

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|---|------------------------|
| In the Matter of the Application of the) | |
| Dayton Power and Light Company) | |
| d/b/a AES Ohio for Approval of Its) | Case No. 22-900-EL-SSO |
| Electric Security Plan.) | |
|) | |

**MOTION FOR SUBPOENA DUCES TECUM
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Ohio Consumers' Counsel ("OCC") respectfully moves¹ the Public Utilities Commission of Ohio ("PUCO"), any commissioner, the legal director, the deputy legal director, or any attorney examiner to issue a subpoena compelling the attendance of the persons identified below at the hearing in this proceeding. The hearing is scheduled to convene on Tuesday, May 2, 2023, at 10:00 a.m., at the Offices of the PUCO, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio, 43215.

The persons requested to attend and give testimony are:

1. Tamara Turkenton, Director of Rates and Analysis Department, Public Utilities Commission of Ohio
2. David Liphtratt, former Chief of Accounting and Finance Division, Public Utilities Commission of Ohio
3. A PUCO-Staff designated person(s) with knowledge and expertise on regulatory practices and principles including deferral accounting, decoupling, carrying charges, prudence reviews, retroactive ratemaking and electric security plans.

Under O.A.C., Rule 4901-1-25, any party may file a motion for a subpoena to persons to attend and give testimony. There is no prohibition in the Ohio Administrative Code that precludes a subpoena to a member of the PUCO Staff to attend and give testimony at an evidentiary hearing. In fact, there is a provision in the Ohio Administrative Code explicitly allowing parties to subpoena persons making or contributing to a Staff Report of Investigation. See O.A.C. 4901-1-28(E). Moreover, here the PUCO Staff has taken on heightened status as a "Signatory Party" to the Settlement, further justifying the issuance of a subpoena to a member of the PUCO Staff.

Said persons shall appear at 10:00 a.m. on May 2, 2023 and shall make themselves available from day to day during the hearing to provide testimony when called by OCC as a witness as on cross-examination concerning this proceeding.

These persons are also requested to bring with them to the hearing and make available to OCC at the beginning of the hearing, the following documents:

- (1) All discovery responses and requests from the present proceeding related to AES Ohio's proposal to collect deferrals and carrying costs from consumers under the Regulatory Compliance Rider (as proposed in AES Ohio's application and as modified by the April 10, 2023 Settlement);
- (2) All communications between the PUCO employees (including Commissioners, Attorney Examiners and Attorneys' General representing the PUCO Staff) and AES Ohio and any other Signatory Party pertaining to AES Ohio's proposal to collect deferrals and carrying charges from consumers under the Regulatory Compliance Rider (as proposed in AES Ohio's application and as modified by the April 10, 2023 Settlement);
- (3) All discovery responses and requests from Case No. 20-140-EL-AAM related to AES Ohio's request to defer decoupling revenues;
- (4) All discovery responses and requests from Case No. 16-395-EL-SSO related to AES Ohio's request in that case to collect deferred OVEC costs and carrying charges;
- (5) All documents pertaining to any prudence review the PUCO Staff has conducted or others have conducted associated with the deferred OVEC

charges that are being sought for collection from consumers in the Settlement;

- (6) All documents pertaining to any prudence review the PUCO has conducted or others have conducted associated with prior RCR deferrals that are being sought for collection from consumers in the Settlement;
- (7) All discovery responses and requests from Case No. 13-2420-EL-UNC related to AES Ohio's request in that case to defer OVEC costs; and,
- (8) All documents pertaining to regulatory practices and principles for deferral accounting and carrying charges.

Grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)
Consumers' Counsel

/s/ Maureen R. Willis
Maureen R. Willis (0020847)
Legal Director
Counsel of Record
John Finnigan (0018689)
Connor D. Semple (0101102)
Assistant Consumers' Counsel

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maureen.willis@occ.ohio.gov
john.finnigan@occ.ohio.gov
connor.semples@occ.ohio.gov
(willing to accept service by e-mail)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On April 10, 2023, nearly all parties to this case reached a Settlement Agreement. The PUCO Staff was a Signatory Party to the Settlement. OCC, the statutory representative of AES Ohio’s nearly 500,000 residential consumers, was not a Signatory Party. For consumer protection, OCC opposes the Settlement and will be challenging the Settlement as not meeting the PUCO’s (flawed) settlement standard. Under the proposed Settlement, the Signatory Parties have agreed to allow AES Ohio to collect new charges from consumers, including approximately \$47 million (plus what may be significant carrying charges) to be collected under DP&L’s Regulatory Compliance Rider charge.

The Regulatory Compliance Rider will allow AES Ohio to collect from consumers coal plant subsidies, some nearly 10 years old, for AES Ohio’s share of two Ohio Valley Electric Corporation (“OVEC”) plants (one in Indiana). Codifying coal plant subsidies for these polluting, 1950’s-era coal plants were also a key part of House Bill 6. Some of the Signatory Parties, including OMAEG, Kroger, CUB, OEC, and OELC “do not support” the collection of these costs from consumers per wording in the Settlement.²

² Settlement Agreement at Footnote 6 (Apr. 10, 2023).

But they nonetheless agreed not to oppose this provision. Other Signatory Parties, including the PUCO Staff, signed on to endorse the charges to consumers.

The Regulatory Compliance Rider also permits AES Ohio to collect deferred decoupling revenues from consumers. These charges were allowed to be collected from consumers under AES Ohio's third electric security plan ("ESP III"). But AES Ohio voluntarily ended that plan³ and reverted back to its first electric security plan ("ESP I"). AES Ohio had no authority to collect or defer those decoupling revenues under its ESP I. And yet, the AES/PUCO Settlement allows for \$13.8 million of deferred decoupling revenues (plus carrying charges) to be collected from consumers. These are some of the same deferred decoupling revenues that the PUCO Staff, OMAEG, Kroger, and OCC opposed in Case No. 20-140-EL-AAM, which remains pending before the PUCO.

OCC seeks to question relevant PUCO Staff related to the \$47 million (plus carrying charges) that the Settlement allows AES Ohio to collect from Dayton-area consumers through the so-called Regulatory Compliance Rider. Tamara Turkenton and David Lipthrott prepared the Staff Recommendation regarding DP&L's application to defer its distribution decoupling revenues in Case No. 20-0140-EL-AAM.⁴ David Lipthrott also provided testimony on this topic in the same proceeding.⁵ The Settlement that the PUCO Staff signed allows AES Ohio to charge its consumers for a portion of the deferred decoupling revenues (\$13.8 million, plus carrying charges).

³ *In re Application of the Dayton Power and Light Co. for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO, Notice of Withdrawal (Sept. 7, 2012).

⁴ *In the Matter of the Application for Approval to Defer Distribution Decoupling Costs*, Case No. 20-0140-EL-AAM, Staff Recommendation (April 29, 2020).

⁵ Case No. 20-0140-EL-AAM, Testimony of David M. Lipthrott (March 19, 2021).

Ms. Turkenton was also integrally involved in this case and is familiar with the terms of the Settlement, including the Regulatory Compliance Rider. Her testimony on topics including the nature of the regulatory deferrals, authority for the deferrals, the associated carrying charges on the deferrals and regulatory practices and principles related to deferrals, carrying charges, and retroactive ratemaking would further the PUCO's understanding of these RCR charges that the PUCO Staff (and others) agreed to and recommended for collection from Dayton-area consumers.

OCC also asks that the PUCO Staff designate a person(s) with knowledge and expertise on regulatory practices and principles including deferral accounting, decoupling, carrying charges, prudence reviews, retroactive ratemaking and electric security plans. These are all issues that are raised by the Settlement proposal to collect deferred expenses, deferred revenues, and carrying charges from consumers through the Regulatory Compliance Rider.

II. LAW AND ARGUMENT

A. The Ohio Administrative Code allows OCC to obtain subpoenas for PUCO staff members for testimony at hearing.

Under O.A.C. 4901-1-25, any party may file a motion for a subpoena to persons to attend and give testimony. There is no prohibition in the Ohio Administrative Code that precludes a subpoena to a member of the PUCO Staff to attend and give testimony at an evidentiary hearing.

In fact, there is a provision in the O.A.C. explicitly allowing parties to subpoena persons making or contributing to a Staff Report of Investigation, which would include a member of the Commission Staff. See O.A.C. 4901-1-28(E). The PUCO has also ruled

that parties may subpoena PUCO Staff to testify at hearings.⁶ Moreover, here the PUCO Staff has taken on heightened status as a “Signatory Party” to the Settlement, further justifying the issuance of a subpoena to a member of the PUCO Staff.

B. Issuing a subpoena to aid in the presentation of evidence at an evidentiary hearing is within the PUCO’s authority, where the information sought is relevant to the issues under PUCO consideration.

The PUCO’s subpoena power, which facilitates parties’ ability to conduct discovery and present evidence for the PUCO’s consideration, is grounded in Ohio law and rules. Attorney Examiners are authorized to issue subpoenas.⁷ “A party may file a motion for subpoena” that “shall command the person to whom it is directed to attend and give testimony at the time and place specified therein.”⁸ Additionally a “subpoena may also command such person to produce books papers, documents, or other tangible things described therein.”⁹

A subpoena to attend and give testimony at hearing facilitates the presentation of evidence at hearing. The hearing in this proceeding will center upon whether the Settlement satisfies the PUCO’s three prong test. The witnesses subpoenaed should be able to provide relevant information including whether the Settlement is in the public interest and whether it violates important regulatory practices and principles.

⁶ *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Pub. Util. Comm., No. 06-685-AU-ORD, 2006 Ohio PUC LEXIS 746, *79-80 (Dec. 6, 2006) (denying proposed change to O.A.C. 4901-1-28 because “Staff may be subpoenaed to testify at a hearing, but not for a deposition.”); see also *In re Black Fork Wind Energy, L.L.C.*, , 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E. 3d 173, ¶19 (noting that the parties could have requested that seven staff members who contributed to a report testify at a Power Siting Board hearing).

⁷ R.C. 4901.18.

⁸ O.A.C. 4901-1-25(A).

⁹ *Id.*

The PUCO Staff actively participated in this case. The PUCO Staff is a Signatory Party to the Settlement and in particular supports the collection of coal plant deferrals (and associated carrying charges) through AES Ohio's so-called Regulatory Compliance Rider. The PUCO Staff is one of several Signatory Parties that has been involved in past cases where the regulatory practices and principles at issue in this case have been examined.

Allowing for PUCO Staff testimony will aid in providing a complete record and should allow the PUCO to better understand the regulatory practices and principles underlying the \$47 million of deferrals (plus carrying charges) that consumers are being asked to pay for. It is reasonable, and not oppressive, to require the Staff, as a Signatory Party with extensive regulatory experience and involvement on these matters, to testify at the evidentiary hearing. It serves due process for OCC on behalf of consumers. It serves justice, which the PUCO must administer.

III. CONCLUSION

The OCC respectfully requests that the attached subpoenas be signed so that Tamara Turkenton, David Liphtratt, and a PUCO-designated person(s), with knowledge and expertise on regulatory practices and principles at issue, will be compelled to appear and testify at the evidentiary hearing in this matter as set forth above.

Additionally, per the terms of the attached subpoena, these PUCO Staff personnel should be ordered to bring documents with them and make available to OCC, on the first day of the hearing, as requested and discussed above. Due process and justice for consumers should be served by granting OCC's motion.

Respectfully submitted,

Bruce Weston (0016973)
Consumers' Counsel

/s/ Maureen R. Willis

Maureen R. Willis (0020847)
Legal Director
Counsel of Record
John Finnigan (0018689)
Connor D. Semple (0101102)
Assistant Consumers' Counsel

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john.finnigan@occ.ohio.gov
connor.semples@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion for Subpoena was served on the persons stated below via electronic transmission this 21st day of April 2022.

/s/ Maureen R. Willis _____

Maureen R. Willis

Legal Director

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

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THE PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM

To: Tamara S. Turkenton
Director of Rates and Analysis Department
Public Utilities Commission of Ohio
180 E. Broad St., Columbus, Ohio
43215

Upon application of the Ohio Consumers' Counsel, and consistent with R.C. 4928.09(A)(1)(a)(b), Tamara S. Turkenton, Director of Rates and Analysis Department, Public Utilities Commission of Ohio, shall appear before the Public Utilities Commission of Ohio as a witness in the following proceeding:

Case No. 22-900-EL-SSO

In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan.

Tamara S. Turkenton is to appear at the offices of the Commission, 180 East Broad Street, Columbus, Ohio, on Tuesday, May 2, at 10:00 a.m. in Hearing Room 11-A and be available to testify at the hearing from day to day thereafter until called as on cross-examination by the Office of the Ohio Consumers' Counsel and completing testimony.

Ms. Turkenton is instructed to bring to the hearing and make available to OCC at the outset of the hearing the following documents:

- (1) All discovery responses and requests from the present proceeding related to AES Ohio's proposal to collect deferrals and carrying costs from consumers under the Regulatory Compliance Rider (as proposed in AES Ohio's application and as modified by the April 10, 2023 Settlement);
- (2) All communications between the PUCO employees (including Commissioners, Attorney Examiners and Attorneys' General representing the PUCO Staff) and AES Ohio and any other Signatory Party pertaining

to AES Ohio's proposal to collect deferrals and carrying charges from consumers under the Regulatory Compliance Rider (as proposed in AES Ohio's application and as modified by the April 10, 2023 Settlement);

- (3) All discovery responses and requests from Case No. 20-140-EL-AAM related to AES Ohio's request to defer decoupling revenues;
- (4) All discovery responses and requests from Case No. 16-395-EL-SSO related to AES Ohio's request in that case to collect deferred OVEC costs and carrying charges;
- (5) All documents pertaining to any prudence review the PUCO Staff has conducted or others have conducted associated with the deferred OVEC charges that are being sought for collection from consumers in the Settlement;
- (6) All documents pertaining to any prudence review the PUCO has conducted or others have conducted associated with prior RCR deferrals that are being sought for collection from consumers in the Settlement;
- (7) All discovery responses and requests from Case No. 13-2420-EL-UNC related to AES Ohio's request in that case to defer OVEC costs; and,
- (8) All documents pertaining to regulatory practices and principles for deferral accounting, carrying charges, and retroactive ratemaking.

Dated at Columbus, Ohio, this _____ day of April 2023.

BY: _____

TITLE: _____

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by

the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.



THE PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM

To: David Lipthrott
Former Chief of Accounting and Finance Division
Public Utilities Commission of Ohio
180 E. Broad St., Columbus, Ohio
43215

Upon application of the Ohio Consumers' Counsel, and consistent with R.C. 4928.09(A)(1)(a)(b), David Lipthrott, former Chief of Accounting and Finance Division, Public Utilities Commission of Ohio, shall appear before the Public Utilities Commission of Ohio as a witness in the following proceeding:

Case No. 22-900-EL-SSO.

In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan.

David Lipthrott is to appear at the offices of the Commission, 180 East Broad Street, Columbus, Ohio, on Tuesday, May 2 at 10:00 a.m. Hearing Room 11-A and be available to testify at the hearing from day to day thereafter until called as on cross-examination by the Office of the Ohio Consumers' Counsel and completing testimony.

Mr. Lipthrott is instructed to bring to the hearing and make available to OCC at the outset of the hearing the following documents:

- (1) All discovery responses and requests from the present proceeding related to AES Ohio's proposal to collect deferrals and carrying costs from consumers under the Regulatory Compliance Rider (as proposed in AES Ohio's application and as modified by the April 10, 2023 Settlement);
- (2) All communications between the PUCO employees (including Commissioners, Attorney Examiners and Attorneys' General representing the PUCO Staff) and AES Ohio and any other Signatory Party pertaining

to AES Ohio's proposal to collect deferrals and carrying charges from consumers under the Regulatory Compliance Rider (as proposed in AES Ohio's application and as modified by the April 10, 2023 Settlement);

- (3) All discovery responses and requests from Case No. 20-140-EL-AAM related to AES Ohio's request to defer decoupling revenues;
- (4) All discovery responses and requests from Case No. 16-395-EL-SSO related to AES Ohio's request in that case to collect deferred OVEC costs and carrying charges;
- (5) All documents pertaining to any prudence review the PUCO Staff has conducted or others have conducted associated with the deferred OVEC charges that are being sought for collection from consumers in the Settlement;
- (6) All documents pertaining to any prudence review the PUCO has conducted or others have conducted associated with prior RCR deferrals that are being sought for collection from consumers in the Settlement;
- (7) All discovery responses and requests from Case No. 13-2420-EL-UNC related to AES Ohio's request in that case to defer OVEC costs; and,
- (8) All documents pertaining to regulatory practices and principles for deferral accounting, carrying charges, and retroactive ratemaking.

Dated at Columbus, Ohio, this _____ day of April 2023.

BY: _____

TITLE: _____

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by

the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.



THE PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM

To: Public Utilities Commission of Ohio
180 E. Broad St., Columbus, Ohio
43215

Upon application of the Ohio Consumers' Counsel, and consistent with R.C. 4928.09(A)(1)(a)(b), the Public Utilities Commission of Ohio is hereby required to produce a designated representative or representatives with knowledge and expertise on regulatory practices and principles including deferral accounting, decoupling, carrying charges, prudence reviews, retroactive ratemaking and electric security plans.

Said witness(es) are to appear before the Public Utilities Commission of Ohio as a witness in the following proceeding:

Case No. 22-900-EL-SSO.

In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan.

The witness/witnesses is/are to appear at the offices of the Commission, 180 East Broad Street, Columbus, Ohio, on Tuesday, May 2 at 10:00 a.m. Hearing Room 11-A and be available to testify at the hearing from day to day thereafter until called as on cross-examination by the Office of the Ohio Consumers' Counsel and completing testimony.

The designated PUCO representative is/are instructed to bring to the hearing and make available to OCC, at the outset of the hearing, the following documents:

- (1) All discovery responses and requests from the present proceeding related to AES Ohio's proposal to collect deferrals and carrying costs from consumers under the Regulatory Compliance Rider (as proposed in AES Ohio's application and as modified by the April 10, 2023 Settlement);
- (2) All communications between the PUCO employees (including Commissioners, Attorney Examiners and Attorneys' General representing

the PUCO Staff) and AES Ohio and any other Signatory Party pertaining to AES Ohio's proposal to collect deferrals and carrying charges from consumers under the Regulatory Compliance Rider (as proposed in AES Ohio's application and as modified by the April 10, 2023 Settlement);

- (3) All discovery responses and requests from Case No. 20-140-EL-AAM related to AES Ohio's request to defer decoupling revenues;
- (4) All discovery responses and requests from Case No. 16-395-EL-SSO related to AES Ohio's request in that case to collect deferred OVEC costs and carrying charges;
- (5) All documents pertaining to any prudence review the PUCO Staff has conducted or others have conducted associated with the deferred OVEC charges that are being sought for collection from consumers in the Settlement;
- (6) All documents pertaining to any prudence review the PUCO has conducted or others have conducted associated with prior RCR deferrals that are being sought for collection from consumers in the Settlement;
- (7) All discovery responses and requests from Case No. 13-2420-EL-UNC related to AES Ohio's request in that case to defer OVEC costs; and,
- (8) All documents pertaining to regulatory practices and principles for deferral accounting ,carrying charges, and retroactive ratemaking.

Dated at Columbus, Ohio, this _____ day of April 2023.

BY: _____

TITLE: _____

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 22-0900-EL-SSO

Summary: Motion Motion for Subpoena Duces Tecum by Office of the Ohio
Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Willis,
Maureen R..