

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of the)
Dayton Power and Light Company for)
Administration of the Significantly) Case No. 2021-_____
Excessive Earnings Test Under R.C.)
4928.143(F) and Ohio Adm. Code 4901:1-)
35-10 for 2018.)

In the Matter of the Application of the)
Dayton Power and Light Company for) Appeal from the Public Utilities
Administration of the Significantly) Commission of Ohio
Excessive Earnings Test Under R.C.)
4928.143(F) and Ohio Adm. Code 4901:1-)
35-10 for 2019.)

In the Matter of the Application of The) Pub. Util. Comm. Nos. 19-1121-
Dayton Power and Light Company for a) EL-UNC, 20-1041-EL-UNC, 20-
Finding that its Current Electric Security) 680-EL-UNC, 18-1875-EL-GRD,
Plan Passes the Significantly Excessive) 18-1876-EL-WVR, 18-1877-EL-
Earnings Test and the More Favorable in the) AAM
Aggregate Test in R.C. 4928.143(E).)

In the Matter of the Application of the)
Dayton Power and Light Company for)
Approval of its Plan to Modernize its)
Distribution Grid.)

In the Matter of the Application of the)
Dayton Power and Light Company for)
Approval of a Limited Waiver of Ohio Adm.)
Code 4901:1-18-06(A)(2).)

In the Matter of the Application of the)
Dayton Power and Light Company for)
Approval of Certain Accounting Methods)

**NOTICE OF APPEAL
BY
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NOTICE OF APPEAL

Appellant, the Office of the Ohio Consumers' Counsel (“OCC”), consistent with R.C. 4903.11 and 4903.13, and S.Ct.Prac.R. 3.11(B)(2), 3.11(D)(2), and 10.02, gives notice to this Court and to the Public Utilities Commission of Ohio (“PUCO”) of this appeal. This appeal is taken to protect approximately 465,000 residential consumers from continuing to pay rates to the Dayton Power and Light Company (“DP&L”) that include charges for so-called “stability,” which this Court has consistently struck down. *See In re Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179; *In re Columbus S. Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734. The charge at issue is DP&L’s “Rate Stabilization Charge.” Unfortunately for consumers, relief from paying this unlawful charge has been substantially delayed by the PUCO’s inaction, where it waited 16 months to issue a final appealable order ruling on OCC’s application for rehearing regarding this charge in a different case. That case is also on appeal to this Court. *Office of the Ohio Consumers’ Counsel v. Pub. Util. Comm.*, S. Ct. No. 2021-1068.

This appeal also seeks to protect residential consumers who were unlawfully denied refunds. Residential consumers are entitled to refunds for DP&L’s significantly excessive earnings (profits) under R.C. 4928.143(F).

The decisions being appealed are the PUCO’s Opinion and Order entered in its Journal on June 16, 2021 (Attachment A), the PUCO’s Second Entry on Rehearing entered in its Journal on October 6, 2021 (Attachment B), and the PUCO’s Third Entry on Rehearing entered in its Journal on December 1, 2021 (Attachment C). Also attached are OCC’s July 16, 2021 First Application for Rehearing (Attachment D) and OCC’s November 5, 2021 Third Application for Rehearing (Attachment E).

The PUCO's orders are unlawful and unreasonable in the following respects, all of which were raised in OCC's Application for Rehearing as noted:

1. The PUCO erred in ruling that DP&L's Rate Stabilization Charge is lawful, which contradicts R.C. 4928.143, R.C. 4903.09, and Ohio Supreme Court precedent. (First Application for Rehearing at 3-8, Assignment of Error 1).
2. The PUCO violated R.C. 4928.143(F) by denying consumers refunds under the significantly excessive earnings test despite finding that DP&L's profits were significantly excessive—in the amount of \$61 million. The PUCO unlawfully denied residential consumers the refunds they are entitled to with a phantom “offset” based on DP&L's future capital investments. (First Application for Rehearing at 27-33, Assignments of Error 5 and 6; Third Application for Rehearing at 2-6, Assignment of Error 1).

The PUCO's June 16, 2021 Opinion and Order, October 6, 2021 Second Entry on Rehearing, and December 1, 2021 Third Entry on Rehearing are unreasonable and unlawful. OCC respectfully requests that the Court reverse the PUCO's Opinion and Order, Second Entry on Rehearing, and Third Entry on Rehearing and remand the case to the PUCO with a directive that the PUCO (i) order DP&L to immediately terminate the Rate Stabilization Charge for residential customers, (ii) order DP&L to refund all Rate Stabilization Charges paid by residential consumers on and after June 16, 2021, which is the date that the PUCO ordered DP&L to add refund language to the Rate Stabilization Charge tariff in Pub. Util. Comm. No. 08-1094-EL-SSO, and (iii) require DP&L to provide refunds to customers in the amount of \$61 million for DP&L's 2018 and 2019 significantly excessive earnings.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal by the Office of the Ohio Consumers' Counsel, was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the Office of the Chairman in Columbus and upon all parties of record via electronic transmission this 6th day of December 2021.

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**COMMISSION REPRESENTATIVES
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CERTIFICATE OF FILING

I hereby certify that a Notice of Appeal of the Office of the Ohio Consumers' Counsel was filed with the docketing division of the Public Utilities Commission of Ohio as required by Ohio Adm. Code 4901-1-02(A) and 4901-1-36.

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