO, Entry on Rehearing at ¶10 (February 19, 2013).

D. DP&L's 2015 distribution rate case did not modify its rate-freeze commitment to consumers

DP&L argues that even if its rate freeze commitment to consumers survived the PUCO's 2012 and 2016 Orders (it did), the PUCO "effectively modified that provision" when it approved the Stipulation and Recommendation in DP&L's 2015 distribution rate case.⁴³ This argument ignores the fact that nothing that happened in the 2015 Rate Case could possibly have modified DP&L's electric security plan because the PUCO lacks authority to modify an electric security plan in a distribution rate case.⁴⁴

"The commission is a creature of statute and may act only under the authority conferred on it by the General Assembly."⁴⁵ The General Assembly did not provide the PUCO with authority to modify an electric security plan through a distribution rate case.

The sole authority to modify a utility's electric security plan rests in the electric security plan statute, R.C. 4928.143. Under that statute an electric security plan can be modified by the PUCO if it finds that the utility's electric security plan is not more favorable in the aggregate than a market rate offer.⁴⁶ Additionally, the PUCO may modify an electric security plan in the quadrennial review process described under R.C. 4928.143(E). The Supreme Court of Ohio has in fact confirmed that the PUCO does not have authority to modify an electric security plan at any time after the application has

⁴³ DP&L Brief at 19-20.

⁴⁴ See *In re Determination of Existence of Significantly Excessive Earnings for 2017 Under the Elec. Sec. Plan of Ohio Edison Co.*, 162 Ohio St.3d 651, 2020-Ohio-5450, 166 N.E.2d 1191, ¶ 20.

⁴⁵ *Id.*

⁴⁶ R.C. 4928.143(C)(1).

been approved.⁴⁷ Because doing so can interfere with other provisions of the electric security plan statutes, including a utility's right to withdraw.⁴⁸

Further, the PUCO could not have modified DP&L's rate freeze commitment to consumers in DP&L's first electric security plan when it approved the 2015 Rate Case Settlement. DP&L's first electric security plan was not in effect at that time. Its third electric security plan was in place. The PUCO cannot modify something that did not exist.

Accordingly, the PUCO should find that a distribution rate freeze is lawful and the PUCO should enforce it and stay any rate increase for DP&L until ESP I expires.

III. THE PUCO SHOULD ADOPT OCC'S CONSUMER PROTECTION RECOMMENDATIONS.

A. Capitalized Bonuses (Incentive Compensation) should not be charged to consumers.

DP&L disagrees with OCC's expert Mr. Willis that the PUCO should require DP&L to remove from its existing rate base any labor amounts that are associated with financial bonuses.⁴⁹ DP&L asserts that those bonuses are reasonable (they are not) and should be recovered in rates (they shouldn't).⁵⁰

DP&L also asserts that the PUCO should reject Mr. Willis's argument because there was no recommendation or requirement in DP&L's 2015 Rate Case that DP&L cease capitalizing those financial bonuses. Therefore, DP&L concludes that there is no PUCO precedent that a utility cannot capitalize financial bonuses. Further DP&L argues

⁴⁷ *In re Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060, ¶30.

⁴⁸ *Id.*

⁴⁹ DP&L Brief at 59-60.

⁵⁰ DP&L Brief at 59-60.

that it was "fair" to allow those amounts to remain in rate base because there was not readily available data to determine the amounts of those bonuses that have been capitalized.⁵¹ The PUCO should reject DP&L's arguments.

Contrary to DP&L's argument, there are precedents to exclude financial bonuses as OCC explained in its brief.⁵² The PUCO decided in its Opinion and Order in Case Numbers 17-38-EL-RDR and 18-230-EL-RDR, that "the Commission has previously addressed the issue of incentive compensation in a number of rate cases and rider proceedings."⁵³ In these prior cases, the PUCO has concluded that, to the extent that a public utility awards financial incentives to its employees for achieving financial goals, shareholders are the primary beneficiary and, therefore, that portion of the incentive compensation should not be collected from consumers.⁵⁴ And notably, the PUCO Staff agrees that "while incentive compensation for reliability and safety are reasonable, it is unreasonable for financial metrics in which the shareholders are the primary beneficiaries."⁵⁵ In the present case, the PUCO should follow this established precedent and exclude this item (unquantified incentive compensations) from rate base and not allow it to be collected through base distribution rates.

⁵¹ DP&L Brief at 59-60.

⁵² OCC Brief at 19-20.

⁵³ OCC Brief at 19-20.

⁵⁴ June 17, 2020, Opinion and Order at 28, Case Nos. 17-38-EL-RDR, 18-230-EL-RDR; *In re Duke Energy Ohio, Inc.*, Case No. 18-397-EL-RDR, Finding and Order (July 31, 2019) at ¶ 17; *In re Duke Energy Ohio, Inc.*, Case No. 16-664-EL-RDR, Finding and Order (May 15, 2019) at ¶ 16; *In re Duke Energy Ohio, Inc.*, Case No. 15- 534-EL-RDR, Opinion and Order (October 26, 2016) at ¶¶ 20, 44; *In re Ohio American Water Co.*, Case No. 09-391-WS-AIR, Opinion and Order (May 5, 2010) at 20-22, Entry on Rehearing (June 23, 2010) at 11-12; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 07-551-EL-AIR, et al., Opinion and Order (January 21, 2009) at 17, Entry on Rehearing (February 2, 2011) at 4-5.

⁵⁵ Staff Brief at 25.

To protect consumers from paying higher rates that are not just and reasonable, the PUCO should follow its precedent in this case (and others) and disallow any performance-based incentive compensation charges to consumers. This cost should be borne by the shareholders who directly benefit from incentive compensation, not consumers.

B. Capitalized Storm Costs should not be charged to consumers.

DP&L argues that the PUCO should reject Mr. Willis's recommendation to exclude "administrative and general overheads, operation and maintenance expenses, cash bonuses, meals, picnics and parties, travel, and office supplies" from capitalized storm costs.⁵⁶ DP&L is wrong as OCC explained in its brief.

Consumers should not pay for capitalized storm costs. The PUCO Staff failed to address capitalized storm costs that are either inappropriate for collection from consumers altogether or inappropriate for inclusion in rate base.⁵⁷ Since date certain in the last rate case, DP&L recorded 19 major storms and booked to plant in service \$28.9 million in storm costs.⁵⁸ OCC's expert, Mr. Willis recommends an adjustment of \$16.8 million to remove administrative and general overheads, operation and maintenance expenses, cash bonuses, meals, picnics and parties, travel, and office supplies that do not qualify to be capitalized into rate base and rate of return recovery.⁵⁹

Capitalized costs such as cash bonuses and picnics and parties should be excluded from the revenue requirement altogether as they are not necessary in the provision of

⁵⁶ DP&L Brief at 60.

⁵⁷ OCC Brief at 20-21.

⁵⁸ OCC Brief at 20-21.

⁵⁹ OCC Brief at 21.

electric service to consumers and should be paid for by shareholders, not consumers.⁶⁰

The other items identified above would be more appropriate for recovery in the Storm Cost Rider (if at all) as an operating expense and not included in rate base and collected through a return on and return of capital.⁶¹

The PUCO should also adjust DP&L's depreciation reserve and depreciation expenses associated with this capitalized storm costs adjustment. According to Mr. Willis, DP&L's depreciation reserve should be reduced by (\$485,717) resulting from the plant in service adjustment to exclude the capitalized storm costs he recommended. Depreciation reserve will also need to be further reduced once the capitalized incentives are identified and removed from plant-in-service.⁶² And PUCO Staff agreed in its brief that there was a miscalculation of the storm costs adjustment in the Staff report.⁶³

To protect consumers from paying higher rates the PUCO should remove \$16.8 million in improperly capitalized storm costs from rate base and make other proper and necessary adjustments.

C. The adjustments to the Storm Cost Recovery Rider in OCC's Rebuttal Testimony should be adopted.

DP&L makes an incorrect argument that Mr. Willis and/or Mr. Walters submitted rebuttal testimony regarding Staff adjustments to Storm Cost Recovery Rider ("Storm

⁶⁰ OCC Brief at 21.

⁶¹ OCC Brief at 21.

⁶² OCC Brief at 21.

⁶³ Staff Brief at 9-10.

Rider") revenue and expenses.⁶⁴ but the argument is inaccurate because DP&L seems to confuse OCC's two witnesses. DP&L's brief states that:⁶⁵

"Mr. Willis also submitted rebuttal testimony regarding Staff adjustments to Storm Cost Recovery Rider ("Storm Rider") revenue and expenses. OCC Ex. 7. The Commission should reject the recommendations made in **Mr. Walters'** rebuttal testimony for two reasons."

"First, OCC did not raise the issue in its objections. The materials that **Mr. Walters** relied upon all existed at the time those objections were filed. OCC Ex. 7, Attachments 1-2. OCC is thus barred from raising the issue in rebuttal testimony. R.C. 4909.19(C); OAC 4901-128(B) and (C)."

"Second, **Mr. Willis** testified that Staff erred in the method that it used to remove Storm Rider revenues and expenses. OCC Ex. 7, p. 3. Assuming for the sake of argument that Staff did err, Mr. Willis erred in calculating the effect of that alleged error on AES Ohio's revenue requirement."

Though it is not clear which witness DP&L is referring to, OCC assumes it was Mr. Willis since his rebuttal testimony is OCC Ex. 7. Mr. Walters did not submit rebuttal testimony in this proceeding.

In any event, DP&L is wrong. Mr. Willis's rebuttal testimony is in response to PUCO Staff Snider's testimony. The purpose of rebuttal testimony is to respond to testimony with which one disagrees. The PUCO Staff opened the door with Mr. Snider's testimony, and Mr. Willis correctly rebutted the testimony. If DP&L had an issue with Mr. Willis's rebuttal testimony, then it could have filed an objection to the testimony. It didn't. The PUCO should reject DP&L's attempt to silence OCC's witness.

⁶⁴ DP&L Brief at 61.

⁶⁵ DP&L Brief at 61-62.

DP&L also argues that removing revenue from Schedule C-2 (AES Ohio Ex. 8) actually has no effect on the revenue requirement.⁶⁶

DP&L reasons that the \$237,349,443 in adjusted distribution revenues shown on Schedule C-2, p. 1, L.2 is adjusted on C-3.24 so that the revenues equal the amount calculated on Schedule E-4 (AES Ohio Ex. 10).⁶⁷ In other words, the adjustments to revenue shown on Schedule C-2 are irrelevant, since the adjusted revenue amount calculated on Schedule C-2 will be adjusted on Schedule C-3.24 to equal the revenue amount from Schedule E-4.⁶⁸

These amounts discussed by Mr. Willis in his rebuttal testimony are far from irrelevant. As explained in OCC's brief, riders are removed from the test year so that base distribution revenue requirement can be determined on a stand-alone basis.⁶⁹ The PUCO Staff adjusted the test year revenue and expense to reflect an amount based on seven-months of actual data and five-months of budget estimates.⁷⁰

For the remaining riders in the test year, the PUCO Staff left the three-months of actual data and nine-months of budget estimates unchanged, as filed by DP&L in its application.⁷¹ Mr. Willis further explained that riders are removed from the test year so the base distribution revenue requirement can be determined on a stand-alone basis.⁷²

⁶⁶ DP&L Brief at 62.

⁶⁷ DP&L Brief at 62.

⁶⁸ DP&L Brief at 62.

⁶⁹ OCC Brief at 24.

⁷⁰ OCC Brief at 24.

⁷¹ OCC Brief at 24.

⁷² OCC Brief at 24.

Most electric riders result from electric security plans and are not generally authorized in rate cases such as this case.⁷³

The test year should be representative of conditions reasonably anticipated to exist during the time frame that the utility's rates to be charged to consumers are in effect.⁷⁴ Adjustments to the test year are supposed to be limited to those necessary to reflect normal ongoing utility operations.⁷⁵

The purpose of adjustments to the test year are to smooth out abnormalities that tend to make test year data unrepresentative of the time when rates are in effect.⁷⁶ The utility has an advantage in ratemaking as it chooses the test year, subject to PUCO approval.⁷⁷ The PUCO Staff adjusted the test year operating revenue and expense without justifying why the adjustment is necessary and without showing that the adjustment is needed other than to enable DP&L to annually charge consumers \$2.7 million more in rates.⁷⁸

The PUCO should reject the PUCO Staff Report adjustment to the Storm Cost Rider shown on PUCO Staff Schedule C-3.4 that carries forward to Staff Schedule C3.24. Rejecting this PUCO Staff adjustment will protect Dayton-area consumers from unjustified higher charges.

⁷³ OCC Brief at 24.

⁷⁴ OCC Brief at 24.

⁷⁵ OCC Brief at 24.

⁷⁶ OCC Brief at 24.

⁷⁷ OCC Brief at 24.

⁷⁸ OCC Brief at 24.

D. OCC's recommended Cost Allocation to residential consumers should be adopted.

DP&L asserts that OCC witness Mr. Fortney recommended that no more than 63.1% of any rate increase should be assigned to residential customers.⁷⁹ But DP&L is mistaken again. Mr. Fortney's recommendation was that "whatever the ultimate rate increase or decrease, residential consumers should pay no more than 63.1% of the resulting base distribution revenue. The amount of rate increase is not the same as the base distribution revenue.

OCC does not agree that the revenue allocation proposed by DP&L and recommended by Staff is a reasonable reflection of the cost responsibility of each class. However, the revenue distribution process should also pay deference to other important considerations. Allocating the overall system-wide revenue deficiency based entirely on the results of a cost-of-service study can result in significant and adverse rate impacts. To avoid such a result, regulators should temper the revenue responsibilities assigned to various customer classes to meet a set of broad ratemaking policy goals.

In this case, the PUCO should reject a revenue allocation methodology based solely on cost-of-service results and recognize the adverse economic consequences to residential consumers resulting from over two years of the covid pandemic and accept OCC's revenue allocation recommendation.

⁷⁹ DP&L Brief at 64.

E. OCC’s recommended Customer Charge should be adopted. Also, as a matter of equity, lower fixed charges are especially important as Dayton-area consumers, including at-risk consumers, emerge from the health and financial challenges of a once-in-a-century pandemic.

DP&L proposed a residential consumer charge of \$15.66, while Staff recommended a charge of \$9.75. OCC’s expert Mr. Fortney testified that the consumer charges should be no greater than \$8.25.⁸⁰ DP&L argues that Mr. Fortney admitted that Staff had included Line Transformers in prior calculations of a customer charge.⁸¹ Mr. Fortney also testified that when calculating a customer charge, Account 368, Line Transformers should not have been included.⁸²

To support that position, Mr. Fortney cited to the NARUC manual for the proposition that Line Transformers are demand related, and that “Staff has not generally included Line Transformers when calculating a customer charge.”⁸³ But DP&L complains that at the hearing, Mr. Fortney admitted that the NARUC manual states that Line Transformers can be either demand or customer related, and that Staff had in fact included Line Transformers in prior calculations of a customer charge.⁸⁴ Likewise, Staff argues that “Staff has a long history of using the minimum compensatory method and that is what was used in this case... According to this methodology, the customer charge recovers costs that vary with the number of customers, such as meter cost, service drop,

⁸⁰ OCC Brief at 66.

⁸¹ DP&L Brief at 64.

⁸² DP&L Brief at 64.

⁸³ DP&L Brief at 64.

⁸⁴ DP&L Brief at 64.

line transformers and customer billing. The calculation has been consistently used in prior case and results in a reasonable increase to the residential customer charges.”⁸⁵

Conveniently, DP&L and PUCO Staff ignore the fact that Mr. Fortney pointed out that Staff had been inconsistent in past staff reports regarding the minimally compensatory calculations.⁸⁶ And in fact, there were other prior staff report calculations that had NOT included line transformers in the minimum charge calculation (notably Case No. 20-585-EL-AIR, Ohio Power) and that a truly minimally compensatory customer charge calculation should NOT include line transformers.⁸⁷

The PUCO should dismiss DP&L and its Staff’s arguments that a consumer charge should include line transformers. Instead, the PUCO should adopt Mr. Fortney’s recommendation that a truly minimally compensatory consumer charge calculation should NOT include line transformers. The consumer charge should not exceed \$8.25.

Further, as a matter of the ratemaking principle of equity, lower fixed charges are especially important as Dayton-area consumers, including at-risk consumers, emerge from the health and financial challenges of a once-in-a-century pandemic.

⁸⁵ Staff Brief at 35-36.

⁸⁶ OCC Brief at 67.

⁸⁷ OCC Brief at 67.

F. The PUCO should adopt OCC's expert witness rate of return recommendations.

1. The PUCO should not approve a return on equity (profit) greater than 9.7%.

DP&L argues in its brief that Mr. Walters' testimony demonstrates that AES Ohio should be allowed to charge consumers for a return on equity (profit) that is greater than 9.7%.⁸⁸ But DP&L mischaracterizes OCC witness Walters' testimony.

As Mr. Walters explained at hearing,⁸⁹ as well as in filed testimony,⁹⁰ DP&L's credit ratings have experienced downgrades through no fault of its own.⁹¹ Rather, the relevant S&P rating the PUCO should focus on in this particular instance is the Company's Stand-Alone-Credit-Profile ("SACP") rating of BBB.⁹² Mr. Walters also explained that the SACP rating is as though DP&L was rated based on its own merits rather than that of being a subsidiary of AES Corp.⁹³ As Mr. Walters demonstrated, DP&L's SACP rating from S&P is BBB, and its Moody's rating is Baa2.⁹⁴

These ratings are identical to the ratings of the proxy group relied on by Mr. Walters and Mr. McKenzie.⁹⁵ Further, DP&L's common equity ratio of 53.87%, and even Mr. Walters' recommended equity ratio of 52.89%, which is based on DP&L's more recent financial statements, is substantially above the equity ratios for the proxy

⁸⁸ DP&L Brief at 65.

⁸⁹ Tr. Vol. V. at 927-951.

⁹⁰ OCC Ex. 2 at 27-28.

⁹¹ OCC Ex. 2 at 27-28.

⁹² OCC Ex. 2 at 27-28.

⁹³ OCC Ex. 2 at 27.

⁹⁴ OCC Ex. 2 at 27.

⁹⁵ OCC Ex. 2 at 36.

group companies.⁹⁶ There is absolutely no evidence presented in Mr. Walters' testimony that supports a ROE above 9.7%. Here, DP&L is trying to punish consumers for the negative consequences as a result of the AES acquisition that happened more than 10 years ago, in spite of their agreement to hold customers harmless for any negative consequences as a result of the acquisition.

DP&L also found fault with the PUCO Staff's proxy group,⁹⁷ market risk premium,⁹⁸ and size adjustment.⁹⁹ DP&L also claims that Value Line is the "most highly respected and widely used service."¹⁰⁰ DP&L makes this statement without any evidence in support thereof. In fact, this is merely an opinion presented as fact by DP&L. There are questionable data points in Value Line's data that Mr. McKenzie relied on to develop his expected market return, and market risk premium, as well as Value Line beta estimates. In fact, Mr. McKenzie includes Value Line growth rates for the S&P 500 companies that are in excess of 4.0x greater than the projected growth rate of the U.S. economy. This is not sustainable. Furthermore, Mr. Walters expresses his concerns with relying solely on Value Line betas.¹⁰¹

Additionally, the PUCO Staff stated in its brief that "Due to the challenge of the pandemic, Staff recognizes the difficulty in estimating the future movements of interest rates. Staff has seen conflicting forecasts and therefore, believes that a larger sample of

⁹⁶ OCC Ex. 2 at 32, 36.

⁹⁷ DP&L Brief at 35.

⁹⁸ DP&L Brief at 36.

⁹⁹ DP&L Brief at 36.

¹⁰⁰ DP&L Brief at 36.

¹⁰¹ OCC Ex. 2 at 54-57.

previous interest rates is more applicable at this time.”¹⁰² But Staff’s reliance on an arbitrary historical average of the 10-year and 30-year Treasury yield dating back to 2006 produced an average risk-free rate of 3.05%. As Mr. Walters noted at the hearing, the 30-year Treasury yield finished at about 2.0% at the end of 2021.¹⁰³ Relying on historical yields that overstate the current yield by more than 100 basis points does nothing but increase the cost to ratepayers. The Staff’s reliance on such a historical, arbitrary, and unsupported period denies consumers the ability to realize the benefit of the very low cost of capital environment we find ourselves in.

As demonstrated above, Mr. Walters’ testimony does not state that DP&L’s ROE should be greater than 9.7%. Mr. Walters supports an ROE *in the range of 8.9% to 9.7%* with a midpoint of 9.3%.¹⁰⁴ Further, as Mr. Walters explains in his response to Mr. McKenzie’s analyses, once corrected, Mr. McKenzie’s model results produce an ROE in the range of 9.0% to 9.4%.¹⁰⁵

2. Mr. Walters’ testimony in other proceedings in other states is not relevant to DP&L’s rate case in Ohio—the PUCO must rely on record evidence in *this proceeding*.

DP&L asserts in its brief that DP&L has a very low bond rating, but that Mr. Walters failed to recommend that the PUCO consider that in setting DP&L’s ROE.¹⁰⁶ DP&L points to a Michigan proceeding, where allegedly Mr. Walters testified that the utility had a credit rating two notches above the average bond rating of the proxy group,

¹⁰² Staff Brief at 20-21.

¹⁰³ Tr. Vol. 5 at 947-948.

¹⁰⁴ OCC Ex. 2 at 41.

¹⁰⁵ OCC Ex. 2 at 54-57 (Corrected estimates are summarized in Table 13 on page 52 of Walters’ Direct Testimony).

¹⁰⁶ DP&L Brief at 65.

and that the Michigan "Commission should continue to reflect the Company's low risk" in setting its ROE.¹⁰⁷ DP&L is again mischaracterizing Mr. Walters's testimony and is twisting Mr. Walter's words from previous testimony (in Michigan). As discussed above, Mr. Walters's testimony shows that DP&L's argument fails to acknowledge its SACP rating.

3. The Federal Reserve Has Increased the Federal Funds Rate, But Such A Move Is Not Correlated to Utility Bond Yields or A Reasonable Rate of Return

DP&L argues that the PUCO should conclude that the Federal Funds Rate and yields for utility and treasury bonds are highly correlated.¹⁰⁸ And the PUCO should further conclude that the Federal Reserve's recent announcement that it would increase the Federal Funds Rate shows that yields will be increasing and the required ROE for AES Ohio will similarly be increasing.¹⁰⁹ DP&L is wrong.

There is absolutely no indication that changes in the Federal Funds Rate are "highly correlated" with changes in utility bond yields. In fact, quite the opposite. This is apparent when one observes the stair-step increases in the Federal Funds Rate from 2015 through 2019 relative to the flat, to declining, yield of Utility bond yields over the same time. The PUCO should disregard DP&L's argument that Federal Funds Rate and yields for utility and treasury bonds are highly correlated.¹¹⁰

¹⁰⁷ DP&L Brief at 65.

¹⁰⁸ DP&L Brief at 66.

¹⁰⁹ DP&L Brief at 66.

¹¹⁰ OCC Ex. 2 at 20, Figure CCW-3.

IV. CONCLUSION

The PUCO should deny DP&L's request to increase rates while ESP I is in place. If the PUCO does not dismiss DP&L's application (it should), then the PUCO must freeze DP&L's rates at the level they were set at the time DP&L reverted to ESP I.¹¹¹ DP&L is dishonoring its settlement agreement with OCC and others for a rate freeze. That would be a miscarriage of justice for the PUCO's settlement process and for the Dayton-area consumers who are affected. The PUCO should thus order DP&L to keep its commitment to freeze rates. Those joining OCC for a rate freeze now include the PUCO Staff, the Ohio Manufacturers' Association, Kroger, and the Ohio Hospital Association.

After ESP I and the rate freeze expires and if the PUCO then allows DP&L an increase (which it should not), the increase should not exceed \$43.3 million. But again, any increase must be stayed until the expiration of ESP I, as the PUCO considered in its Entry denying OCC's Motion to Dismiss.

¹¹¹ See Case No. 12-426-EL-SSO, Entry on Rehearing at 5 (February 13, 2013) (interpreting R.C. 4928.143(C)(2)(b) to mean that when a utility withdraws from its electric security plan, it must revert to the previous electric security plan in its entirety).

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Ambrosia E. Wilson
John Finnigan (0018689)
Counsel of Record
Ambrosia E. Wilson (0096598)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Finnigan]: (614) 466-9585
Telephone [Wilson]: (614) 466-1292
john.finnigan@occ.ohio.gov
ambrosia.wilson@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Consumer Protection Reply Brief was served on the persons stated below *via* electronic transmission, this 30th day of March 2022.

/s/ Ambrosia E. Wilson

Ambrosia E. Wilson

Assistant Consumers' Counsel

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

SERVICE LIST

jodi.bair@ohioAGO.gov
kyle.kern@ohioAGO.gov
werner.margard@ohioAGO.gov
chelsea.fletcher@ohioAGO.gov
hogan@lithubio.com
ktreadway@oneenergylc.com
jdunn@oneenergylc.com
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com
dromig@armadapower.com
dparram@bricker.com
rmains@bricker.com
ccox@elpc.org
khernstein@bricker.com
mwarnock@bricker.com
little@lithubio.com
tdougherty@theOEC.org
ctavenor@theOEC.org

Attorney Examiners:

patricia.schabo@puco.ohio.gov
Michael.williams@puco.ohio.gov

bojko@carpenterlipps.com
paul@carpenterlipps.com
wygonski@carpenterlipps.com
michael.schuler@aes.com
jsharkey@ficlaw.com
djireland@ficlaw.com
mwatt@ficlaw.com
christopher.hollon@aes.com
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com
bethany.allen@igs.com
Joe.oliker@igs.com
Michael.nugent@igs.com
Evan.betterton@igs.com
Stephanie.chmiel@thompsonhine.com
Kevin.oles@thompsonhine.com
Fdarr2019@gmail.com
rdove@keglerbrown.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com
bmckenney@mcneeslaw.com
mjsettineri@vorys.com
glpetrucci@vorys.com

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on
3/30/2022 4:32:07 PM**

in

Case No(s). 20-1651-EL-AIR, 20-1652-EL-AAM, 20-1653-EL-ATA

Summary: Brief Consumer Protection Reply Brief by Office of the Ohio Consumers'
Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Wilson, Ambrosia
E.