BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid	)))))	Case No. 18-1875-EL-GRD
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)	)))))	Case No. 18-1876-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Methods.	)))	Case No. 18-1877-EL-AAM

MEMORANDUM CONTRA TO THE ENVIRONMENTAL LAW & POLICY CENTER'S MOTION TO DISMISS WITHOUT PREJUDICE AND FOR THE COMMISSION TO DIRECT THE DAYTON POWER AND LIGHT COMPANY TO RE-FILE ITS APPLICATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

This case is about a utility, with 35.5% of its Dayton residents living at the federal poverty level, seeking even more money from its customers for "Grid Modernization." Specifically, DP&L wants the PUCO to approve a program that would cost its consumers $866.9 million over 20 years.[1]

On September 19, 2019, the Environmental Law and Policy Center ("ELPC") filed a motion asking the PUCO to dismiss DP&L's application. ELPC argues that the application lacks the information necessary for the PUCO to determine whether DP&L's plan is just and

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[1] *See* Application (December 21, 2018) at 5.

reasonable.[2] ELPC also asserts that the application does not provide sufficient information for the PUCO to determine whether DP&L's plan is consistent with the PUCO's PowerForward Roadmap.[3] ELPC asks the PUCO to dismiss DP&L's application without prejudice and to direct DP&L to refile its plan. In the alternative, ELPC requests that the PUCO direct DP&L to file supplemental direct testimony that provides the information necessary to sustain its burden of proof.[4] ELPC is right; however, there is much more missing from DP&L's application.

The Office of the Ohio Consumers' Counsel agrees that the PUCO should dismiss the application. But the Consumers' Counsel disagrees with ELPC's alternative suggestion that DP&L be allowed to file more supportive testimony in lieu of dismissing the application. The application is so fundamentally flawed that it cannot be e saved by additional testimony. The PUCO should dismiss the application altogether.

II. DISCUSSION

ELPC's motion specifically addresses the shortcomings of DP&L's application regarding four pilot programs: its distributed energy demonstration projects; its microgrid pilot; its electric vehicle charging initiative; and its conservation voltage reduction and volt/VAR optimization initiative.[5] Although the Consumers' Counsel shares ELPC's view regarding the application's failure to support these programs, our concerns with DP&L's application are not limited to those four pilot programs.

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[2] ELPC Motion, Memorandum in Support at 4-11.

[3] *Id.* at 12.

[4] *Id.* at 13.

[5] *Id.* at 4-11.

Fundamentally, the application fails to comply in providing the basic information that the PUCO has determined is needed for evaluating grid modernization applications.[6] This includes detailed cost benefit analysis for all components of the plan, proposed performance based ratemaking metrics, structured audits to verify that such metrics are achieved, and assurance that customer money is being spent prudently. Further, the Modernization Plan funded through a Smart Grid Rider provides no protections against collection of the same costs across multiple other riders that are seemingly intended to serve the same purpose such as the Distribution Modernization Rider ("modernization charge") and Distribution Investment Rider.

In addition, the conditions that DP&L has placed on the implementation of the grid modernization plan are fundamentally flawed. DP&L requires PUCO approval for a continuation and expansion of its distribution modernization charge in Case No. 19-0162-EL-RDR. This is because the modernization charge is an illegal transition charge or equivalent revenue. All funds collected from customers through the modernization charge will be used toward paying DP&L's debt.[7] That debt is linked to its generation assets, not to distribution.

Ohio law bars the PUCO from authorizing "the receipt of transition revenues or *any equivalent revenues* by an electric utility" after the market development period ended in 2005.[8] This was confirmed when the Supreme Court of Ohio ("Court") overturned the PUCO's approval of AEP Ohio's Retail Stability Rider. The Court determined that even though something was not explicitly labeled as transition revenue, it can still be considered "transition

[6] Power Forward Roadmap (August 29, 2018) at 35.

[7] *See* Case No. 16-395-EL-SSO, DP&L's Initial Post-Hearing Brief, Public Version (May 5, 2017) at 44.

[8] R.C. 4928.38 (italics added).

revenue."[9] The Court determined that charges through included the collection of unlawful transition revenue. The Court subsequently summarily rejected DP&L's similar service stability charge as an unlawful transition charge.[10]

Another issue of concern involves the prudence of spending over $575 million in capital when DP&L does not have sufficient financial resources to implement the Modernization Plan without the extension of the modernization charge. If DP&L needs a customer-funded bailout of its present debt through the modernization charge, it should not be incurring even more debt that will be charged to customers.

Further concerns involve the lack of quantifiable benefits to justify the Modernization Plan's high implementation costs to consumers. Most of the alleged benefits are supported through assumptions about increased service reliability and reductions in customer interruptions that are highly speculative at best. Additionally, advanced metering infrastructure deployments in other Ohio service territories have resulted in few benefits for consumers and after-the-fact expensive fixes for obsolete communication systems.[11] DP&L's application does not offer any assurance that its advanced metering infrastructure deployment would avoid any of the expensive problems that other utilities' customers have been subjected to.[12]

Finally, the Consumers' Counsel is concerned about reduced consumer protections that can result from DP&L's advanced meter infrastructure deployment. Even prior to deploying a single advanced meter, DP&L proposed a waiver to support remote shut-offs for customers[13] and

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[9] "But the fact that AEP did not explicitly seek transition revenues does not foreclose a finding that the Company is receiving the equivalent of transition revenue under the guise of RSR." *In re Application of Columbus Southern Power Co.*, 147 Ohio St. 3d 439, 444, 2016-OHIO-1608, ¶21.

[10] *In re Dayton Power & Light Co.*, 147 Ohio St. 3d 166 (2016).

[11] Case No. 17-32-EL-AIR, Direct Testimony of Donald Schneider (March 16, 2017) at 11-13.

[12] *Id.* at 17.

[13] Application at 9-10.

an electric pre-pay program[14] that is likely well outside Ohio consumer protection laws, especially regarding disconnection of service. These are basic flaws in the application that no additional testimony would cure.

As an alternative to dismissing the application, ELPC suggests that the PUCO direct DP&L to file supplemental testimony to provide the minimum information necessary for a complete application.[15] ELPC's suggestion may be counterproductive. Instead of just supporting elements of an application, supplemental testimony often includes additional proposals or removes proposals from an application. That likely would lead to confusion regarding what DP&L is or is not proposing in its application. And the filing of supplemental testimony would be like starting the process over again. DP&L would need additional time to prepare the testimony and intervenors would need additional time for discovery. Instead of ordering supplemental testimony, the PUCO should dismiss the application altogether.

III. CONCLUSION

DP&L has filed a flawed application. ELPC is right that the application should be dismissed. But ELPC is mistaken that the application can be cured with supplemental testimony. To protect consumers, the best course for the PUCO is to dismiss what amounts to a fundamentally flawed application that will harm its customers.

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[14] *Id.* at 7.

[15] ELPC Motion, Memorandum in Support at 13.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum Contra was served electronically on the parties listed below on this 7th day of October 2019.

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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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