

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

**MOTION TO DISMISS DP&L’S APPLICATION FOR A RATE INCREASE
BY
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Respectfully submitted,

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August 5, 2021

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As part of a settlement agreement reached with OCC and others, the Dayton Power and Light Company (“DP&L”) agreed to freeze its base rates to consumers for the duration of its first Electric Security Plan (“ESP 1”).¹ DP&L’s ESP 1 is currently in effect because DP&L unilaterally chose to revert back to ESP 1 after the PUCO stopped charging DP&L consumers for DP&L’s so-called distribution modernization rider.² The Public Utilities Commission of Ohio (“PUCO”) should enforce this ESP 1 rate freeze for Dayton-area consumers, just as it has enforced the other provisions of the settlement reached in DP&L’s ESP 1.

Accordingly, and for the reasons more fully described in the attached memorandum in support, the Office of the Ohio Consumers’ Counsel (“OCC”) respectfully moves the PUCO for an

¹ *In re Application of the Dayton Power & Light Co. for Approval of its Elec. Sec. Plan*, Case No. 08-1094-EL-SSO, Stipulation & Recommendation at 10 (February 24, 2009) (the “ESP 1 Settlement”); Opinion & Order at 5, 9 (June 24, 2009) (“ESP 1 2009 Opinion”).

² *Id.*, Second Finding & Order (December 18, 2019).

order denying DP&L's application³ to increase rates to consumers in its entirety and dismissing these cases with prejudice for as long as ESP 1 remains in effect. Allowing a distribution rate increase when DP&L committed to a rate freeze during ESP 1 violates the settlement agreement, the PUCO's rulings on the continuation of DP&L ESP 1, and the PUCO's interpretation of 4928.143(C)(2)(b).

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³ Application of the Dayton Power and Light Co. to Increase its Rates for Electric Distribution (November 30, 2020) (the "Application").

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

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

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

MEMORANDUM IN SUPPORT

DP&L wants to charge consumers an additional \$121 million per year for base distribution service.⁴ But DP&L is prohibited from increasing base rates to its consumers by \$121 million—or any other amount—because it agreed to freeze base distribution rates in a 2009 PUCO-approved settlement. DP&L is currently operating under that settlement, which sets the terms for DP&L’s ESP 1. DP&L unilaterally decided to revert to ESP 1. ESP 1 is currently in effect and expected to be in effect for at least three more years.⁵ The PUCO must enforce the ESP 1 rate freeze, just as it has enforced the other provisions of DP&L’s ESP 1. It must reject DP&L’s Application in its entirety and dismiss this case with prejudice for the duration of ESP 1.

⁴ Application at 2.

⁵ See *In re Application of the Dayton Power & Light Co. for a Finding that its Current Elec. Sec. Plan Passes the Significantly Excessive Earnings Test & More Favorable in the Aggregate Test in R.C. 4928.143(E)*, Case No. 20-680-EL-UNC, Opinion & Order ¶ 41 (June 16, 2021) (DP&L to file application for new ESP by October 1, 2023, which means a new ESP will likely not be in effect until mid 2024).

I. BACKGROUND

A. The ESP 1 Settlement.

In its first electric security plan case, DP&L, OCC, the PUCO Staff, and other intervenors signed a settlement.⁶ Under this ESP 1 Settlement, DP&L's first electric security plan (ESP 1) was to be in effect until December 31, 2012.⁷ The ESP 1 Settlement likewise provided that certain rates and terms would continue through December 31, 2012. Two of these provisions are relevant to the current case.

First, under the ESP 1 Settlement, DP&L was allowed to continue charging consumers under its Rate Stabilization Charge or "RSC" through December 31, 2012.⁸ DP&L consumers are paying that Rate Stabilization charge today under DP&L's ESP 1, which was reinitiated December 19, 2019. To date, DP&L consumers have paid more than a half billion dollars in stability charges under ESP 1. With the recent PUCO-approved settlement (opposed by OCC), DP&L customers can be expected to pay \$79 million per year in stabilization charges through 2024 (the supposed end to ESP 1).

Second, the ESP 1 Settlement provides that "DP&L's distribution base rates will be frozen through December 31, 2012."⁹ The only exceptions to the rate freeze (the "Rate Freeze") are (i) DP&L could seek emergency rate relief under R.C. 4909.16, (ii) DP&L could seek PUCO approval of a rider for the "cost of complying with changes in tax or regulatory laws and

⁶ See ESP 1 Settlement.

⁷ ESP 1 2009 Opinion at 7 ("DP&L notes that the Stipulation extends its electric security plan through December 31, 2012..."); ESP 1 Settlement at 3 ("the parties agree to extend DP&L's current rate plan through December 31, 2012, except as modified herein"), at 7 ("DP&L will file a new ESP and/or MRO case by March 31, 2012 to set SSO rates to apply for [the] period beginning January 1, 2013.").

⁸ ESP 1 2009 Opinion at 5 ("The current RSC will continue as an unavoidable charge through 2012."); ESP 1 Settlement at 4 ("The current [RSC] charge will continue as a nonbypassable charge through December 31, 2012."). (The ESP 1 Settlement has a typo, referring to the RSC as the "RSS." See ESP 1 2009 Opinion at 5, footnote 2.).

⁹ ESP 1 Settlement at 10.

regulations effective after the date” of the settlement, and (iii) DP&L could seek approval of a rider for storm damage costs.¹⁰

The PUCO approved the ESP 1 Settlement without modification.¹¹

B. The ESP 1 Extension allowed DP&L to continue charging customers for stability.

As required by the ESP 1 Settlement, on March 30, 2012, DP&L filed an application for a market rate offer to replace ESP 1.¹² Before the PUCO could rule on that application, however, DP&L withdrew it.¹³ At the same time, DP&L notified the PUCO and parties that it intended to file an application for an electric security plan by October 8, 2012.¹⁴

DP&L’s withdrawal of its MRO application occurred on September 7, 2012, less than four months before the December 31, 2012 expiration of ESP 1. At this point, it became clear that the PUCO would not be able to approve an MRO or ESP to replace ESP 1 before ESP 1 expired.

Recognizing this, OCC and other intervenors filed a joint motion to enforce the terms of ESP 1.¹⁵ In that motion, intervenors noted that under the plain language of the ESP 1 Settlement, the RSC was to expire on December 31, 2012. (Same for the rate freeze.) Accordingly, the intervenors argued that if ESP 1 were to continue beyond that date (as a result of there not being a new ESP or MRO to replace it), the PUCO “should promptly identify the provisions of ESP I

¹⁰ ESP 1 Settlement at 10-11.

¹¹ ESP 1 2009 Opinion at 13.

¹² *In re Application of the Dayton Power & Light Co. for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO, Application (March 30, 2012).

¹³ Case No. 12-426-EL-SSO, Notice of Withdrawal of Market Rate Offer Application (September 7, 2012).

¹⁴ Case No. 12-426-EL-SSO, Motion of Application the Dayton Power & Light Co. to Set Procedural Schedule for its Elec. Sec. Plan Filing (September 7, 2012).

¹⁵ Case No. 12-426-EL-SSO, Joint Motion Seeking Enforcement of Approved Settlement Agreements and Orders Issued by the Public Utilities Commission of Ohio (September 26, 2012) (the “Joint Motion”).

that cease as of December 31, 2012 and thereafter no longer apply to determine electric bills of ... customers.”¹⁶ More specifically, the parties argued that PUCO, consistent with the terms of the ESP 1 Settlement, should “direct DP&L to refile its ESP I tariffs to remove the RSC effective for service rendered on or after January 1, 2013.”¹⁷

DP&L opposed the Joint Motion.¹⁸ DP&L argued that under the ESP 1 Settlement, ESP 1 was to continue through December 31, 2012, and the RSC was to continue through December 31, 2012, so any extension of ESP 1 necessarily meant that the RSC would continue as well.¹⁹

The PUCO agreed with DP&L and denied the Joint Motion.²⁰ The PUCO was not convinced by the joint movants’ argument that the RSC was required to end because the ESP 1 Settlement specifically referenced a December 31, 2012 termination date. Instead, it ruled, “As one of the provisions, terms, or conditions of the current ESP, the RSC should continue with the ESP until a subsequent standard service offer is authorized.”²¹ As the PUCO itself had previously ruled, when a utility withdraws from an electric security plan and reverts to its previous one, “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.”²²

¹⁶ *Id.* at 13-14.

¹⁷ *Id.* at 14.

¹⁸ Case No. 12-426-EL-SSO, Memorandum of the Dayton Power & Light Co. in Opposition to Joint Motion Seeking Enforcement of Approved Settlement Agreements and Orders Issued by the Public Utilities Commission of Ohio (October 11, 2012).

¹⁹ *Id.* at 10.

²⁰ Case No. 12-426-EL-SSO, Entry (December 19, 2012).

²¹ *Id.* at 4.

²² *In re Application of the Dayton Power & Light Co. for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO, Entry on Rehearing ¶ 10 (February 19, 2013).

C. ESP 2, Withdrawal of ESP 2, and Return to ESP 1, with the Stability Charge to Consumers Continuing.

Following the extension of ESP 1 beyond its original December 31, 2012 end date, the PUCO approved DP&L's ESP 2 on September 4, 2013.²³ ESP 2 included charges to consumers to subsidize DP&L called the "Service Stability Rider," similar to the Rate Stabilization Charge that parties had agreed to under ESP 1. OCC applied for rehearing and ultimately appealed that ruling to the Ohio Supreme Court.²⁴ OCC's primary challenge was that the Service Stability Rider was unlawful.²⁵

OCC's appeal succeeded, with the Supreme Court reversing the PUCO's ruling.²⁶ In response to the Supreme Court ruling stopping the stability charge, DP&L moved to withdraw from ESP 2 and revert to ESP 1.²⁷ The PUCO granted DP&L's request on August 26, 2016, over OCC's objections, and allowed DP&L to again charge consumers under the terms of ESP 1, including reviving the Rate Stabilization Charge.²⁸

D. ESP 3, Withdrawal of ESP 3, and Second Return to ESP 1, with the Stability Charge to Consumers Continuing.

In early 2016, DP&L filed an application for a new electric security plan (ESP 3).²⁹ Over the objection of numerous parties, including OCC, the PUCO approved ESP 3.³⁰ Like ESP 1 and

²³ Case No. 12-426-EL-SSO, Opinion & Order (September 4, 2013).

²⁴ Ohio Supreme Court Case No. 2014-1505.

²⁵ Ohio Supreme Court Case No. 2014-1505, Merit Brief by Appellant The Office of the Ohio Consumers' Counsel (December 1, 2014).

²⁶ *In re Dayton Power & Light Co.*, 2016-Ohio-3490 (following the Court's ruling in *In re Columbus S. Power Co.*, 2016-Ohio-1608, where the Court ruled that a similar charge for AEP Ohio consumers was unlawful).

²⁷ Case No. 12-426-EL-SSO, Motion of the Dayton Power & Light Co. to Withdraw its Applications in this Matter (July 27, 2016).

²⁸ Case No. 12-426-EL-SSO.

²⁹ *In re Application of the Dayton Power & Light Co. for Approval of its Elec. Sec. Plan*, Case No. 16-395-EL-SSO, Application (February 22, 2016).

³⁰ Case No. 16-395-EL-SSO, Opinion & Order (October 20, 2017).

ESP 2, ESP 3 included a subsidy charge to consumers, this time called the “Distribution Modernization Rider” or “DMR.”³¹

Before approving DP&L’s DMR, the PUCO had approved a substantially identical DMR for FirstEnergy in its electric security plan proceeding.³² OCC and other parties appealed that ruling and the Ohio Supreme Court ruled that FirstEnergy’s DMR was unlawful.³³

Citing this Supreme Court precedent and the substantial similarity between FirstEnergy’s and DP&L’s Distribution Modernization Riders, the PUCO modified DP&L’s ESP 3, removing charges to consumers under DP&L’s DMR.³⁴

In response, DP&L almost immediately filed a notice of withdrawal of ESP 3, seeking PUCO approval to again revert to ESP 1 (a second time in three years), including charges to consumers for the Rate Stabilization Charge.³⁵ OCC and others opposed DP&L’s attempt to again revert to ESP 1.³⁶

The PUCO granted DP&L’s request to revert to ESP 1.³⁷ Thus, as of December 19, 2019, DP&L once again began charging consumers for the Rate Stabilization Charge—that very same charge that DP&L and OCC agreed would expire December 31, 2012.

³¹ *Id.* ¶ 13.

³² *In re Application of [FirstEnergy] for Authority to Provide for a Standard Serv. Offer*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (October 12, 2016).

³³ *In re Application of Ohio Edison Co.*, 2019-Ohio-2401.

³⁴ *In re Application of the Dayton Power & Light Co. to Establish a Standard Serv. Offer in the Form of an Elec. Sec. Plan*, Case No. 16-395-EL-SSO, Supplemental Opinion & Order (November 21, 2019).

³⁵ Case No. 16-395-EL-SSO, The Dayton Power & Light Co.’s Notice of Withdrawal of its Application in Case No. 16-395-EL-SSO Pursuant to R.C. 4928.143(C)(2)(a) (November 25, 2019).

³⁶ Case No. 16-395-EL-SSO, Memorandum Contra DP&L’s Motions to Withdraw its Application & Implement Previously Authorized Rates (to Increase Charges to Consumers) by the Office of the Ohio Consumers’ Counsel, the Ohio Manufacturers’ Association Energy Group, the Kroger Company, and IGS Energy (December 4, 2019).

³⁷ Case No. 16-395-EL-SSO, Finding & Order (December 18, 2019) (approving withdrawal); Case No. 08-1094-EL-SSO, Second Finding & Order (approving revised tariffs with modifications by the PUCO).

OCC and others applied for rehearing, challenging the PUCO's ruling that DP&L could revert to ESP 1 and again charge consumers under the Rate Stabilization Charge.³⁸ Among other things, OCC argued in its application for rehearing that the PUCO erred by failing to continue the rate freeze that was part of ESP 1.³⁹ As the PUCO itself had previously ruled, when a utility withdraws from an electric security plan and reverts to its previous one, "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."⁴⁰

The PUCO denied OCC's application for rehearing.⁴¹ According to the PUCO, OCC should have raised the issue of the rate freeze in DP&L's 2015 base distribution rate case, Case No. 15-1830-EL-SSO.⁴² ESP 1 was in effect from September 1, 2016 (when DP&L withdrew from ESP 2) to October 31, 2017 (when ESP 3 became effective), and during that time, DP&L's 2015 rate case was pending.⁴³ The PUCO further reasoned that, having approved new base rates in the 2015 rate case, it would not be possible to revert to base rates that were in effect at the time ESP 1 was approved.⁴⁴

³⁸ Case No. 16-395-EL-SSO, Application for Rehearing from the Supplemental Opinion & Order by the Office of the Ohio Consumers' Counsel (December 23, 2019); Case No. 08-1094-EL-SSO, Application for Rehearing of the Office of the Ohio Consumers' Counsel (January 17, 2020).

³⁹ Case No. 08-1094-EL-SSO, Application for Rehearing of the Office of the Ohio Consumers' Counsel at 6-10 (January 17, 2020).

⁴⁰ *In re Application of the Dayton Power & Light Co. for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO, Entry on Rehearing ¶ 10 (February 19, 2013).

⁴¹ Case No. 08-1094-EL-SSO, Fifth Entry on Rehearing (June 16, 2021).

⁴² *Id.* ¶ 19.

⁴³ *Id.*

⁴⁴ *Id.*

E. The 2020 Rate Case, where DP&L’s Commitment to Consumers to Freeze Rates is Broken

DP&L initiated the above-captioned rate case with a notice of intent on October 30, 2020 and its application on November 30, 2020. DP&L seeks to charge its consumers an additional \$121 million annually. Since the time of its application, and continuing through today, DP&L has been operating under the terms of ESP 1.

Consistent with the PUCO’s instruction in Case No. 08-1094-EL-SSO that the proper place to enforce the rate freeze is a base rate case, OCC now seeks to enforce the Rate Freeze in this base rate case. ESP 1 is currently in effect. ESP 1 says that for the duration of ESP 1, a distribution rate freeze shall be in effect.

Enforcing the Rate Freeze means that DP&L’s rates should remain at the level established in the 2015 rate case. DP&L is not entitled to a \$121 million rate increase, or a rate increase of any other amount. The PUCO should deny the Application and dismiss this case with prejudice for as long as ESP 1 remains effective.

II. ARGUMENT

A. DP&L’s application is unlawful under R.C. 4928.143(C)(2)(b), as interpreted by the PUCO. The PUCO must enforce the terms of ESP 1 in their entirety, including the Rate Freeze, which is an agreed-upon consumer protection.

Under R.C. 4928.143(C)(2)(b), if a utility withdraws from 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 pursuant to this section of section 4928.142 of the Revised Code.” The PUCO has interpreted this statute

to mean that when a utility withdraws from its current ESP, it reverts to its previous ESP in its entirety.⁴⁵

When DP&L withdrew from ESP 2 and reverted to ESP 1, the PUCO found that DP&L was required to continue charges to consumers (which included the Rate Stabilization Charge) because those charges were part of ESP 1: “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.”⁴⁶

When DP&L withdrew from ESP 3 and reverted to ESP 1, the PUCO again found that it was required to continue ESP 1 without modification. The PUCO rejected arguments that the RSC should not continue.⁴⁷ The PUCO rejected arguments that DP&L should be allowed to continue charging consumers under various riders because they were approved in ESP 3 and thus were not part of ESP 1.⁴⁸ And the PUCO rejected arguments that certain “economic development” payments to signatory parties in ESP 3 should continue because they were not part of ESP 1 either.⁴⁹

There can be no dispute that the Rate Freeze was part of ESP 1. The ESP 1 Settlement states, “DP&L’s distribution rates will be frozen through December 31, 2012,” which was the original termination date for ESP 1.⁵⁰ And the PUCO has already ruled that when ESP 1 was

⁴⁵ OCC does not concede that this is the correct legal interpretation, as OCC has argued that the law only requires the utility to revert to its most recent *standard service offer*, not its entire electric security plan. It remains an open issue in Case No. 08-1094-EL-SSO, and OCC reserves all rights on that issue in that case and any related cases, including appeals.

⁴⁶ Case No. 12-426-EL-SSO, Entry on Rehearing at 5 (February 13, 2013).

⁴⁷ Case No. 08-1094-EL-SSO, Second Finding & Order ¶¶ 29-35 (December 18, 2019).

⁴⁸ *Id.* ¶¶ 36-38.

⁴⁹ *Id.* ¶ 40.

⁵⁰ ESP 1 Settlement at 10.

extended beyond December 31, 2012, its provisions were extended,⁵¹ so that would include the Rate Freeze. Therefore, DP&L's application to increase rates is unlawful and should be dismissed.

B. OCC retains the right to enforce the Rate Freeze.

In the PUCO's June 2021 Fifth Entry on Rehearing, the PUCO denied OCC's application for rehearing arguments that the PUCO should enforce the Rate Freeze. According to the PUCO, "OCC should have raised this issue, or otherwise preserved its rights, in the *Distribution Rate Case*, where the distribution rates were, in fact, established according to law."⁵² Thus, the PUCO ruled that "OCC's failure to raise this issue at an earlier juncture, during the *Distribution Rate Case*, constitutes a forfeiture of the objection because it deprived the Commission of an opportunity to cure any error when it reasonably could have done so."⁵³ Even if this ruling were legally justifiable (which OCC does not concede), it would not prevent OCC from enforcing the Rate Freeze now in the current rate case.

Consider the history of DP&L's electric security plans. As the PUCO correctly noted in its June 2021 Fifth Entry on Rehearing, ESP 1 was in effect from September 1, 2016 to October 31, 2017, during which time DP&L's 2015 base rate case was pending. The PUCO did *not* increase DP&L's base rates at any point when ESP 1 was in effect, so DP&L's rate freeze commitment was not violated.

It was not until March 12, 2018 that the Staff Report was issued in the 2015 base rate case.⁵⁴ By then, DP&L was no longer under ESP 1 rates. The PUCO then approved a rate increase in the 2015 base rate case on September 26, 2018, when ESP 3, not ESP 1 rates were in

⁵¹ Case No. 12-426-EL-SSO, Entry (December 19, 2012).

⁵² Case No. 08-1094-EL-SSO, Fifth Entry on Rehearing ¶ 19 (June 16, 2021).

⁵³ *Id.* (emphasis in original).

effect.⁵⁵ In the interim, parties filed objections to the Staff Report, negotiated a settlement, participated in a hearing, and filed briefs—all of which occurred while ESP 3, and not ESP 1—was in effect. At no point during the 2015 Rate Case did anything occur that was inconsistent with the Rate Freeze. There was nothing for OCC to enforce as DP&L did not violate its rate freeze commitment.

As explained, DP&L’s 2015 rate case was resolved in September 2018 at a time when ESP 3 was in effect. That rate increase was allowed because ESP 3 did not include a rate freeze. It was not until more than a year *after* that rate increase, in December 2019, that DP&L withdrew from ESP 3 and reverted to ESP 1. At that moment, therefore, the Rate Freeze was revived (a decision that was entirely within DP&L’s discretion) and became enforceable anew.

C. To protect consumers, the PUCO should freeze DP&L’s base rates at the level approved in the 2015 base rate case.

As discussed, the ESP 1 Settlement (which the PUCO approved) states that “DP&L’s distribution base rates will be frozen” throughout the term of ESP 1.⁵⁶ As discussed, DP&L’s base rates were increased in 2018 at a time when ESP 3, as opposed to ESP 1, was in effect. OCC concedes that it would be impractical (and potentially unlawful) to undo the 2018 rate increase.

But it is neither impractical nor unlawful to enforce the Rate Freeze by prohibiting DP&L from increasing its base rates above the level approved in 2018 at this time. To the contrary, the PUCO’s interpretation of R.C. 4928.143(C)(2)(b)—that a utility reverts to its most recent ESP in its entirety—compels such a conclusion. The PUCO must freeze DP&L’s base rates at whatever level they were set at the time DP&L reverted to ESP 1. As discussed, DP&L reverted to ESP 1 in December 2019. At that time, the base rates approved in 2018 were in effect. Thus, the PUCO

⁵⁴ Case No. 15-1830-EL-AIR, Staff Report (March 12, 2018).

⁵⁵ Case No. 15-1830-EL-AIR, Opinion & Order (September 26, 2018).

is required to enforce the Rate Freeze by keeping base rates at 2018 levels for as long as ESP 1 remains in effect.

Given that ESP 1 may be in effect for at least three more years,⁵⁷ the current rate case should be dismissed with prejudice. If DP&L wants to pursue a rate increase after the termination of ESP 1, it can file a new application with a new test period and new date certain that reflect DP&L's conditions as of that time.

III. CONCLUSION

The PUCO must freeze DP&L's base rates at whatever level they were set at the time DP&L reverted to ESP 1.⁵⁸ As discussed, DP&L reverted to ESP 1 in December 2019. At that time, the base rates approved in 2018 were in effect. Thus, the PUCO is required to enforce the Rate Freeze by keeping base rates at 2018 levels for as long as ESP 1 remains in effect.

DP&L signed a settlement agreeing to many terms and conditions, including a Rate Stabilization Charge and a rate freeze for the duration of its ESP 1. Now, almost a decade later, consumers are still bailing DP&L out by paying the 2009 Rate Stabilization Charge. DP&L has gotten far more from consumers than it ever bargained for. Now, for once, it is time for

⁵⁶ ESP 1 Settlement at 10.

⁵⁷ See *In re Application of the Dayton Power & Light Co. for a Finding that its Current Elec. Sec. Plan Passes the Significantly Excessive Earnings Test & More Favorable in the Aggregate Test in R.C. 4928.143(E)*, Case No. 20-680-EL-UNC, Opinion & Order ¶ 41 (June 16, 2021) (DP&L to file application for new ESP by October 1, 2023, which means a new ESP will likely not be in effect until mid 2024).

⁵⁸ 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).

consumers to get what *they* bargained for under the DP&L settlement: a freeze on DP&L's base rates while ESP 1 is in effect. The PUCO should enforce the Rate Freeze. The way to do that is by denying the Application and dismissing this case with prejudice for the duration of ESP 1.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Dismiss* was served on the persons stated below *via* electronic transmission, this 5th day of August 2021.

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

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Summary: Motion Motion to Dismiss DP&L's Application for a Rate Increase by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Healey, Christopher