**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of the Dayton Power and Light Company for a Limited Waiver of Ohio Adm. Code 4901:1-18(A)(2). | ))) | Case No. 18-1257-EL-WVR |

**APPLICATION FOR REHEARING**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

 The Public Utilities Commission of Ohio’s (“PUCO”) order in this proceeding grants the application of The Dayton Power and Light Company (“DP&L”) for a limited waiver of Ohio Adm. Code 4901:1-18-06(A)(2). This PUCO rule requires that the utility provide the residential customer with personal notice on the day of disconnection of utility service due to nonpayment. It is an important consumer protection that helps avoid health and safety issues associated with electric service disconnection by providing a last opportunity for consumers to make payment arrangements prior to electricity being shut-off. DP&L requested a limited waiver of the personal notice requirement regarding customers whom the Company has labeled “Code Red” customers; that is, customers who allegedly acted violently or aggressively toward DP&L representatives in the past.

The Office of the Ohio Consumers’ Counsel (“OCC”) seeks rehearing from the PUCO’s June 19, 2019 Entry because it is unreasonable in the following respects:

Assignment of Error No. 1: The PUCO’s Entry is unreasonable because it does not provide any support or assurance that the technology needed to implement Code Red remote shut-offs is not duplicative and will not result in additional costs to consumers when DP&L implements the technology to remotely shut-off all customers.

Assignment of Error No. 2: The PUCO’s Entry is unreasonable because it imposes no meaningful recordkeeping standards on DP&L other than a vague “best efforts” and “shall endeavor” documentation requirement to support designating customers on the Code Red list, and departs from the PUCO’s decision in AEP’s similar Code Red proceeding.

The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

 Respectfully submitted,

 Bruce Weston (0016973)

 Ohio Consumers’ Counsel

 */s/ Amy Botschner O’Brien\_\_\_\_*

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## MEMORANDUM IN SUPPORT

1. **INTRODUCTION**

OCC recommended in its Comments that the PUCO defer consideration of DP&L’s waiver request for “Code Red” customers and consolidate that request with DP&L’s broader waiver request in the utility’s ongoing SmartGrid case.[[1]](#footnote-2) OCC further recommended that if the PUCO decides not to consolidate these cases, then the PUCO should modify DP&L’s waiver proposal to incorporate the consumer safeguards consistent with how it ruled in AEP’s Waiver Case.[[2]](#footnote-3) The PUCO, however, did not adopt OCC’s recommendations and granted DP&L’s application as filed.

To ensure just and reasonable rates, the Entry should have conditioned approval of DP&L’s Code Red waiver contingent upon DP&L implementing the technology in a manner that is not duplicative to its waiver request in the smart meter deployment, resulting in unnecessary increased costs being passed on to consumers. In addition, DP&L’s recordkeeping requirements for supporting the reasons why new and existing customers are placed on the Code Red list should be the same firm requirements imposed on AEP, as opposed to a vague “best efforts” and “shall endeavor” standard.

1. **STANDARD OF REVIEW**

After an order is entered, intervenors in a PUCO proceeding have a statutory right to apply for rehearing “in respect to any matters determined in the proceeding.”[[3]](#footnote-4) An application for rehearing must “set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.”[[4]](#footnote-5)

In considering an application for rehearing, R.C. 4903.10 provides that the PUCO may grant and hold rehearing if there is “sufficient reason” to do so. After such rehearing, the PUCO may “abrogate or modify” the order in question if the PUCO “is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted.”[[5]](#footnote-6)

In this case, the standard for rehearing under R.C. 4903.10 is met. The PUCO should grant OCC’s application for rehearing and modify the Entry as OCC recommends.

1. **ASSIGNMENT OF ERROR**

**Assignment of Error No. 1: The PUCO’s Entry is unreasonable because it does not provide any support or assurance that the technology needed to implement Code Red remote shut-offs is not duplicative and will not result in additional costs to consumers when DP&L implements the technology to remotely shut-off all customers.**

The PUCO authorized DP&L’s limited waiver for Code Red customers beginning August 1, 2019, as opposed to deferring this request and addressing the waiver in the broader context of the utility’s ongoing SmartGrid case, stating that “there is no reason to conclude that permitting this limited waiver for Code Red customers, as opposed to addressing the waiver in the broader context of the SmartGrid case, is duplicative to future efforts or will result in increased costs to customers.”[[6]](#footnote-7) The PUCO provided no support for its conclusion that the technology needed to implement the Code Red remote shut-off capabilities will not result in increased costs to customers.[[7]](#footnote-8)

In fact, the costs of the remote disconnection/reconnection technology involved in DP&L’s Code Red program or the interaction between it and the overall remote deployment program for which DP&L is intending to deploy was never mentioned in DP&L’s application or the PUCO Entry. In order to ensure just and reasonable rates, it is incumbent on the PUCO to direct that the technology will *not* be duplicative or result in increased costs to customers. On rehearing, the PUCO should rule that approval of the Code Red waiver is contingent upon DP&L implementing the necessary technology in a manner that is not duplicative to its waiver request in the SmartGrid deployment, resulting in unnecessary increased costs to consumers.

Just six months ago, DP&L filed a waiver request from Ohio Adm. Code 4901:1-18-06(A)(2) in Case No. 18-1876-EL-WVR, consolidated with 18-1875-EL-GDR. Part of DP&L’s proposal includes system-wide Advanced Metering Infrastructure (AMI) with remote connection and disconnection features. As part of that case, DP&L is also seeking a waiver of the PUCO rule which requires DP&L to provide residential customers with personal notice on the day of disconnection. While the waiver request in the instant case specifically targets Code Red customers, the waiver request in Case No. 18-1876-EL-WVR pertains to *all* residential customers who have meters installed with remote shut-off capabilities.[[8]](#footnote-9)

The Code Red waiver should have been considered as part of the broader waiver request and resolved as part of that case with all the costing information provided. In the waiver order granted for AEP’s Code Red customers, the utility was in the process of deploying its SmartGrid system.[[9]](#footnote-10) DP&L’s Code Red Waiver request is premature. DP&L intends to spend money that will be eventually collected from customers for purchasing and installing a metering system that is capable of remotely disconnecting and reconnecting customers. However, DP&L has not selected a vendor or metering system with the functionality to accommodate the Code Red waiver request in this proceeding.[[10]](#footnote-11)

The metering capabilities and functionality that DP&L plans to install for targeted “Code Red” customers may be duplicative of many of the advanced metering infrastructure (AMI) capabilities and functionalities that DP&L is proposing to install for all residential customers throughout its service territory .[[11]](#footnote-12) Both metering systems provide for automated meter reads, remote disconnections, and remote reconnections. The new AMI metering system and other proposed grid upgrades come with a hefty price tag of over $600 million.

In 2016, AEP Ohio filed a similar waiver request involving “Code Red” disconnections;[[12]](#footnote-13) however, the functionality for remote shut-offs for all residential customers was able to be provided through the AMI meters *as they are installed*. DP&L has not provided any assurance that the yet-to-be-defined metering system it plans to install as part of its proposed Code Red waiver is in any way compatible with the metering system capabilities it now proposes to deploy system-wide. Therefore, the new Code Red metering system could be replaced in a very short time with an even newer AMI metering system. And there is no assurance that the costs that will likely be passed along to customers are cost effective, prudently incurred or are just and reasonable. Such metering systems are expensive. The PUCO has experience with Duke Energy’s AMI meters that required replacement a few years after deployment.[[13]](#footnote-14)

The PUCO should have rejected DP&L’s Code Red waiver request and instead address the more comprehensive AMI remote disconnection and reconnection matters in Case No. 18-1876-EL-WVR when (and if) the PUCO approves DP&L’s grid modernization proposal. This would avoid DP&L unnecessarily spending money on a Code Red metering system that could be duplicative and not needed if DP&L’s $600 million smart grid program with AMI metering system is deployed. No information was presented in DP&L’s waiver application, and the PUCO did not address this issue. In order to ensure just and reasonable rates, it is incumbent on the PUCO to direct that the technology will *not* be duplicative or result in increased costs to customers.

In the alternative, the PUCO should grant rehearing and modify its Entry to condition approval of DP&L’s Code Red waiver contingent upon DP&L implementing the necessary technology in a manner that is not duplicative to its waiver request in the smart meter deployment, resulting in unnecessary increased costs being passed on to consumers.

**Assignment of Error No. 2: The PUCO’s Entry is unreasonable because it imposes no meaningful recordkeeping standards on DP&L other than a vague “best efforts” and “shall endeavor” documentation requirement to support designating customers on the Code Red list, and departs from the PUCO’s decision in AEP’s similar Code Red proceeding.**

To the extent the Entry adopts the safeguards the PUCO ordered for a similar limited waiver case involving customers labeled Code Red, OCC supports it. ”[[14]](#footnote-15) However, the last sentence of Finding (b) in this Entry dilutes DP&L’s recordkeeping responsibilities for documentation required to be retained on file supporting its customers’ Code Red designation. Under the Entry, DP&L must merely adhere to a “best efforts” recordkeeping standard in documenting the reasons why new customers are placed on its Code Red list, and DP&L is required only to “endeavor” to provide the same information for existing Code Red customers. [[15]](#footnote-16) Many of the existing customers could have been on the Code Red list for several years and there is no documentation supporting why they are on the list.

Ohio Adm. Code 4901:1-18-06(2) reads as follows:

(2) On the day of disconnection of service, the utility company shall provide the customer with personal notice. If the customer is not at home, the utility company shall provide personal notice to an adult consumer. If neither the customer nor an adult consumer is at home, the utility company shall attach written notice to the premises in a conspicuous location prior to disconnecting service.

DP&L’s waiver bypasses the PUCO’s personal notice requirement for those customers, deemed “Code Red,” who the utility claims have acted violently or aggressively towards DP&L agents in the past. With the waiver granted, customers labeled Code Red lose important notification rights including loss of personal notice or written notice attached to the premises upon day of disconnection. It is unreasonable to deny important consumer protections when DP&L has no firm requirements to document why the customer is on the Code Red list other than meeting an unaccountable “best efforts” standard or “endeavor” to keep adequate records, which is what the Entry does.

DP&L’s recordkeeping requirements for supporting the reasons why new and existing customers are placed on the Code Red list should be the same firm requirements imposed on AEP, as opposed to a vague “best efforts” and “shall endeavor” standard, which AEP’s Waiver Case order did not have. The vague and undefined “best efforts” recordkeeping standard gives DP&L the unilateral right to remotely shut-off customers’ electric service with little (if any) supporting documentation. The recordkeeping standards for new and existing customers are inadequate considering the serious and adverse implications of being on the list.

This vague and undefined standard is inconsistent with PUCO’s approval of the AEP Ohio Waiver Case and also lacks sufficient regulatory oversight to ensure customers are not being unjustly adversely affected by DP&L policies. It is unreasonable to deny important consumer protections like personal notice prior to disconnection of service when DP&L is not required to demonstrate that it has adequate records to support categorizing customers as Code Red. The PUCO should grant rehearing and require DP&L to maintain sufficient documentation for all customers (existing and new) prior to the customer being added to the Code Red list, without the qualifying “best efforts” and “endeavor” language.

DP&L should be required to maintain sufficient documentation to support any customer placed on the Code Red list regardless whether the customer is just being added to the list or if the customer has been on the list for several years. The potential adverse impacts of being on the list requires consistent and methodological collection and recording of documentation by DP&L such that the Utility can demonstrate that the customer was appropriately added on the Code Red list. OCC objects to inclusion of this “best efforts” sentence because of the vague and undefined standard it imposes upon the utility, without sufficient regulatory accountability.

The “best efforts” sentence of Finding (b) should be removed as unnecessary and vague. It lacks utility accountability, and unnecessarily deviates from the PUCO’s order in AEP’s Code Red waiver case from two years ago. DP&L’s waiver application itself was identical in substance to AEP’s waiver application,[[16]](#footnote-17) and the two cases should have been decided the same. The PUCO’s Entry in the AEP Waiver Case did not include such qualifying language, and that waiver case involved hundreds more customers being designated “Code Red”—AEP had 437 customers compared to DP&L’s 50.[[17]](#footnote-18) The PUCO

failed to follow its own precedent, which is essential to assure consistency in administrative decisions.[[18]](#footnote-19)

 It is well-established that the PUCO should respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.[[19]](#footnote-20) To be consistent with the AEP Waiver Order, Finding (b) should read:

The Commission directs DP&L to maintain and retain on file any and all documentation which supports a customer being designated Code Red as long as the customer account is active. The permanent account note should include, but is not limited to, the date of the threat or other aggressive or threatening action, the name of the person behaving aggressively or threatening, if known, the type of threat made and the date the note was added to the account notes.[[20]](#footnote-21)

OCC recommends that the PUCO grant rehearing and require DP&L to notate on both current and new Code Red customer accounts the reason for this designation without the “best efforts” qualifying language to ensure regulatory accountability and consistency. The loss of the important consumer protection that provides customers with personal notice prior to disconnection can significantly and adversely impact the health and safety of DP&L customers. Because of the serious ramifications of this waiver, for additional consumer protection, the PUCO should also require its Staff to periodically review the documentation being retained by DP&L supporting customers being categorized Code Red for compliance with the Entry.

**IV. CONCLUSION**

The PUCO’s Entry granting DP&L’s limited waiver in regard to “Code Red” customers should be modified for consumer protection as OCC recommends. The Code Red waiver request should be addressed in the larger context of DP&L’s ongoing waiver proceeding. In the alternative, a specific PUCO directive should be issued stating that the Code Red waiver is contingent upon DP&L demonstrating that its smart meter technology for Code Red customers will not be duplicative to its waiver request in its SmartGrid deployment case or result in increased costs to customers.

Additionally, at a minimum, DP&L should be required to maintain the same firm level of documentation for pre-existing and new customer additions to the Code Red list as the Entry required in AEP’s waiver case. The “best efforts” concluding sentence of finding (b) should be removed. For additional consumer protections, PUCO Staff should be instructed to periodically review the documentation being retained by DP&L supporting customers being categorized Code Red for compliance with the Entry.

The PUCO should grant OCC’s Application for Rehearing and modify the Entry consistent with OCC’s recommendations.

 Respectfully submitted,

 Bruce Weston (0016973)

 Ohio Consumers’ Counsel

 */s/ Amy Botschner O’Brien\_\_\_\_*

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 19th day of July 2019.

 */s/ Amy Botschner O’Brien\_\_\_\_*

 Amy Botschner O’Brien

 Assistant Consumers’ Counsel

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1. *See, 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 (Dec. 21, 2018); *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 (Dec. 21, 2018) (“*SmartGrid case*”). [↑](#footnote-ref-2)
2. Comments on DP&L’s Proposal to Waive Personal Notice to Residential Customers on the Day of Disconnection by the Office of the Ohio Consumers’ Counsel, Case No. 18-1257-EL-WVR, April 10, 2019. [↑](#footnote-ref-3)
3. R.C. 4903.10. [↑](#footnote-ref-4)
4. R.C. 4903.10(B). *See also* Ohio Adm. Code 4901-1-35(A). [↑](#footnote-ref-5)
5. R.C. 4903.10(B). [↑](#footnote-ref-6)
6. *In re the Application of Dayton Power and Light Company for a Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)(2)*, Case No. 18-1257-EL-WVR (“*DP&L Waiver Case”*), Entry (June 19, 2019) at 4. [↑](#footnote-ref-7)
7. DP&L Waiver Case, Entry at 4. [↑](#footnote-ref-8)
8. *See, DPL SmartGrid case, Case Nos. 18-1875-EL-GRD; 18-1876-EL-WVR (filed Dec.21, 2018)*. [↑](#footnote-ref-9)
9. See, *In re the Application of Ohio Power Company for a Limited Waiver of Ohio Adm.Code 4901:1-18-06(A)(2)*, Case No. 16-1773-EL-WVR (“*AEP Waiver Case*”), Entry (Feb. 8, 2017). [↑](#footnote-ref-10)
10. DP&L response to OCC INT-1-011. [↑](#footnote-ref-11)
11. *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 (Dec. 21, 2018). [↑](#footnote-ref-12)
12. *AEP Waiver Case*, Case No. 16-1773-EL-WVR, Application (August 24, 2016). [↑](#footnote-ref-13)
13. See, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-0032-EL-AIR et al. [↑](#footnote-ref-14)
14. *DP&L Waiver Case*, Case No. 18-1257-EL-WVR, Entry at 4-5; *AEP Waiver Case*, Case No. 16-1773-EL-WVR, Entry at 5-6. [↑](#footnote-ref-15)
15. *DP&L Waiver Case*, Entry at 4. [↑](#footnote-ref-16)
16. AEP Waiver Application at 1-4; DP&L Waiver Application at 1-4. [↑](#footnote-ref-17)
17. AEP Waiver Application at 3; DP&L Waiver Application at 2. [↑](#footnote-ref-18)
18. See, e.g*.*, *Office of Consumers’ Counsel v. Public Utilities Commission*, 10 Ohio St. 3d 49, 461 N.E.2d 303, 305 (1984) (“The Commission…should also respect is own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.”) [↑](#footnote-ref-19)
19. *Id*. [↑](#footnote-ref-20)
20. *See*, AEP Waiver Case Entry, 16-1773-EL-WVR at 5. [↑](#footnote-ref-21)