

**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 Authority) Case No. 08-1096-EL-AAM
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 A STAY OF PROCEEDINGS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In the interest of consumer protection and administrative efficiency, the Office of the Ohio Consumers' Counsel ("OCC") moves for a stay of these proceedings, without prejudice to OCC's claims. Here, the PUCO has before it OCC's Notice of Termination and Withdrawal¹ from our 2009 settlement with DP&L and others, given DP&L's violation of our settlement by its proposed \$120 million base rate increase.² In the 2009 settlement of these cases, DP&L agreed to forgo a distribution rate increase while it is

¹ *In the Matter of the Application of The Dayton Power & Light Company for Approval of Its Electric Security Plan*, Case No. 08-1094-EL-SSO, Notice of Termination and Withdrawal (Sept. 10, 2021).

² *In the Matter of the Application of the Dayton Power and Light Company to Increase its Rates for Electric Distribution*, Case No. 20-1651-EL-AIR.

charging consumers for so-called stability. OCC also has pending before the Ohio Supreme Court a motion for reconsideration of the Supreme Court's recent dismissal³ of our related appeal as "premature."⁴

The Court's upcoming decision on OCC's pending motion for reconsideration and the PUCO's upcoming decision on DP&L's proposed distribution rate increase will likely add clarity to various interrelated issues. Accordingly, consumers and administrative efficiency would be served if this case were stayed, without prejudice to OCC's Notice to terminate and withdraw from the settlement, until: 1) the Ohio Supreme Court issues a final ruling on OCC's Motion for Reconsideration and 2) the PUCO issues an order in DP&L's pending distribution rate case. PUCO Attorney Examiner Gregory Price and parties seemed to encourage such a motion, at the prehearing conference of May 3, 2022.

The reasons for granting this Motion are further set forth in the attached Memorandum in Support.

³ *In re Application of the Dayton Power & Light Co. to Establish a Standard Service Offer*, S.Ct. 2021-1068, 2022-Ohio-1156.

⁴ *Id.*, Motion for Reconsideration (Apr. 25, 2022).

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This is a complicated case with a nearly decade-and-a-half-long history – a history that has unfairly disfavored consumers. DP&L is currently operating under its 2009 electric security plan, having reverted to it for the second time in three years. DP&L likes the 2009 plan because it is collecting \$76 million per year from consumers for stability – a charge that is not based on any real cost of utility service. All told, DP&L consumers will have paid over \$1.2 billion in so-called stability charges to DP&L (not counting the \$218 million in distribution modernization charges) by the end of DP&L’s reinstated ESP I. And yet,

stability charges just like DP&L's have been undone by the Ohio Supreme Court many times over.⁵

This 2009 case has involved settlement, orders, entries, briefing, applications for rehearing, motions, prehearing conferences, a notice of termination and withdrawal from the settlement, and appeals to the Ohio Supreme Court. But clarity may be brought to this case in time, depending on the resolution of certain matters pending before the Ohio Supreme Court and the PUCO. OCC is seeking that clarity through its motion to stay this proceeding pending a ruling from the Ohio Supreme Court on OCC's reconsideration request in S. Ct Case No. 2021-1068 and a ruling in DP&L's rate case (Case No. 20-1651).

Unquestionably, the PUCO has the authority to take the steps necessary to grant OCC's motion. The PUCO is vested with the broad discretion to manage its dockets to avoid duplication of effort and promote administrative efficiency. The PUCO's broad discretion to manage its own docket includes the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business and eliminate unnecessary duplication of effort.⁶

II. RECOMMENDATION

On August 27, 2021, OCC appealed this case to the Ohio Supreme Court to protect DP&L's approximately 500,000 consumers from charges for electric service that

⁵ *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788; *In re Application of Columbus S. Power Co.*, 47 Ohio St.3d 439, 2016-Ohio-1608; *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d.166, 2016-Ohio-3490; *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401.

⁶ *In re Application of Columbus S. Power Co. and Ohio Power Co.*, Case Nos. 11-346-EL-SSO et al., Opinion and Order (Aug. 8, 2012) at 24 (citing *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560 (1982)); Case Nos. 18-857-EL-UNC; 19-1338-EL-UNC; 20-1034-EL-UNC; 20-1476-EL-UNC, Entry (Jan. 12, 2021) (consolidating cases for administrative efficiency).

are unjust and unreasonable. OCC's Appeal involved charges for so-called stability, which the Ohio Supreme Court has consistently struck down. To protect consumers, weeks later OCC filed a Notice of Termination and Withdrawal⁷ regarding the 2009 settlement reached in this case.⁸

On April 13, 2022, the Ohio Supreme Court *sua sponte* dismissed OCC's appeal as "premature" noting its "lack of jurisdiction."⁹ On April 25, 2021, OCC filed a motion asking the Supreme Court to reconsider its decision dismissing OCC's appeal.¹⁰ DP&L filed in opposition to OCC's Motion.¹¹ The Supreme Court has not issued a ruling on OCC's reconsideration request.

Meanwhile, DP&L has proposed a \$120 million distribution rate increase in Case No. 20-1651. DP&L initiated its request for a rate increase on October 30, 2020,¹² during the sixteen-month period that OCC was awaiting a PUCO ruling on its application for rehearing.¹³ The evidentiary hearing in the distribution case has concluded and briefs and reply briefs have been filed. The case is awaiting an oral argument that has been scheduled for May 18, 2022, at DP&L's request.

OCC moved to dismiss DP&L's proposed rate increase as a violation of the 2009 settlement, on August 5, 2021. In 2022, some parties including the PUCO Staff have

⁷ Notice of Termination and Withdrawal (Sept. 10, 2021).

⁸ Stipulation and Recommendation (Feb. 24, 2009).

⁹ Supreme Court Case No. 2021-1068, Decision (Apr. 1, 2022).

¹⁰ *Id.* at Motion for Reconsideration (Apr. 25, 2022).

¹¹ *Id.* Memo of the Dayton Power & Light Co. opposing motion for reconsideration (May 5, 2022).

¹² *In the Matter of the Notice of The Dayton Power and Light Company's Intent to File an Application to Increase Its Rates for Electric Distribution Service*, Case No. 20-1651-EL-AIR (Oct. 30, 2020).

¹³ *In the Matter of the Application of The Dayton Power & Light Company for Approval of Its Electric Security Plan*, Case No. 08-1094-EL-SSO Application for Rehearing (Jan. 17, 2020).

agreed with OCC's position that even a penny of rate increase for DP&L is barred by the 2009 settlement.

On April 22, 2022, an Entry was issued setting a prehearing conference in this case.¹⁴ In the Entry, the Attorney Examiner explained:

In light of the dismissal of OCC's appeal and AES Ohio's cross-appeal, the attorney examiner finds that a prehearing conference should be held in order to discuss a procedural schedule for consideration of OCC's notice of withdrawal and termination and the scope of the hearing proposed by OCC.¹⁵

During the prehearing, it became apparent that there is a consensus among the parties on one issue. The consensus is that the PUCO's decision regarding OCC's Notice of Termination and Withdrawal will likely be impacted by the Supreme Court's decision on OCC's motion for reconsideration and the PUCO's decision on DP&L's proposed distribution rate increase. The Attorney Examiner expressed the belief that during the time that the Supreme Court has jurisdiction over OCC's appeal (due to OCC's Motion for Reconsideration), the PUCO is without jurisdiction to act on OCC's Notice.¹⁶ Further, if the PUCO denies or stays DP&L's request for an increase in rates in the pending distribution rate case, OCC's Notice may be moot.

Thus, it is in the interest of consumer protection and administrative efficiency to stay these proceedings, without prejudice to OCC's Notice, until 1) the Ohio Supreme Court issues a final ruling in OCC's appeal and 2) the PUCO issues an order on DP&L's

¹⁴ Entry (Apr. 22, 2022).

¹⁵ *Id.* at ¶ 18.

¹⁶ R.C. 4903.13 (describing the Court's jurisdiction to "reverse[], vacate[], or modif[y]" the PUCO's orders).

proposed base rate increase. As stated, OCC's requested stay is without prejudice to OCC and its Notice of Termination and Withdrawal.

III. CONCLUSION

In the interest of consumer protection and administrative efficiency, the PUCO should stay these proceedings, *without prejudice to OCC and its Notice of Termination and Withdrawal*, until 1) the Ohio Supreme Court issues a ruling in OCC's motion for reconsideration and 2) the PUCO issues an order on DP&L's proposed base rate increase.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was electronically served via electric transmission on the persons stated below this 13th day of May 2022.

/s/ Maureen R. Willis
Maureen R. Willis
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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UNC**

Summary: Motion Motion for a Stay of Proceedings by Office of the Ohio
Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of
Willis, Maureen R.