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FILE**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO****FAX**

In the Matter of the Commission's Review of)
Chapters 4901:1-9, 4901:1-10, 4901:1-21,)
4901:1-22, 4901:1-23, 4901:1-24 and)
4901:1-25 of the Ohio Administrative Code)

Case No. 06-653-EL-ORD

**INITIAL COMMENTS OF THE
DAYTON POWER AND LIGHT COMPANY**

The Dayton Power and Light Company (DP&L) or (Company) hereby provides comments on the Commission's proposed amendments to rules for electric service and safety standards.

By an entry dated April 4, 2007, the Public Utilities Commission's (Commission) initiated a review of the Minimum Electric Service and Safety Standards and invited comments from interested parties. On April 16, a joint motion for Technical Conference and to modify procedural schedule was filed on behalf of numerous parties including Electric Distribution Utilities (EDUs), Ohio Marketers Group, Industrial Energy Users of Ohio, Ohio Manufacturers Association, Ohio Energy Group, Ohio Partners for Affordable Energy and the Office of the Ohio Consumers Counsel. A technical conference was held on May 3 to explain the rationale for proposed changes. While DP&L commends the Commission Staff for providing the opportunity for interested parties to ask questions during this technical conference, the Company would note a concern that there are some highly significant and, in some instances, costly changes to regulations that are being proposed with little or no support as to cost-effectiveness, need, or the timing of implementation.

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As a general comment, DP&L is concerned about the timing of these rules, in particular the applicability of OAC 4901:1-17 to electric utilities. The Company understands that these rules are scheduled to be before the Joint Committee on Agency Rule Review (JCARR) for review in September, however, if the Company will be subject to OAC 4901:1-17 a significant amount of computer programming will be required to comply, which could take several months to put in place. DP&L requests that the Commission allow EDUs time to thoroughly review and comment on the business implication of compliance with OAC 4901:1-17 since it varies from the current rules set forth by OAC 4901:1-10 as well as time to put the required systems and processes in place to abide by the rules once they are approved by JCARR. Further some of the rule changes may require tariff changes. DP&L requests that the Commission provide the EDUs with adequate time to implement any necessary tariff changes.

DP&L is also generally concerned that many of these proposed amendments, particularly those relative to inspection and maintenance plans, sub-delegate authority to a single Commission Staff member to review, approve, propose modifications, and otherwise assume duties that are more properly left to utility management. In this regard, the Company would respectfully suggest that the Commission's role should be to establish meaningful reliability standards, while refraining from stepping into the shoes of utility management or its professional staff to manage the process by which a utility meets such standards.

As a third general comment, DP&L would note that there are several instances within the proposed regulations where an automatic "violation" is established and there appears to be little or no due process opportunity to defend or explain events leading up

to the purported violation. In general, DP&L's comments in these areas are to suggest that there be a rebuttable presumption of a violation, which then gives a utility an opportunity to refute the presumption that a violation exists based on the specific facts and circumstances involved.

I. 4901:1-10-03 Retention of Records

Section (D) states that access to records and business activities includes such records and activities as would allow the commission staff to effectively monitor Ohio-specific customer calls made to the EDU's call center. Access includes the ability of commission staff to adequately monitor EDU call center interaction with Ohio customer at a location in Ohio or in a manner agreed to by the commission by the commission staff. EDUs shall provide access to monitor customer call without the customer service representative's knowledge.

DP&L seeks clarification if the proposed rule is intended to allow commission staff to remotely monitor live phone call with customers or recorded phone calls with customers. DP&L is concerned that if commission staff is going to randomly listen to live calls with customers that a single phone call may not capture all the interactions with the customer. A customer may call the company more than once requesting information. For example, a customer will call requesting an amount to avoid disconnect and the customer service representative will provide them with that amount. If the customer does not pay this amount, an additional call may be needed to set up payment arrangements for the customer.

II. 4901:1-10-05 Establishment of credit for nonresidential applicants and customers

Section (A) states the establishment of credit for residential customers is governed by Chapter 4901:1-17 of the Ohio Administrative Code. This is a significant change for DP&L from business policy and systems standpoint. Dayton is concerned that the Commission is requiring EDUs to comply with new administrative rules without giving interested parties the ability to comment. Section 4901:1-17 establishes a new set of parameters for establishing credit for residential customers. For example, under current rule 4901:1-10-14(C)(2)(b) a customer would not be considered creditworthy if he/she had a prior account with the EDU for the same class of service within two years when during the final year of prior service the applicant failed to pay his/her bill by the due date at least two times. However, in Section 4901:1-17-04(B)(1) a utility may require a deposit if the customer has not made full payment or payment arrangements by the due date for two **consecutive** bills during the preceding twelve months. Therefore, the EDUs will be subject to tighter requirements for obtaining a deposit from a customer, which will lead to higher uncollectible expenses, and ultimately higher distribution rates.

This is only one example that will cause DP&L to incur significant system programming modification costs and make numerous changes to its existing operating policies to comply with §4901:1-17. DP&L requests the Commission leave Section 4901:1-10-14 intact until EDUs have an opportunity to comment on how §4901:1-17 will impact them.

Section (G)(2) gives nonresidential customers the option of a guarantor to secure payment instead of a cash payment. However, during the technical conference Staff indicated that was a mistake and guarantor should not be referenced in this section. Currently, DP&L allows non-residential customers to use a guarantor in lieu of a deposit. This has been very successful for DP&L over the years and allows non-residential applicants another option to initiate service, other than cash. DP&L seeks clarification that the EDU will not be prohibited from allowing nonresidential customers to secure deposit payments via a guarantor.

Section (J)(1)(b) requires the EDU to review each nonresidential account after the first two years of service for which a deposit is being held, and refund the deposit if during the preceding twenty-four months the customer's service was not disconnected for non-payment, a fraudulent practice, tampering, or unauthorized reconnection; the customer had **not more than three** past due bills.

Section (J)(2)(b) states upon customer request, but not more than annually, review each account after the first two years of service for which a deposit is being held, and shall promptly refund the deposit or credit the customer's account, plus interest accrued, if, with regard to the preceding twelve months, the customer had **not more than two** past due bills.

DP&L suggests the Commission change the language in Section 4901:1-10-05 (J)(1) to be consistent with Section 4901:1-10-05(D) and delete Section 4901:1-10-05(J)(2).

- **Recommended Rule Change for 4901:1-10-05(J)(1)(b)**

(J) Each EDU shall:

(1) Review each account after the first two years of service for which a deposit is being held, and thereafter upon a customer request but no more than annually, and promptly refund the deposit or credit the customer's account, plus interest accrued, unless during the preceding twenty-four months:

(a) The customer was issued a disconnection notice for non-payment or

(b) The customer's service was disconnected for nonpayment, a fraudulent practice, tampering, or unauthorized reconnection or

(c) The customer has not paid its bill by the due date at least two times.

Section (M) requires an EDU to apply the generation service portion of a deposit and the accrued interest to the amounts due and payable on the next bill and refund any remaining to the customer if the customer leaves standard offer service. The suggested changes would only apply to nonresidential customers and residential customers are now treated differently since there is no comparable provision in Chapter 4901:1-17 O.A.C. DP&L suggests the Commission leave Section 4901:1-10-14 intact and continue to make it applicable to residential customers, at least until EDUs have an opportunity to comment on §4901:1-17, and how the changing applicability of that rule may impact EDUs.

III. 4901:1-10-07 Minimum Customer Service Levels

DP&L commends the Commission for recognizing that the ninety second average speed of answer recently approved in the minimum gas standards should equally apply to EDUs.

IV. 4901:1-10-10 Cooperation with Certified Governmental Aggregators

Section (A). This section requires EDUs to cooperate with governmental aggregators to facilitate the proper formation and functioning of governmental aggregations. EDUs must provide for all customers residing within the governmental aggregator's boundaries a list that contains specific information. DP&L suggests the Commission add language that this information is provided on a best efforts basis. DP&L uses the taxing location to develop the governmental aggregator list and DP&L is not made aware of municipality boundary changes. In addition, postal overlaps cause inaccuracies in some taxing locations. While DP&L strives to provide the most accurate information, it can only provide the information available in our billing system.

- **Recommended Rule Change for 4901:1-10-10(A)**

(A) Each EDU shall cooperate with governmental aggregators to facilitate the proper formation and functioning of governmental aggregations. Upon the request of a certified governmental aggregator or CRES provider under contract with the governmental aggregator, the EDU shall, **on a best efforts basis**, provide for all customers residing within the governmental aggregator's boundaries including those customers who have opted off the pre-enrollment list the following information:....

V. 4901:1-10-19 Reconnection of Nonresidential Service

Changes to section (B)(2) eliminates the EDUs ability to collect any amount past due on another electric billing account in the same customer class. DP&L recommends that this language not be deleted. By deleting this language the Commission has taken away a collection practice that an EDU utilizes to manage their uncollectible expenses. Without this flexibility, the EDUs uncollectible expense may increase which may lead to higher distribution rates.

VI. 4901:1-10-20 Fraudulent Practice, Tampering and Theft of Service

Under the current rules, Section (B)(2) requires EDUs that have disconnected service under this paragraph to tag or seal the customer's meter and hand-deliver written notice to the customer or consumer at the service location. If no adult consumer is present, each EDU shall attach written notice to a conspicuous place on the premises. However, in the proposed rules the Commission has deleted the references to consumer and added customer. DP&L objects to this change and requests that the Commission keep the original language. A customer is defined as any person who has an agreement, by contract and/or tariff with an EDU or by contract with a competitive retail electric service (CRES) provider, to receive service. In some instances the individual residing at the property may be stealing electricity and does not have an agreement with the EDU. Consumer is defined as any person who receives service from an EDU or CRES. The definition of consumer is more general and captures individuals who are stealing electricity from the EDU.

VII. 4901:1-10-26 Distribution System Reliability¹

Section (D) states failure to meet a performance target for two consecutive years shall be a violation of this rule. DP&L objects to this language and suggests that it be deleted. Reliability indices can be influenced by random events and since these indices are developed statistically, variability is expected. Data for several years must be considered before one can establish a trend. Furthermore, not meeting the targets could be a direct result of events out of the EDU's control, such as a car accident. To

¹ Comments with respect to delegations of authority to the Director of service monitoring and enforcement department under this subsection and 4901:1-10-27 and 4901:1-10-29 are grouped together and discussed in a separate section below.

the extent a target is missed, it should not be considered a violation because then the utility is subject to monetary penalties under 4901:1-10-04 O.A.C. possibly for an event that was entirely outside its control. Alternatively, if the Commission does not delete this language DP&L suggests that the penalty to only be invoked once the target is missed for three consecutive years. This will lessen the potential for financial penalties for random events outside the EDU's control.

- **Recommended Rule Change for 4901:1-10-26(D)**

~~(D) Failure to meet a performance target for two consecutive years shall be a violation of this rule.~~

- **Alternative Rule Change for 4901:1-10-26(D)**

(D) Failure to meet a performance target for ~~two~~ three consecutive years shall be a violation of this rule.

VIII. 4901:1-10-27 Distribution Circuit Performance²

Section(C)(5)(d) deletes the report of the Momentary Average Index Frequency Interruption (MAIFI). MAIFI calculated the average number of monetary interruptions per customer. DP&L applauds the Commission for recognizing that reporting on this index was not necessary.

Section (F) adds language that states the inclusion of a given circuit in the report under paragraph (C) of this rule for three consecutive reporting periods shall constitute a violation of this rule. First, DP&L commends the Commission for giving EDUs an additional year to see benefits of work performed on the circuit.

² Comments with respect to delegations of authority to the Director of service monitoring and enforcement department under this subsection and 4901:1-10-26 and 4901:1-10-29 are grouped together and discussed in a separate section below.

Second, however, DP&L would respectfully suggest that the Commission should be very cautious about establishing any rule that creates an automatic "violation" with little or no due process opportunities to defend or explain why the "violation" occurred. DP&L would note, for example, that that a circuit may show up for three consecutive years for completely different reasons. For example, a circuit may show up in year one for a car accident, a second year for lightning on part of the circuit and a third year for animals on a completely different area of the circuit. The EDU should not be found in violation of the rule for events that are outside of the EDU's control.

Third, DP&L recognizes the need for Staff to address worst performing circuits and the need to ensure customers are receiving reliable service. EDUs invest a significant amount of time and resources in addressing any current or potential reliability concerns. However, it is imperative that Staff and the Commission recognize the law of diminishing returns and its applicability to system maintenance to improve reliability. Investing at the appropriate level can yield significant reliability improvements and investing beyond that level yields little results. It must be demonstrated that the resources required to support any increase in this requirement will result in a measurable reliability improvement. EDUs must be allowed to exercise basic engineering judgment without justifying every action or inaction with respect to maintenance on its system. It is the nature of electric distribution system that every distribution circuit is unique. The circuit may show up for its intrinsic characteristics (location, exposure, design etc.) rather than any particular problem that needs to be fixed.

- **Recommended Rule Change for 4901:1-10-27(F)**

(F) The inclusion of a given circuit in the report under paragraph (C) of this rule for three consecutive reporting periods shall constitute a rebuttable presumption of a violation of this rule. The presumption may be rebutted by a showing that the inclusion was the result of factors outside the utility's control, such as if a circuit is included on the list for separate causes for three consecutive years. An EDU will not be found in violation of this rule if a circuit is included on the list for three consecutive years and there is verifiable evidence that reliability performance is improving.

IX. 4901:1-10-28 Annual System Improvement Plan Report

Section (B)(1)(a) requires EDU's to list any electric reliability organization (ERO) standards violations, regional reliability organization (RRO) standards violations, regional transmission operator (RTO) operating violations, transmission load relief (TLR), and the top ten congestion facilities by hours of congestion occurring on the transmission owner's facilities.

DP&L objects to the proposed language. This is public information and is readily available to PUCO Staff from the ERO or RTO. In addition, each EDU recently received revised market monitoring forms that contain the congestion information. EDU's should not be required to provide duplicative information.

IX. 4901:1-10-29 Inspection, Maintenance, Repair and Replacement of Transmission and Distribution Facilities (circuits and equipment)³

Section (E)(1) requires EDUs to establish and maintain written programs, policies, procedures and schedules for the inspection, maintenance, repair and replacement of its transmission and distribution circuits and equipment. The Commission has suggested language that failure to comply with the requirements of the

³ Comments with respect to delegations of authority to the Director of service monitoring and enforcement department under this subsection and 4901:1-10-26 and 4901:1-10-27 are grouped together and discussed in a separate section below.

electric utility's programs, policies, procedures, and schedules shall be considered a violation of this rule.

DP&L suggests the proposed language be deleted. This added language penalizes EDUs for having more aggressive programs. For example, the National Electric Safety Code (NESC) requires only a penta bolt or a lock on pad mount transformers. However, a utility may have a maintenance program that requires a penta bolt and lock. If one these locking mechanisms are missing then the EDU would then be found in violation of their maintenance program, and subject to monetary penalties, but still in compliance with the NESC. Staff should recognize that making the EDU subject to monetary penalties for not strictly adhering to its written maintenance programs, policies, and procedures may result in less specific written programs, policies, and procedures. We do not believe this is Staff's intent, and therefore suggest that this proposed language be deleted.

The proposed language also creates an automatic violation. If not deleted in its entirety, the language should be modified so that the violation is rebuttable on a showing that the failure to comply did not materially affect reliability.

Section (F) requires utilities to maintain records sufficient to demonstrate compliance with its transmission and distribution facilities maintenance, repair and replacement programs. The Commission has added language that now requires EDUs to record all deficiencies revealed by inspection or tests and all actions taken to correct those deficiencies. Lines and equipment with recorded defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected, or

isolated. All remaining deficiencies shall be corrected within one year of the completion of the inspection or testing originally revealed such deficiencies.

DP&L agrees with the Staff that problems that cause safety concerns should be promptly repaired, disconnected, or isolated. However, DP&L strongly opposes the additional requirement of correcting all remaining deficiencies within one year of the completion of the inspection or testing. This language should be deleted. The one year time frame appears arbitrary with no justification given for the time frame. DP&L prioritizes its deficiencies found during inspections based on experience and knowledge of operating a distribution system. To dictate that an EDU should resolve minor deficiencies that do not impact reliability, within an arbitrary time frame is unnecessary, unreasonable and a very poor use of resources.

X. Section 4901:1-10-26, Section 4901:1-10-27, and Section 4901:1-10-29

In addition to the more specific comments made above, DP&L opposes the changes to Sections 4901:1-10-26, 4901:1-10-27, and 4901:1-10-29 to the extent these proposed changes sub-delegate much of the Commission's enforcement power and oversight authority to a single member of the Commission Staff. In accordance with §4905.05 and §4905.06 of the Ohio Revised Code the Commission has jurisdiction over companies operating as public utilities, and it has general supervisory powers over the manner in which a public utility manages,. Operates and maintains its property. However, the proposed language in sections 4901:1-10-26 (B)(2)(e), 4901:1-10-27(B)(1)(3) and 4901:1-10-29(E)(2)(d) seeks to expand the supervisory authority granted to the Commission under ORC § 4905.06 and treads heavily into the province of utility management and utility professional staff. These sections go far beyond

establishing meaningful standards and ensuring a process by which the Commission and its staff can monitor and evaluate how a utility is performing. Instead, these provisions, in conjunction with other provisions in the same sections discussed in more detail below, invite micro-management of a utility by a single staff member who is given the authority to review and approve the most minute details of an inspection and maintenance program and to propose changes to those programs.

While there is a mechanism to permit the utility to bring a dispute before the Commission where the utility and that single Staff person disagree on a proposed change, neither the Commission, nor the utility should promote a regulatory process that could result in the equivalent of litigation regarding hundreds of small, technical, and detailed aspects of a maintenance and inspection plan.

DP&L has great respect for the expertise of Commission Staff in the areas in which they are expert. However, decades of experience and practical application of skills is typically found within the utility staff that develops, implements, and modifies inspection and maintenance plans as needed as unforeseen events arise during a year. It is simply an improper delegation of regulatory power to assign a single Staff person to become the equivalent of a corporate officer in developing, modifying and implementing a maintenance and inspection plan. The Company respectfully suggests that the Commission should recognize that the details of an inspection and maintenance plan and how to implement that plan are better left to the discretion of the utility, which has a professional staff with decades of experience to guide its decisions. The Commission Staff certainly plays an important role in monitoring performance and DP&L does not

object to providing its plans to Commission Staff and will certainly consider any proposed changes that Commission Staff may want to suggest.

DP&L understands that the Commission and its Staff have an obligation to monitor and enforce the electric utilities' maintenance plans, practices and procedures and to ensure the reliability of the distribution system is maintained. However, there are current formal and informal means to address monitor, enforce and make modifications to an EDU's reliability targets and maintenance programs. DP&L and the Staff have successfully demonstrated the ability to work together to address concerns. DP&L is concerned that the Commission is developing a process which may provide a disincentive for EDU's and the Staff to work together.

In addition and as noted previously, the regulations should not impose an automatic un rebuttable violation. The regulations should be modified to provide guarantee due process rights to the utility to explain why a failure to meet a particular standard was not within the Company's control.

Further, the proposed language states that if the director and the EDU cannot reach an agreement on the maintenance plans, the director may request a hearing. If the Commission is inclined to adopt the proposed language changes, it should at a minimum provide equal opportunity for both parties to remedy the situation through a hearing process. Specifically, the language in §4901:1-10-29 (E)(2)(d) should be modified in the following manner:

"In the event the director(s) and EDU can not reach agreement on the proposed plan amendment, the director(s) or the EDU may request a hearing."

DP&L believes that the Commission Staff is authorized to carry out Commission policies and directives, but questions the explicit authority granted to a single member of the Commission staff throughout these proposed rules.

CONCLUSION

Based on the foregoing, DP&L respectfully requests that the Commission amend or modify the Proposed Rules. DP&L appreciates the opportunity to provide the above-mentioned comments and to work with all interested parties to develop standards that promote reliable and safe electric service for all customers.

Respectfully submitted,



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