

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority.)	Case No. 20-650-EL-AAM
)	
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency.)	Case No. 20-651-EL-UNC
)	
)	
In the Matter of the Application of The Dayton Power and Light Company for Waiver of Tariffs and Rules Related to the COVID-19 State of Emergency.)	Case No. 20-652-EL-WVR
)	
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Contract with Certain Customers and Reasonable Arrangement Related to the COVID-19 State of Emergency .)	Case No. 20-755-EL-AEC
)	

**MOTION TO INTERVENE AND COMMENTS
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

Pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11, 4901:1-38-03(E), and 4901:1-38-05(F), the Ohio Manufacturers' Association Energy Group (OMAEG) moves to intervene in the above-captioned proceeding before the Public Utilities Commission of Ohio (Commission). On March 23, 2020, the Dayton Power and Light Company (DP&L or the Company) filed an Application in response to the Commission's Entry in Case No. 20-591-AU-UNC, establishing its COVID-19 Plan to reduce social contact and mitigate undue burdens on residential and non-

residential customers during the emergency.¹ In its Application, DP&L requested accounting authority to implement a rate mechanism to track and defer all costs associated with its COVID-19 Plan for future recovery of those costs.² Also, DP&L sought to defer as a regulatory asset for future recovery foregone revenue for charges and fees waived or not collected during the term of its COVID-19 Plan.³ On April 15, 2020, DP&L filed a Supplemental Application, which proposed to revise demand charges for commercial and industrial customers during the declared emergency and requested deferral authority for charges not imposed on customers during the declared emergency.⁴ DP&L sought to defer and recover “the resulting costs of charges avoided by customers” if those costs are not already included in DP&L’s proposed distribution decoupling mechanism.⁵ Alternatively, DP&L requested approval of an economic development and/or a unique reasonable arrangement for deferral authority and recovery of forgone revenue through its Economic Development Rider (EDR), pursuant to R.C. 4905.31, Ohio Adm. Code 4901:1-38-03 and/or Ohio Adm. Code 4901:1-38-05.⁶ The Commission Staff filed its review and recommendation of DP&L’s Plan on April 22, 2020.⁷ On April 24, 2020, the Commission directed stakeholders to file motions to intervene and comments by May 4, 2020, to assist the Commission in its review of DP&L’s Supplemental Application.⁸

¹ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency*, Case No. 20-651-EL-UNC, et al., Application (March 23, 2020) (COVID-19 Plan).

² Application at 8.

³ Id. at 4-5.

⁴ Supplemental Application at 3-4 (April 15, 2020) (Supplemental Plan).

⁵ Id. at 4.

⁶ Id. at 5 (April 15, 2020).

⁷ See Staff Recommendation (Staff Report) (April 22, 2020).

⁸ Supplemental Plan, Entry at ¶ 12 (April 24, 2020).

As demonstrated in the attached Memorandum in Support, OMAEG has a real and substantial interest in the proceeding which may be adversely affected by the outcome and which cannot be adequately represented by any other party. Further, OMAEG's participation will not unduly delay the proceedings or prejudice any other party. Accordingly, OMAEG satisfies the standard for intervention set forth in Ohio statutes and regulations. OMAEG respectfully requests that this Commission grant its motion to intervene for these reasons and those set forth in more detail in the attached Memorandum in Support.

In addition, as directed by the Commission's April 24, 2020 Entry and for the Commission's consideration, OMAEG hereby submits its comments to DP&L's COVID-19 Plan, as supplemented.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT
AND COMMENTS**

I. INTRODUCTION

On March 23, 2020, DP&L filed a COVID-19 Plan⁹ in response to the Commission's Entry directing utilities to review policies and Ohio Administrative Code requirements that would impose a "service continuity hardship on residential and non-residential customers" during the

⁹ Plan (March 23, 2020).

COVID-19 emergency.¹⁰ In its Application, DP&L requested accounting authority to implement a rate mechanism to track, defer, and recover all costs associated with its COVID-19 Plan.¹¹ Also, DP&L proposed to defer foregone revenue, as a regulatory asset for future recovery.¹² On April 15, 2020, DP&L filed its Supplemental Plan, which revised demand charges for commercial and industrial customers during the emergency.¹³ Specifically, for commercial and industrial customers whose demand meters are temporarily not being read, DP&L requested to charge those customers an energy-only rate equivalent to the County Fair Rate.¹⁴ For commercial and industrial customers whose meters can be read, DP&L requested to reduce the current maximum charge rate to reflect the current County Fair Rate.¹⁵ For all non-residential customers, DP&L stated its intent to waive the minimum demand provisions and instead bill only according to an actual read of customers' current monthly demand.¹⁶

Also, DP&L, pursuant to R.C. 4909.16, sought to defer as a regulatory asset for future recovery charges avoided by customers provided that those costs are not already included in the distribution decoupling deferral request that DP&L filed on January 23, 2020 in Case No. 20-140-EL-AAM.¹⁷ DP&L explained in its Supplemental Application that the deferral request in its Supplemental Application "includes amounts related to the Secondary class as well as the other

¹⁰ *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU UNC, Entry at ¶ 7 (March 12, 2020) (Emergency Proceeding).

¹¹ Application at 8.

¹² Id. at 4-5.

¹³ Supplemental Application at 3.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 4.

¹⁷ Id.

non-residential tariff classes for the demand components that do not already have a true-up mechanism.”¹⁸ Alternatively, DP&L requested approval of an economic development and/or a unique reasonable arrangement pursuant to R.C. 4905.31, Ohio Adm. Code 4901:1-38-03(E), and/or Ohio Adm. Code 4901:1-38-05(F) to collect through its EDR forgone revenue associated with its COVID-19 Plan.¹⁹ The Commission Staff filed its review and recommendation on April 22, 2020.²⁰

On April 24, 2020, the Commission directed stakeholders to file motions to intervene and comments by May 4, 2020, to assist the Commission in its review of DP&L’s Application, Supplemental Application, and COVID-19 Plan.²¹ Accordingly, OMAEG hereby files its motion to intervene and comments to DP&L’s applications and COVID-19 Plan, as well as DP&L’s deferral and cost recovery proposals.

II. INTERVENTION

R.C. 4903.221, Ohio Adm. Code 4901-1-11, and Ohio Adm. Code Chapter 4901:1-38, establish the standards for intervention in Commission proceedings. R.C. 4903.221 provides, in pertinent part, that any person “who may be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) further requires the Commission to consider the nature and extent of the prospective intervenor’s interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and the prospective intervenor’s potential contribution to a just and expeditious resolution of the issues

¹⁸ Id.

¹⁹ Id. at 5.

²⁰ See Staff Report (April 22, 2020).

²¹ Supplemental Plan, Entry at ¶ 12 (April 24, 2020).

involved. Ohio Adm. Code 4901-1-11 permits intervention to a party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party. Ohio Adm. Code 4901:1-38-03(E) and 4901:1-38-05(F) authorize a party affected by the reasonable arrangement to intervene and file comments and objections to the application.

OMAEG is a non-profit entity that strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. OMAEG members and their representatives work directly with elected officials, regulatory agencies, the judiciary, and the media to provide education and information to energy consumers, regulatory boards and suppliers of energy; advance energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and advocate in critical cases before the Commission. OMAEG is a non-profit entity created by the Ohio Manufacturers' Association (OMA) for these purposes. OMAEG's members are all members of the OMA. OMAEG members purchase electric services from DP&L and are subject to the EDR and other cost recovery mechanisms of DP&L. OMAEG has been a participant in other cases before the Commission involving rates DP&L recovered from customers.²²

OMAEG also has been a participant in other cases involving reasonable arrangements,²³ and has an interest in ensuring that any benefits accruing to DP&L or other customers through a

²² See, e.g., *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case No. 08-1094-EL-SSO; *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case No. 16-0395-EL-SSO; *In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case No. 15-1830-EL-AIR.

²³ See, e.g., *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Presrite Corporation and The Cleveland Electric Illuminating Company*, Case No. 17-1981-EL-AEC, Entry at 1 (granting OMAEG's Motion to Intervene); *In the Matter of the Joint Application of Vadata, Inc. and Ohio Power Company*

reasonable arrangement, and the resultant discounted rates that are wholly funded by other customers, are just and reasonable.²⁴ OMAEG also has an interest in ensuring that all arrangements approved by the Commission further the policy of the State of Ohio prescribed by R.C. 4928.02.²⁵ Additionally, OMAEG has an interest in ensuring that no unreasonable or anticompetitive effects arise from reasonable arrangements.

OMAEG has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede its ability to protect that interest. OMAEG is regularly and actively involved in Commission proceedings and, as in previous proceedings, OMAEG's unique knowledge and perspective will contribute to the full development and equitable resolution of the issues in this proceeding. OMAEG's interest will not be adequately represented by other parties to the proceeding and its timely intervention will not unduly delay or prolong the proceeding.

Accordingly, OMAEG satisfies the criteria for intervention set out in R.C. 4903.221 and Ohio Adm. Code 4901:1-11, Ohio Adm. Code 4901:1-38-03(E), and Ohio Adm. Code 4901:1-38-05(F). OMAEG, therefore, respectfully requests that the Commission grant this motion, allow

for Approval of a Unique Economic Development Arrangement for Ohio Data Center Campuses, Case No. 17-1827-EL-AEC, Motion to Intervene and Comments of the Ohio Manufacturers' Association Energy Group (September 21, 2017); *In the Matter of the Application of Globe Metallurgical, Inc. for Approval of a Unique Arrangement Between Ohio Power Company and Globe Metallurgical, Inc.*, Case No. 16-737-EL-AEC, Entry at 1 (August 4, 2016) (granting OMAEG's Motion to Intervene).

²⁴ Ohio Adm. Code 4901:1-38-03(A)(3) ("An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement."); R.C. 4905.35 ("No public utility shall give any undue or unreasonable preference or advantage to any . . . firm . . . or subject any . . . firm to any undue or unreasonable prejudice or disadvantage.").

²⁵ Ohio Adm. Code 4901:1-38-03(B)(1).

OMAEG to intervene with the full powers and rights granted by the Commission to intervening parties, and make OMAEG a full party of record.

III. COMMENTS

A. OMAEG Applauds the Commission for its Actions During the State of Emergency.

OMAEG applauds the Commission for its quick response to the Governor's declared emergency in directing the utilities to consider the impact of COVID-19 on Ohio's customers.²⁶ OMAEG also thanks DP&L and other utilities for responding with proposals to assist businesses during this difficult time.²⁷ Without such action, the public health and economic impact on Ohioans likely would be more severe during the COVID-19 state of emergency.

In response to the COVID-19 emergency, OMA has become a repository of information for manufacturers seeking to protect employees from the virus.²⁸ In addition, OMA has united with the Ohio Hospital Association, Ohio Manufacturing Extension Program, nursing homes, and Jobs Ohio to combat COVID-19 as the Ohio Manufacturing Alliance.²⁹ As a key member of the alliance, OMA is responsible for reaching out to manufacturing companies to promote the repurposing of operations to produce in-demand products, especially products related to healthcare to protect Ohioans. Since early April, the Alliance has worked with OMA's members to manufacture critical and essential products. Governor DeWine recently stated, "the Ohio Manufacturing Alliance is playing a critical role in helping our manufacturing companies connect

²⁶ Emergency Proceeding, Entry at ¶ 7.

²⁷ See Supplemental Application at 2-4.

²⁸ See OMA's COVID-19 Resource Page, <https://www.ohiomfg.com/covid-19-resources/> (last accessed April 27, 2020).

²⁹ *Ohio Manufacturing Alliance Helps Company Repurpose to Produce COVID-19 Testing Swabs*, <https://repurposingproject.com/pdfs/04-24-2020-alliance-press-release.pdf> (April 24, 2020).

with the resources needed to keep Ohioans safe as we fight COVID-19.”³⁰ Going forward, the Alliance will continue to play a critical role in Ohio’s fight against COVID-19. OMA’s members have acted not because their revenue would cover these new COVID-19 expenses or because they would maintain the same profit margins that they had before COVID-19, but because these actions were beneficial for Ohioans. OMAEG would expect DP&L and the other utilities to respond in kind and to similarly shoulder some of the burden of the emergency, especially with regard to discretionary revenues that the utility does not rely upon and routinely chooses to forego recovery of or waive.

While OMAEG agrees with Staff that actions need to be taken to suspend disconnections and remove financial barriers to reconnection or continuity of service and to expand customer assistance programs,³¹ OMAEG has concerns about DP&L’s request to recover all costs and forgone revenues from customers and the potential for utility rate increases during and after the emergency. The financial pressure being applied to customers is great. Many manufacturers have also incurred unique expenses and foregone revenue during the declared emergency without a guarantee that those expenses and foregone revenue will be able to be recovered from their customers during or after the emergency. While utilities have an opportunity to earn up to an established rate of return on their investments, utilities are not guaranteed to receive such returns. Customers should not be expected to guarantee a utilities’ profits and the Commission should not authorize utilities to increase charges to do just that. Passing all of the utilities’ costs on to customers, including foregone revenues associated with the utilities’ proposals to suspend or waive

³⁰ Id.

³¹ See Staff Report at 2 (April 22, 2020) (Please note that the Staff Report does not include page numbers. Thus, for purposes of this filing, we have manually numbered the page numbers, beginning with the page containing case numbers and the title “Summary.” The cover page filed with the Staff Report is excluded from the numbering).

customer fees or charges, will further harm customers who are economically vulnerable during this difficult time. Accordingly, any proposals that will cause manufacturers to incur increased costs during and after the declared emergency should be scrutinized, including proposals to defer for subsequent recovery incremental operating costs incurred and foregone revenue that result from implementing DP&L's COVID-19 Plan.³²

B. DP&L's Proposed Reasonable Arrangement Application Lacks Sufficient Information.

In its Supplemental Application, DP&L seeks to charge an energy-only rate equivalent to the County Fair Rate, to reduce the current maximum charge rate to reflect the current County Fair Rate, and/or to waive the minimum demand provisions and instead bill only according to an actual read of customers' current monthly demand.³³ DP&L seeks to recover the avoided charges or foregone revenues from customers through either its distribution decoupling rider that DP&L filed on January 23, 2020 in Case No. 20-140-EL-AAM,³⁴ or through its EDR upon approval of a reasonable arrangement (either in the form of an economic development arrangement or a unique arrangement).³⁵

OMAEG agrees with DP&L's assumption that the "unprecedented circumstances created by COVID-19" are negatively impacting many businesses and that many may benefit from DP&L's proposal to allow customers to temporarily avoid minimum demand charges associated with reduced levels of operations.³⁶ However, DP&L's proposal does not simply eliminate

³² Supplemental Application at 4-5.

³³ Supplemental Application at 2-4.

³⁴ Id. at 4.

³⁵ Id. at 5.

³⁶ Id.

antiquated demand ratchets to assist struggling manufacturers during the declared emergency. Rather, it also includes shifting customers to a new rate and a request to defer and recover the foregone revenues associated with DP&L's proposals through either a decoupling rider or the EDR. OMAEG does and would support DP&L's proposal to forego revenues associated with antiquated demand ratchets during the stated emergency. OMAEG, however, questions the prudence and reasonableness of DP&L's proposal to switch customers to a new, energy-only rate for a two or three month period and collect such rate differential from customers through a decoupling rider or the EDR. Switching customers to a different rate schedule will likely cause customer confusion during an already stressful time. For the meters that cannot be read, it may be more reasonable to estimate the customers' demand for the short duration of the COVID-19 Plan without reconciliation. A reduction to the tariffed maximum charge provision could then be applied similar to those customers whose meters can be read.

OMAEG further questions the reasonableness of seeking cost recovery for foregone revenue associated with discretionary revenue and revenue that it would not have received but for the COVID-19 emergency. Utilities routinely waive late fees and reconnection fees and there is no guaranteed level of revenue associated with such fees; therefore, foregoing these revenues will not result in financial harm to DP&L. Such discretionary revenue should not be deferred and subsequently collected from customers.

Accordingly, DP&L's request to defer as a regulatory asset for future recovery charges avoided by customers through DP&L's proposed distribution decoupling rider should be rejected as DP&L has not satisfied the necessary accounting criteria to allow deferral of revenues.³⁷

³⁷ See *In the Matter of the Application for Approval to Defer Distribution Decoupling Costs*, Case No. 20-0140-EL-AAM, Staff Report at 2-3 (April 29, 2020).

Similarly, DP&L's alternative proposal to recover the foregone revenues from its EDR should also be rejected. As Staff explained, DP&L's proposal to recover foregone revenues resulting from the COVID-19 emergency is "not a typical reasonable arrangement under R.C. 4905.31."³⁸ Allowing DP&L to use a reasonable arrangement and associated rider under R.C. 4905.31 to collect foregone revenue associated with the COVID-19 emergency is not consistent with the accounting standards for the deferral of foregone revenues, would create bad precedent and public policy, and could open the reasonable arrangement statute and Commission's rules up for abuse. The foregone revenues associated with COVID-19 that DP&L seeks to recover were not the type of revenues intended to be recovered under the economic development arrangement in Ohio Adm. Code 4901:1-38-03 or any other reasonable arrangement under Chapter 4901:1-38.³⁹

As Staff recognized, given that DP&L's proposal is not a typical reasonable arrangement, there may be other recovery options that are more appropriate, including a repayment of the benefit received by customers who were provided relief.⁴⁰ There may also be other government assistance specifically related to COVID-19 that may not require other customers to face more or increased costs during the COVID-19 emergency or during the recovery phase of the emergency.

As DP&L admits,⁴¹ its COVID-19 Plan seeking approval for a reasonable arrangement is insufficient and does not meet the requirements of the Commission's rules as DP&L has not projected or estimated the level of foregone revenues associated with the minimum billing demand

³⁸ Staff Report at 5.

³⁹ See Ohio Adm. Code 4901:1-38-02(A) ("The purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency and to provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates in furtherance of the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.").

⁴⁰ Staff Report at 5.

⁴¹ Supplemental Application at 5-6.

provisions that it anticipates deferring for future recovery. Additionally, as Staff explained, DP&L has requested deferral authority for future recovery of other categories of foregone revenue that are unknown.⁴²

Ohio Adm. Code Chapter 4901:1-38 requires that an application for approval of a reasonable arrangement include certain verifiable information about the terms and conditions of the proposed arrangement, including rationale for the arrangement and/or information on all associated incentives, estimated billings without incentives, and annual estimated delta revenues for the term of the incentives. More specifically, an economic development arrangement pursuant to Ohio Adm. Code Chapter 4901:1-38-03 requires:

(B) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for an economic development arrangement between the electric utility and its customer or group of customers for the retention of an existing customer(s) likely to cease, reduce, or relocate its operations out of state. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.

(1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section [4928.02](#) of the Revised Code.

(2) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, at a minimum, meet the following criteria, submit to the electric utility verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:

(a) Eligible projects shall be for non-retail purposes.

(b) The number of full-time or full-time equivalent jobs to be retained shall be at least twenty-five.

⁴² Id. at 3.

(c) The average billing load (in kilowatts to be retained) shall be at least two hundred fifty kilowatts.

(d) The customer shall demonstrate that the cost of electricity is a major factor in its decision to cease, reduce, or relocate its operations to an out-of-state site. In-state relocations are not eligible. If the customer has the potential to relocate to an out-of-state site, the site(s) shall be identified, along with the expected costs of electricity at the site(s) and the expected costs of other significant expenses including, but not limited to, labor and taxes.

(e) The customer shall identify any other local, state, or federal assistance sought and/or received in order to maintain its current operations.

(f) The customer shall agree to maintain its current operations for the term of the incentives.

DP&L has failed to provide the requisite information in its Supplemental Application seeking approval for an economic development arrangement or a unique arrangement. DP&L's COVID-19 Plan requesting approval of a reasonable arrangement is insufficient and additional information is necessary to determine the reasonableness of DP&L's proposal prior to Commission approval.

Finally, the Commission should consider whether the reasonable arrangement is just and reasonable,⁴³ furthers the policy of the state of Ohio prescribed by R.C. 4928.02,⁴⁴ and whether any unreasonable or anticompetitive effects arise from the arrangement. A Commission-approved arrangement should balance any purported benefits to individual customers with the costs required to achieve such benefits. The cost-benefit analysis should consider the amount and level of the foregone revenue that will be paid for by other customers and the impact on all customers' bills during the COVID-19 emergency and during the subsequent recovery period. The Commission should ensure there is proper alignment between benefits received under the economic

⁴³ Ohio Adm. Code 4901:1-38-03(A)(3) and 4901:1-38-05(A)(1).

⁴⁴ Ohio Adm. Code 4901:1-38-03(B)(1) and 4901:1-38-05(C).

development arrangement by customers and the cost of DP&L's proposed program to other customers.

C. The Uncertainty of the Deferral Amounts and the Potential for Double Recovery Are Problematic.

OMAEG shares Staff's concerns regarding the lack of an end-date or term of DP&L's COVID-19 Plan, the uncertainty of the deferral amounts, and the potential for double recovery.⁴⁵ The level and type of costs for which DP&L is seeking deferral authority and over what period of time, and how those costs will be allocated and recovered from customers in the future is unknown and uncertain. The uncertainty associated with the level of costs and foregone revenues that DP&L proposes to recover from customers in the future is concerning as many customers will be struggling to recover for several months or possibly years from the economic crisis that occurred as a result of COVID-19. OMAEG has significant concerns about the implications of DP&L's deferral requests on customers' rates in the future. To help limit the level of costs and foregone revenues, OMAEG supports Staff's recommendation for the COVID-19 Plan to be limited initially to a ninety-day period.⁴⁶

Staff also expressed concerns in its Staff Report regarding the potential for double-recovery of costs as "some expenses incurred in implementing the plan may represent costs currently collected in rates, and thus not incremental to rates."⁴⁷ Staff explained that it is unclear what expenses have been incurred as part of the COVID-19 Plan that are above and beyond what is already included in base rates.⁴⁸ Staff explained the importance of ensuring that double-recovery

⁴⁵ Staff Report at 2-3.

⁴⁶ Id. at 2.

⁴⁷ Id. at 3-4.

⁴⁸ Id. at 3.

does not occur as a result of the deferral.⁴⁹ OMAEG agrees that it is important to protect customers from paying twice for the same costs.

The concern about double recovery is particularly pertinent given that DP&L's COVID-19 Plan is in its beginning stages and the duration, level, and type of costs that DP&L is seeking authority to defer for future recovery from customers are yet to be determined. Accordingly, if the Commission approves deferral authority, the Commission should limit the time period that incurred costs can be over-recovered, ensure that DP&L does not receive double recovery from customers for costs already included in base rates or through other rate mechanisms, and ensure that any costs recovered from customers are just, reasonable, and were prudently incurred. The costs authorized to be deferred should be limited and should only be authorized if absolutely necessary to prevent harm to DP&L. The General Assembly and Congress are better suited to resolve general economic matters, including the potential for utilities to be made whole from the declared emergency.

Accordingly, OMAEG recommends that the Commission adopt Staff's recommendations regarding the duration of the COVID-19 Plan and the recovery of the deferred amounts, and note that recovery is not guaranteed as only those deferred amounts that are prudent, properly computed, properly recorded, reasonable, and not already recovered in rates will be eligible for subsequent recovery.⁵⁰

⁴⁹ Id. at 4.

⁵⁰ Id at 5.

D. Ratepayers Should Not Compensate DP&L's Acts of Good-will.

In DP&L's Supplemental Application, the Company touts its Plan to "help its customers and communities weather the unprecedented health crisis which we are faced."⁵¹ This COVID-19 Plan includes suspending certain charges, waiving late fees and reconnection fees, and revising demand charges for commercial and industrial customers during the state of emergency.⁵² These acts of good-will represent foregone revenue associated with discretionary revenue. In *Lima Telephone*, the Supreme Court of Ohio held that the value of utilities' good-will should not be included in ratepayers' charges.⁵³ This is because good-will has diminished commercial value when the utilities are natural monopolies, and customers have little choice when deciding which utility to receive services from.⁵⁴ In 1980, the Court clarified that a utility cannot pass on the costs of acts designed to promote the utility's public image, unless it can show that the customers paying for the act receive "a direct and primary benefit."⁵⁵

Additionally, in 2011, the Commission explained that utilities' discretionary acts that are not within their general company policies should not receive cost recovery.⁵⁶ The Commission made this determination when it denied Duke Energy Ohio, Inc.'s request for cost recovery for the supplemental compensation it provided employees and contractors during the Hurricane Ike State of Emergency in 2008.⁵⁷ Similarly, the Commission denied Ohio Power Company's request to

⁵¹ Supplemental Plan at 1.

⁵² Id. at 1-2.

⁵³ *Lima Tel. & Tel. Co. v. Pub. Util. Comm.*, 98 Ohio St. 110, 124, 120 N.E. 330, 333 (1918).

⁵⁴ Id. at 124 (citing *Wilcox v. Consolidated Gas Co.*, 212 U.S. 19, 52 (1909)).

⁵⁵ *Cleveland v. Pub. Util. Comm.*, 63 Ohio St. 2d 62, 72-73, 406 N.E.2d 1370, 1379 (1980).

⁵⁶ *In the Matter of the Application of Duke Energy Ohio, Inc. to Establish and Adjust the Initial Level of its Distribution Reliability Rider*, Case No. 09-1946-EL-RDR, Opinion and Order at 13 (January 11, 2011).

⁵⁷ Id.

pass on to customers the cost of its promotional efforts to bolster its image and employee morale that it incurred during a major storm.⁵⁸

Despite this precedent, DP&L asks the Commission for authority to fully recover for its decisions designed to promote good-will of the public. DP&L has the discretion to waive late fees and certain charges and, in many instances, would not have collected these revenues but for the COVID-19 emergency. The lost opportunity costs associated with the COVID-19 Plan are not the result of DP&L being denied guaranteed revenue. While DP&L is likely experiencing financial stress during the emergency, so are its ratepayers. Consequently, ratepayers should not bear the costs of the utility's business risks or acts promoting good-will during the COVID-19 emergency.

⁵⁸ *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion and Order at 27 (April 2, 2014).

IV. CONCLUSION

In summary, OMAEG satisfies the standards set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11 and 4901:1-38-03(E), and is authorized to intervene with the full powers and rights that the Commission grants to intervening parties. Accordingly, OMAEG respectfully requests that the Commission grant its motion to intervene, allow OMAEG to intervene with the full powers and rights granted by the Commission to intervening parties, and make OMAEG a full party of record. OMAEG further requests that the Commission give due consideration to the comments articulated herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Summary: Motion to Intervene and Comments electronically filed by Mrs. Kimberly W. Bojko
on behalf of OMA Energy Group