BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Establishing New Reliability Standards. | )))) | Case No. 21-956-EL-ESS |

**INITIAL BRIEF FOR CONSUMER PROTECTION**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Bruce Weston (0016973)

 Ohio Consumers’ Counsel

William J. Michael (0070921)

Counsel of Record

Ambrosia E. Wilson (0096598)

Connor D. Semple (0101102)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Michael]: (614) 466-1291

Telephone: [Wilson]: (614) 466-1292

Telephone [Semple]:(614) 466-9565

william.michael@occ.ohio.gov

ambrosia.wilson@occ.ohio.gov

connor.semple@occ.ohio.gov

January 31, 2023 (willing to accept service by e-mail)

**TABLE OF CONTENTS**

 **PAGE**

[I. INTRODUCTION 1](#_Toc126054941)

[II. RECOMMENDATIONS 2](#_Toc126054942)

[A. To protect consumers, the PUCO should reject DP&L’s proposal to
reduce its applicable reliability standards. 2](#_Toc126054943)

[B. To protect consumers, the PUCO should reject DP&L’s proposed methodology for calculating SAIFI and CAIDI, because they are not
just and reasonable and they lead to reduced reliability for
consumers. 6](#_Toc126054944)

[C. The DP&L five-year average historical SAIFI performance supports
the PUCO improving the current SAIFI performance standard for consumers, not weakening the standard as proposed by DP&L. 9](#_Toc126054945)

[D. To protect consumers, the PUCO should require that a downward adjustment be made to DP&L’s five-year average historical CAIDI performance to avoid rewarding DP&L for providing inadequate
and substandard service to consumers. 12](#_Toc126054946)

[E. The PUCO should protect consumers by adjusting the historical CAIDI as recommended by OCC because DP&L’s failure to meet reliability standards is the result of DP&L’s unilateral decisions not to make
needed investments in its distribution system and/or sufficient
spending for vegetation management. 14](#_Toc126054947)

[F. The PUCO should adjust the historical CAIDI because DP&L
committed to improve reliability in its 15-1830-EL-AIR distribution
rate case. It should be held to that PUCO-approved commitment, to protect consumers. 16](#_Toc126054948)

[G. The PUCO should protect consumers by adjusting the historical
CAIDI baseline because increases in DP&L’s annual vegetation management expense were authorized in its 15-1830-EL-AIR
distribution rate case—yet despite this increase, DP&L has not
complied with its vegetation management plan. 17](#_Toc126054949)

[H. The PUCO should protect consumers by rejecting DP&L’s proposed
15 percent adder on the five-year average historical SAIFI and CAIDI performance as it does not comply with the PUCO rules for establishing reliability standards, O.A.C. 4901:1-10-10(B). 21](#_Toc126054950)

[III. CONCLUSION 22](#_Toc126054951)

BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Establishing New Reliability Standards. | )))) | Case No. 21-956-EL-ESS |

**INITIAL BRIEF FOR CONSUMER PROTECTION**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) in this case will be setting the standards by which the reliability of the Dayton Power and Light Company d/b/a AES Ohio’s (“DP&L”) electric service to consumers will be measured. R.C. 4928.11(A) requires the PUCO to protect consumers by adopting rules that specify the minimum service quality, safety, and reliability requirements that are to be provided by electric utilities. The law goes further in requiring electric utilities to establish prescriptive standards over the inspection, maintenance, repair, and replacement of its distribution system and to file annual reliability performance reports.[[1]](#footnote-2)

 DP&L would have the PUCO disregard the governing law and rules. DP&L would also have the PUCO ignore the PUCO-approved commitments DP&L made for improving reliability in its rate case.[[2]](#footnote-3) And DP&L would have the PUCO overlook the commitments it made in settling its SmartGrid application to significantly improve the reliability standards.[[3]](#footnote-4) It wants to set the bar much lower allowing it to provide less, not more, reliable service to its consumers. *.*[[4]](#footnote-5)Consumers would experience more outages of longer duration if DP&L gets its way. That is unreasonable. To protect consumers, DP&L’s application should be rejected.

# II. RECOMMENDATIONS

## To protect consumers, the PUCO should reject DP&L’s proposal to reduce its applicable reliability standards.

 Under the PUCO rules,[[5]](#footnote-6) at a minimum, DP&L is required to provide reliable service in compliance with two reliability indices. These indices include a Customer Average Interruption Duration Index (“CAIDI”) and a System Average Interruption Frequency Index (“SAIFI”). SAIFI represents the average number of interruptions per consumer per year. CAIDI represents the average interruption duration or average time to restore service per interrupted consumer.

 OCC’s expert Williams testified that reliability standards are calculated by developing a baseline for reliability, using a recent five-year average based on historical performance..[[6]](#footnote-7) The five-year average baseline is then adjusted to reflect changes that are occurring (or have occurred) in the system design, technological advancements, service area geography, customer perception survey results, and other relevant factors.[[7]](#footnote-8) Importantly, reliability performance data during major events and transmission outages are excluded from calculating the indices and the proposed standards.[[8]](#footnote-9) Momentary interruptions (outages with durations under five minutes) are also excluded from calculating the indices and the proposed standards.[[9]](#footnote-10) Thus the standards can be considered as normal operating conditions.

 The reliability standards considered in this proceeding reflect DP&L’s day-to-day operations and maintenance of its distribution system outside of periods of extreme inclement weather or other events outside of the control of DP&L.[[10]](#footnote-11) OCC’s expert Williams testified that these are commonly referred to as “blue sky” standards.[[11]](#footnote-12) DP&L’s current reliability standards of a 0.88 SAIFI and a CAIDI of 125.04 minutes were established in PUCO Case No. 12-1832-EL-ESS, and have been in effect since 2013.[[12]](#footnote-13)

 DP&L has proposed standards in this proceeding that result in *reduced* reliability for consumers, including a SAIFI of 1.02 and a CAIDI of 147.22. Under these standards, DP&L may interrupt service to consumers more often and the interruptions can be longer. If the PUCO approves DP&L’s amended application (which it should not), the average number of annual interruptions experienced by DP&L consumers could increase by 15.9 percent. Further, the average annual duration of a DP&L consumer interruption would increase by over 22 minutes over the minimum service standards that the PUCO currently considers acceptable.

DP&L’s attempt to lower its reliability standards should be viewed in light of its historical reliability performance. Table 1, below, provides a summary of DP&L’s reliability performance compared to its standard for 2013 through 2021. Table 1 also provides a summary of the actual reliability performance if major events and transmission outages were not excluded from the standards. This is important information in evaluating the actual average number of outages that DP&L consumers are enduring and the average duration of each.

**Table 1: DP&L Reliability Performance Compared with Its Standards (2013 – 2021)[[13]](#footnote-14)**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Year | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
| SAIFI Standard | 0.88 | 0.88 | 0.88 | 0.88 | 0.88 | 0.88 | 0.88 | 0.88 | 0.88 |
| SAIFI Performance (After Exclusion) | 0.70 | 0.82 | 0.85 | 0.69 | 0.68 | 0.83 | 0.88 | 0.84 | 0.72 |
| SAIFI Performance (Before Exclusion) | 0.86 | 0.97 | 0.96 | 0.92 | 1.06 | 1.14 | 1.39 | 1.10 | 0.99 |
| CAIDI Standard | 125.04 | 125.04 | 125.04 | 125.04 | 125.04 | 125.04 | 125.04 | 125.04 | 125.04 |
| CAIFI Performance (After Exclusion) | 110.51 | 121.86 | 118.69 | 119.08 | ***133.07*** | 118.41 | ***133.29*** | ***132.17*** | ***129.52*** |
| CAIFI Performance (Before Exclusion) | 148.11 | 132.25 | 123.46 | 164.16 | 185.56 | 170.86 | 437.03 | 157.88 | 181.93 |
| Number of Customers | 572,667 | 574,993 | 577,709 | 580,592 | 584,044 | 587,473 | 591,607 | 594,965 | 600,136 |

OCC expert Williams explained in his testimony that, until recently, DP&L has consistently met the SAIFI standard each year since the standards were initially established.[[14]](#footnote-15) And PUCO Staff confirmed this.[[15]](#footnote-16) But as confirmed by PUCO Staff, DP&L failed to meet the minimum required CAIDI performance standard in 2017, 2019, 2020, and 2021.[[16]](#footnote-17) This means that consumers have had longer duration outages than what the PUCO considers minimally acceptable.[[17]](#footnote-18) But compliance with the standards for number of interruption does not excuse DP&L from providing too long outages, inadequate service as measured by the CAIDI standards.

Under O.A.C. 4901:1-10-10(E), failure to comply with the SAIFI or CAIDI reliability performance standard for two consecutive years constitutes a violation of PUCO rules. The PUCO has initiated an enforcement action against DP&L (21-1220-EL-UNC) for failure to comply with the CAIDI standard.[[18]](#footnote-19) That action is pending.

As supported by OCC expert Williams’ testimony, the PUCO should not approve a DP&L SAIFI standard that exceeds 0.79 or a CAIDI standard that exceeds 123.34 minutes. These standards align with the PUCO rules and provide a just and reasonable benchmark for judging the reliability of electric service that DP&L provides consumers. The PUCO should not approve DP&L’s application in this case***.*** It should adopt OCC’s recommended CAIDI and SAIFI standards, to protect consumers.

The PUCO should not permit DP&L to lower reliability standards. This is especially true given that the reason why DP&L failed to meet its current reliability standards is due entirely to its failure to perform the required inspection, maintenance, repair, and replacement of its distribution system that was needed to meet the current standards.

DP&L’s distribution charges approved by the PUCO in the 15-1830-EL-AIR rate case were determined to be just and reasonable and sufficient for DP&L to provide adequate service to consumers. It would be unjust and unreasonable for[[19]](#footnote-20) consumers to now pay the even higher distribution charges that the PUCO approved in case 20-1651-EL-AIR and yet allow DP&L to provide even less reliable service.

## To protect consumers, the PUCO should reject DP&L’s proposed methodology for calculating SAIFI and CAIDI, because they are not just and reasonable and they lead to reduced reliability for consumers.

Neither OCC, nor the PUCO Staff, support DP&L’s proposed reliability standards.[[20]](#footnote-21) One reason is based on how DP&L proposes to calculate the standards. The PUCO should not approve DP&L’s proposal to use performance data from 2016 through 2020 to establish its five-year average historical performance baseline without making specific adjustments as required by the rules.[[21]](#footnote-22) PUCO Staff’s testimony describes two primary issues.[[22]](#footnote-23) “First, the Company proposes to deviate from how SAIFI has historically been calculated and reported by the Company, which Staff does not believe the Company’s outage management system (OMS) is designed to do. Second, the Company proposes to base new standards on the past five years’ average performance plus a 15% increment to account for variability, which Staff does not believe is appropriate.”[[23]](#footnote-24)

OCC’s expert Williams testified in even greater detail about the consumer protection issues involved. He explained that rather than using the actual historical baseline to calculate the total number of consumers served, DP&L proposed adjusting the number of consumers, for each year 2016 – 2020, based on what it *claims* were the actual number of consumers served.

Traditionally, DP&L has appropriately reported the total consumer count based on the number of premises that it serves. This methodology accurately reflects the fact that even though consumer counts will continually change as people move from one premise to another, DP&L is always obligated to provide safe and reliable service to the premise.[[24]](#footnote-25) That DP&L has met or exceeded its SAIFI performance standard since at least 2013 when the standards were last approved (based on a total premise count) is evidence that there is no legitimate reason for changing the methodology used for calculating consumer counts. Given the lack of factual support for changing how consumer counts are determined, doing so can serve no purpose other than enabling DP&L to provide less reliable service to consumers.

DP&L proposed adding a 15-percent variance onto the adjusted five-year average historical performance to be included in the new proposed standard.[[25]](#footnote-26) This would undermine the very rationale and rules that the PUCO has enacted for establishing realistic and meaningful reliability standards in the first place. As explained earlier, the reliability standards considered in this proceeding reflect DP&L’s normal day-to-day operations and maintenance of its distribution system outside of periods of extreme inclement weather or other events that may be outside of the control of DP&L. They are commonly referred to as “blue sky” standards.[[26]](#footnote-27) There is no *need* for a 15-percent variance. Adopting one would harm consumers.

DP&L has also proposed no adjustment on the historical five-year average CAIDI performance 2016 through 2020. It is unjust and unreasonable not to adjust the historical average CAIDI baseline downwards for 2017, 2019, and 2020 to reflect the years in which DP&L, through its own actions, failed to provide adequate service to consumers. It would reward DP&L’s poor performance during those years and enable it to provide less reliable service into the future.[[27]](#footnote-28)

The effect of DP&L’s proposed approach is to make it acceptable under the standards to provide less reliable electric service to consumers.[[28]](#footnote-29) DP&L’s proposed adjustment to the actual five-year average performance and proposed standards are illustrated in Table 2, below.

**Table 2: DP&L’s Proposed Adjustment to the Actual Five-Year Average Performance and Proposed Standards**

|  |  |  |
| --- | --- | --- |
| **Year** | **SAIFI** | **CAIDI** |
| 2016 | 0.77 | 119.08 |
| 2017 | 0.76 | 133.07 |
| 2018 | 0.96 | 122.48 |
| 2019 | 0.99 | 133.29 |
| 2020 | 0.95 | 132.17 |
| DP&L Proposed Five-Year Average Performance | 0.89 | 128.02 |
| New Standard(s) With an Additional Proposed 15 percent adder. | 1.02 | 147.22 |

Under these proposed minimum performance standards, it would be acceptable for consumers to experience more interruptions annually and for each interruption to last for longer periods of time. Specifically, regarding the proposed SAIFI, consumers could experience 15.9 percent more interruptions annually than under the current 0.88 standard. Regarding the proposed CAIDI, consumers would be subjected to average restoration times that are over 22 minutes longer than supported under the current standard of 125.04 minutes. This approach should be rejected as recommended by OCC and the PUCO Staff.

## The DP&L five-year average historical SAIFI performance supports the PUCO improving the current SAIFI performance standard for consumers, not weakening the standard as proposed by DP&L.

OCC’s expert Williams and PUCO Staff testified that the SAIFI is calculated by dividing the total number of consumer interruptions (“CI”) by the total number of consumers served.[[29]](#footnote-30) In establishing reliability standards in previous proceedings, DP&L has traditionally used the total premises where it is required to provide service as the total number of consumers served. This method is appropriate because while all premises may not have active consumers 100% of the time, DP&L has an obligation to be ready to serve the premises any time that there is an active consumer.[[30]](#footnote-31) But reducing the denominator as proposed by DP&L to reflect only active consumers at a given time results in an unrealistic, higher SAIFI.[[31]](#footnote-32)

As shown in Table 1, DP&L’s SAIFI performance has met or exceeded the SAIFI standard since at least 2013 when the standards were last established. It is not just and reasonable for DP&L to propose changing how consumer counts are calculated when it would serve no purpose other than to increase the SAIFI standard and make it acceptable for consumers to incur additional outages.

Using only the actual consumers served on any particular day during the year can understate the actual count of the number of consumers served during the year, witness Williams explained in his testimony.[[32]](#footnote-33) This can also distort the actual average number of outages that DP&L consumers incur throughout a year.[[33]](#footnote-34)

The following table provides a comparison of the actual SAIFI historical performance for the years 2016 through 2020 based on the as-filed annual reliability performance reports compared to DP&L’s proposed SAIFI using its new definition for consumer counts.[[34]](#footnote-35)

**Table 3:** **Historical SAIFI Performance (2016 – 2020) Compared with DP&L’s Proposed SAIFI Using Different Consumer Counts**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | **Consumer Count in Filed Rule 10 Reports**  | **SAIFI as Reported in Filed Rule 10 Reports** | **Consumer Count as now Proposed by DP&L** | **Historical SAIFI as Proposed by DP&L**  |
| 2016 | 580,592 | 0.69 | 519,665 | 0.77 |
| 2017 | 584,044 | 0.68 | 522,808 | 0.76 |
| 2018 | 587,473 | 0.86 | 525,690 | 0.96 |
| 2019 | 591,607 | 0.88 | 528,892 | 0.99 |
| 2020 | 594,965 | 0.84 | 529,801 | 0.95 |
| Five-Year Average |  | 0.79 |  | 1.02 |

Table 3 shows that the five-year average historical SAIFI performance baseline of 0.79 is significantly better than its current PUCO standard of 0.88. For consumer protection, OCC recommended adjusting the SAIFI standard downward to accurately reflect the reliability performance that consumers are receiving.[[35]](#footnote-36) Using the total number of premises where DP&L is required to serve consumers should continue to be used for purposes of setting reliability standards. [[36]](#footnote-37)

DP&L’s proposal to determine the total number of active consumers on a given day during the year unreasonably distorts the use of SAIFI as a metric to evaluate reliability.[[37]](#footnote-38) Additionally, as shown in Table 3, above, modifying the consumer count as proposed by DP&L would weaken the SAIFI standard and serve no purpose other than making it acceptable for consumers to experience more outages on an annual basis.[[38]](#footnote-39)

Other reasons for not changing the methodology for calculating SAIFI include DP&L’s agreement to provide a 15 percent reduction in the 2015-2019 average historical SAIFI performance baseline as part of its Smart Grid Plan.[[39]](#footnote-40) The DP&L proposed SAIFI standard of 1.02 is heading in the opposite direction from the 15 percent reduction in SAIFI it agreed upon where the standards will need to be after the five-year deployment of the smart grid is complete.[[40]](#footnote-41) A 15 percent reduction in the average historical SAIFI performance for 2015 -2019 would reflect a SAIFI of 0.67 by 2026.[[41]](#footnote-42)

And modifying the method in which SAIFI is calculated obscures the SAIFI commitment that DP&L made in its smart grid plan that will be reflected in the 2026 reliability standards case. Changing the SAIFI methodology also makes it more difficult for the PUCO and others to evaluate the effectiveness of DP&L’s grid modernization program in providing the quantifiable reliability benefits it committed to provide consumers.[[42]](#footnote-43)

 Accordingly, the PUCO should not approve DP&L’s proposal.

## To protect consumers, the PUCO should require that a downward adjustment be made to DP&L’s five-year average historical CAIDI performance to avoid rewarding DP&L for providing inadequate and substandard service to consumers.

As shown in Table 1, above, DP&L failed to meet the CAIDI standard of 125.04 minutes in 2017, 2019, 2020, and 2021. DP&L’s failure to comply with the PUCO minimum reliability performance standards for three consecutive years is unprecedented in the Ohio electric industry since the reliability standards were established.[[43]](#footnote-44) Even PUCO Staff concluded that “[t]he Company’s proposed standards are significantly worse than both the currently approved standards and the Company’s recent average performance.”[[44]](#footnote-45)And sadly for DP&L’s consumers, the year-to-date CAIDI performance through December 8, 2022 is 126.84 minutes.[[45]](#footnote-46) This means that DP&L will likely fail to meet the CAIDI standard again in 2022.[[46]](#footnote-47)

R.C. 4905.22 requires electric utilities to provide adequate service and facilities to provide consumers with reliable service. Failure to meet the minimum PUCO required CAIDI standard over multiple years clearly demonstrates that DP&L is not providing adequate service to consumers.[[47]](#footnote-48) And while enforcement of the PUCO standards is not the subject of this proceeding, how DP&L calculates its five-year average historical performance baseline is.

The PUCO should not permit DP&L to benefit from the inadequate service it provided consumers in 2017, 2019, and 2020 in calculating the historical baseline performance it used to propose new standards. In other words, the solution to DP&L’s failure to meet its CAIDI standards should not be to adjust them upwards (resulting in less reliability). Table 4, below, provides a comparison of the five-year average historical performance baseline for CAIDI as proposed by DP&L adjusted to the PUCO CAIDI standard.

**Table 4: Historical CAIDI Performance (2016 – 2020) as Proposed by DP&L Adjusted to Reflect Compliance with the PUCO Rules**

|  |  |  |
| --- | --- | --- |
| **Year** | **DP&L Proposed Historical Average CAIDI Performance**  | **DP&L Historical Average CAIDI Performance Adjusted to the PUCO Standard**  |
| 2016 | 119.08 | 119.08 |
| 2017 | 133.07 | 125.04 |
| 2018 | 122.48 | 122.48 |
| 2019 | 133.29 | 125.04 |
| 2020 | 132.17 | 125.04 |
| Five-Year Average | 128.02 | 123.34 |

This information confirms that DP&L’s proposal would result in less reliability for consumers. DP&L’s proposal should be rejected.

## The PUCO should protect consumers by adjusting the historical CAIDI as recommended by OCC because DP&L’s failure to meet reliability standards is the result of DP&L’s unilateral decisions not to make needed investments in its distribution system and/or sufficient spending for vegetation management.

DP&L’s proposal to adjust the CAIDI standard is based on its claims that being unable to make investments in infrastructure in recent years and vegetation management have contributed to DP&L being unable to meet the CAIDI standard.[[48]](#footnote-49) But while DP&L claims it was unable to make the needed investments in its distribution infrastructure, it is unable to quantify the impact that the decisions to not make the needed investments in its distribution had on providing adequate service to consumers.[[49]](#footnote-50)

Further, according to DP&L’s response to OCC INT-05-006 (discussed by OCC witness Williams), DP&L is unable to quantify the impact that its decision to revert from the Electric Security Plan (“ESP”) 3 to ESP 1 had on making needed investments in its distribution system.[[50]](#footnote-51) Under the terms of ESP 3, DP&L was authorized to expedite the collection of costs from consumers through a Distribution Investment Rider (“DIR”) for certain investments that it made in its distribution system.[[51]](#footnote-52) But DP&L withdrew from its ESP 3, and reverted back to ESP 1. ESP 1 had no rider to enable it to collect distribution investment in an expedited manner. But with or without a DIR, DP&L was required to make sufficient investment in its distribution system to provide adequate service to consumers.[[52]](#footnote-53)

Alarmingly, according to the DP&L response to OCC RPD-5-001 (discussed by OCC witness Williams), DP&L is *unable to produce a single document* containing any studies or analysis that were performed over the last five-years documenting which investments would not be made in its distribution infrastructure and why.[[53]](#footnote-54)

OCC witness Williams testified about a summary by outage cause by year between 2016 and 2020. The single largest contributor to the number of annual outage events, consumer interruptions, and consumer minutes interrupted discussed by Mr. Williams is equipment/hardware outages.[[54]](#footnote-55) In 2019, equipment/hardware failures constituted approximately 27 percent of all consumer interruptions and 31 percent of all consumer minutes interrupted.[[55]](#footnote-56) In 2020, equipment/hardware failures constituted approximately 24 percent of all consumer interruptions and approximately 26 percent of all consumer minutes interrupted.[[56]](#footnote-57)

Mr. Williams provided testimony concluding that outages caused by animals/ birds consistently represent one of the highest causes for outage events.[[57]](#footnote-58) And tree-caused outages inside and outside the right of way represent a high number of outage events, consumer interruptions, and consumer minutes interrupted.[[58]](#footnote-59)

The PUCO should not approve DP&L’s proposal to reduce the reliability standards when DP&L’s failure to meet them resulted from DP&L’s unilateral decision to not make needed investments in its distribution system and/or sufficiently spend for vegetation management.

## The PUCO should adjust the historical CAIDI because DP&L committed to improve reliability in its 15-1830-EL-AIR distribution rate case. It should be held to that PUCO-approved commitment, to protect consumers.

As part of its 15-1830-EL-AIR distribution rate case, DP&L committed to a process that included funding levels for the Distribution Investment Rider (“DIR”) that was approved by the PUCO under DP&L’s ESP III.[[59]](#footnote-60) DP&L committed to work with the PUCO Staff and OCC to develop an annual plan for the DIR that emphasized proactive distribution maintenance.[[60]](#footnote-61) The plan also focused spending on where it would have the greatest impact on maintaining or improving reliability for consumers.[[61]](#footnote-62)

DP&L’s decision to revert to ESP I (and the riders that existed from that ESP) does not excuse DP&L from making sufficient investments in its distribution infrastructure to furnish *necessary and adequate* service to consumers. OCC agrees with PUCO Staff that “[a]llowing standards in this case to worsen to the degree proposed by the Company would make meeting the reliability commitment from the grid modernization case extremely difficult if not impossible.”[[62]](#footnote-63) The PUCO should hold DP&L to its PUCO-approved commitment to improve reliability.

## The PUCO should protect consumers by adjusting the historical CAIDI baseline because increases in DP&L’s annual vegetation management expense were authorized in its 15-1830-EL-AIR distribution rate case—yet despite this increase, DP&L has not complied with its vegetation management plan.

In DP&L’s 15-1830-EL-AIR distribution rate case, vegetation management expenses charged to consumers increased from $10.7 million annually to $15.7 million annually.[[63]](#footnote-64) And DP&L was authorized to defer for later collection from consumers certain tree-trimming costs subject to a $4.6 million annual cap.[[64]](#footnote-65)

According to the PUCO approved DP&L Inspection, Maintenance, Repair, and Replacement Program, DP&L is required to complete tree-trimming of all circuits within the right of way under a five-year cycle-based program.[[65]](#footnote-66) But even though DP&L is required to trim trees within the right of way on five-year cycle, it is not doing so.[[66]](#footnote-67) And even though consumer interruptions associated with trees inside the right of way are increasing, DP&L has chosen to selectively defer the cycle-based tree-trimming program due to the alleged costs.[[67]](#footnote-68)

Between 2018 and 2020, DP&L failed to meet the five-year cycle-based tree-trimming requirements.[[68]](#footnote-69) This failure is particularly unreasonable considering the significant increases in baseline vegetation management expense that the PUCO authorized DP&L to charge its consumers in DP&L’s last base last rate case.[[69]](#footnote-70) Once again DP&L is charging consumers but not providing the reliable service they are entitled to under Ohio law.

According to the DP&L response to OCC INT-5-005 (discussed by OCC witness Williams), there was not a single year where DP&L’s actual spending for vegetation management was even close to exceeding the amount consumers are required to pay in base rates or through the authorized deferrals.[[70]](#footnote-71)

In 2019, DP&L reported completing tree-trimming on 71 of the 108 circuits in 2018 that it should have completed for the year.[[71]](#footnote-72) In 2020, DP&L reported completing tree-trimming on 91 of the 108 circuits in 2019 that it should have completed for the year.[[72]](#footnote-73) In 2021, DP&L reported completing tree-trimming on 89 of the 108 circuits in 2020 that it should have completed for the year.[[73]](#footnote-74)

DP&L’s explanation for failing to comply with the PUCO approved vegetation management requirements was “[c]hallenging labor market conditions…”[[74]](#footnote-75) More specifically, DP&L provided the following statement as its explanation for not complying with tree-trimming requirements:[[75]](#footnote-76)

Challenging labor market conditions affecting the entire vegetation management industry have led to widespread price increases and schedule completion shortfalls for many utilities. Currently there is not enough qualified labor in the utility vegetation management industry to effectively meet the increasing needs of electricity providers. As a result, DP&L Ohio has faced significant challenges in trying to overcome the labor shortages and the related price increases. To the best of its ability, DP&L Ohio made strategic decisions to focus its vegetation management efforts in such a way as to maximize the potential benefit to [consumers] by prioritizing circuits based on safety, reliability and vegetation risk.[[76]](#footnote-77)

Identical statements are found in each of DP&L’s system improvement plan reports for 2018 through 2020.[[77]](#footnote-78) In comparing the number of tree-caused outages between 2015 and 2020, there is a significant increase in outages associated with tree-trimming that are contributing to declines in DP&L’s reliability performance as shown in the table below.

**Table 5: Inside Row Tree Caused Outages 2015 – 2020 (Excludes Major Events and Transmission Outages)**[[78]](#footnote-79)

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Events** | **Consumers Interrupted** | **Consumer Minutes Interrupted** |
| 2015 | 145 | 7,007 | 1,393,088 |
| 2016 | 116 | 6,112 | 2,006,194 |
| 2017 | 318 | 17,128 | 3,265,144 |
| 2018 | 310 | 16,973 | 3,366,969 |
| 2019 | 368 | 22,079 | 4,318,048 |
| 2020 | 162 | 16,135 | 2,652,857 |
| Average 2015-2017 | 193 | 10,082 | 2,221,475 |
| Average 2018-2020 | 280 | 18,396 | 3,459,281 |
| Percentage Change | 45.1% | 82.5% | 55.7% |

DP&L’s tree-caused outages within the ROW have increased significantly despite increases in base rates and deferrals of vegetation management expenses that were authorized in the last base rate case.[[79]](#footnote-80) Table 5 demonstrates there was a 45.1 percent increase in the average number of in ROW tree-caused outages for the period 2018 through 2020 compared with the average number of outages between 2015 and 2017 and before rate increases went into effect after the last base rate case.[[80]](#footnote-81) There is an 82.5 percent increase in the number of consumers interrupted on average between 2018 and 2020 compared with the average number of consumers interrupted due to in ROW tree-caused outages between 2015 and 2017.[[81]](#footnote-82) And there is a 55.7 percent increase in the number of consumer minutes interrupted during in ROW tree-caused outages during the period 2018 through 2020 compared with the average number of consumer minutes interrupted between 2015 and 2017.[[82]](#footnote-83)

The PUCO should not relax DP&L’s reliability standards. This is especially true since DP&L has not complied with its vegetation management plan despite charging its consumers for increased vegetation management expenses that the PUCO authorized in its 15-1830-EL-AIR distribution rate case.

## The PUCO should protect consumers by rejecting DP&L’s proposed 15 percent adder on the five-year average historical SAIFI and CAIDI performance as it does not comply with the PUCO rules for establishing reliability standards, O.A.C. 4901:1-10-10(B).

Neither PUCO Staff[[83]](#footnote-84) nor OCC[[84]](#footnote-85) agrees that the addition of a 15 percent adder is reasonable. As previously explained, the SAIFI and CAIDI reliability standards should be based on the five-year average historical performance baseline with specific adjustments as required to account for system design, technological advancements, service area geography, customer perception survey results, and other relevant factors.[[85]](#footnote-86)

OCC’s expert witness Williams explained in his testimony that an arbitrary 15 percent adder on the historical baseline performance diminishes the purpose of the standards in ensuring that consumers are provided reliable service.[[86]](#footnote-87) Additionally, over time the use of the 15 percent adder results in less stringent reliability requirements because the annual reliability performance can rise to the elevated level of the standard.[[87]](#footnote-88)

Rather than a 15 percent adder to the historical performance, DP&L should quantify changes that are made in its system design and technological advancements within its proposed standards.[[88]](#footnote-89) For example, DP&L has on-going programs for proactively replacing cut-outs and underground (“URD”) cable that should result in annual improvements in distribution reliability.[[89]](#footnote-90) These improvements should appropriately be included in the standards. And as mentioned earlier, as part of the on-going grid modernization program, DP&L committed to specific improvements in SAIFI and the System Average Interruption Duration Index (“SAIDI”) to be reflected in a reliability standards case to be filed by June 1, 2026.[[90]](#footnote-91)

As grid modernization technology is being deployed annual, improvements in reliability should be reflected in the standards. Consumers should receive improved service for the additional charges DP&L is seeks to impose on them. The PUCO should not allow this. The PUCO should reject DP&L’s proposal to reduce the reliability standards.

# III. CONCLUSION

The PUCO should reject DP&L’s proposal to reduce reliability standards. Instead, the PUCO should approve a SAIFI of no more than 0.79 (the five-year historical SAIFI average) and a CAIDI of no more than 123.34 minutes (the five-year historical CAIDI average adjusted to the PUCO approved CAIDI standard). And these standards should remain in effect until the PUCO approves new reliability standards after DP&L completes the grid modernization program in 2026. The application that DP&L files in 2026 should reflect the reliability improvements that DP&L agreed to regarding SAIFI and SAIDI.

Respectfully submitted,

Bruce Weston (0016973)

 Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Ambrosia E. Wilson (0096598)

Connor D. Semple (0101102)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Michael]: (614) 466-1291

Telephone: [Wilson]: (614) 466-1292

Telephone [Semple]:(614) 466-9565

william.michael@occ.ohio.gov

ambrosia.wilson@occ.ohio.gov

connor.semple@occ.ohio.gov

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Initial Brief for Consumer Protection was served via electronic transmission to the persons listed below on this 31st day of January 2023.

 */s/ William J. Michael*

 William J. Michael

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |
| --- | --- |
| robert.eubanks@ohioAGO.govRhiannon.howard@ohioAGO.govAttorney Examiners:Jacqueline.st.john@puco.ohio.govMichael.williams@puco.ohio.gov | randall.griffin@aes.comchristopher.hollon@aes.com |

1. R.C. 4928.11(B). [↑](#footnote-ref-2)
2. Case No. 15-1830-EL-AIR. [↑](#footnote-ref-3)
3. Case No. 18-1875-EL-GRD. [↑](#footnote-ref-4)
4. *In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Establishing New Reliability Standards*, Case No. 21-956-EL-ESS, Amended Application (March 18, 2022). [↑](#footnote-ref-5)
5. O.A.C. 4901:1-10-10(B)(1). [↑](#footnote-ref-6)
6. Williams’ Direct at 5. [↑](#footnote-ref-7)
7. Williams’ Direct at 5; O.A.C. 4901:1-10-10(B)(4). [↑](#footnote-ref-8)
8. *Id.* [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. Williams’ Direct at 6. [↑](#footnote-ref-11)
11. *Id.* [↑](#footnote-ref-12)
12. *Id.* [↑](#footnote-ref-13)
13. Annual O.A.C. 4901:1-10-10 Reliability Reports. [↑](#footnote-ref-14)
14. Williams’ Direct at 8. [↑](#footnote-ref-15)
15. Prefiled Testimony of Jacob Nicodemus (December 19, 2022) at 6 (“PUCO Staff”). [↑](#footnote-ref-16)
16. *Id.* at 6-7. [↑](#footnote-ref-17)
17. Williams’ Direct at 8. [↑](#footnote-ref-18)
18. *In the Matter of the Commission’s Investigation into AES Ohio’s Compliance with the Ohio Administrative Code and Potential Remedial Action*, Case No. 21-1220-EL-UNC, Entry (April 8, 2022). [↑](#footnote-ref-19)
19. *In the Matter of the Application of the Dayton Power and Light Company for an Increase in Its Electric Distribution Rates*, Case 15-1830-EL-AIR, Opinion and Order (September 26, 2018) at 34 and 39. [↑](#footnote-ref-20)
20. PUCO Staff at 10-11. [↑](#footnote-ref-21)
21. Williams’ Direct at 8-9. [↑](#footnote-ref-22)
22. PUCO Staff at 10-11. [↑](#footnote-ref-23)
23. *Id.*  [↑](#footnote-ref-24)
24. Williams’ Direct at 8-9. [↑](#footnote-ref-25)
25. Williams’ Direct at 9. [↑](#footnote-ref-26)
26. *Id.* [↑](#footnote-ref-27)
27. *Id.* at 10*.* [↑](#footnote-ref-28)
28. *Id.* [↑](#footnote-ref-29)
29. Williams’ Direct at 11; PUCO Staff at 11-12. [↑](#footnote-ref-30)
30. *Id.* at 11*.* [↑](#footnote-ref-31)
31. *Id.* [↑](#footnote-ref-32)
32. *Id.* [↑](#footnote-ref-33)
33. *Id.* [↑](#footnote-ref-34)
34. *Id.* [↑](#footnote-ref-35)
35. Williams’ Direct at 22. [↑](#footnote-ref-36)
36. *Id.* [↑](#footnote-ref-37)
37. *Id.* [↑](#footnote-ref-38)
38. *Id.* [↑](#footnote-ref-39)
39. Williams’ Direct at 12. [↑](#footnote-ref-40)
40. Williams’ Direct at 12. [↑](#footnote-ref-41)
41. *Id.* [↑](#footnote-ref-42)
42. *Id.* [↑](#footnote-ref-43)
43. *Id.* at 13-14. [↑](#footnote-ref-44)
44. PUCO Staff at 8-9. [↑](#footnote-ref-45)
45. Williams’ Directat 14. [↑](#footnote-ref-46)
46. *Id.* [↑](#footnote-ref-47)
47. *Id.* [↑](#footnote-ref-48)
48. *Id.* at 15. [↑](#footnote-ref-49)
49. *Id.* [↑](#footnote-ref-50)
50. *Id.* [↑](#footnote-ref-51)
51. *Id.* [↑](#footnote-ref-52)
52. *Id.* [↑](#footnote-ref-53)
53. *Id.* at 16. [↑](#footnote-ref-54)
54. *Id.* [↑](#footnote-ref-55)
55. *Id.* [↑](#footnote-ref-56)
56. *Id.* [↑](#footnote-ref-57)
57. *Id.* [↑](#footnote-ref-58)
58. *Id.* [↑](#footnote-ref-59)
59. Williams’ Direct at 16, Case 15-1830-EL-AIR, Stipulation and Recommendation (June 18, 2018) at 6. [↑](#footnote-ref-60)
60. Williams’ Direct at 16, Case 15-1830-EL-AIR, Stipulation and Recommendation (June 18, 2018) at 9. [↑](#footnote-ref-61)
61. Stipulation and Recommendation (June 18, 2018) at 9. [↑](#footnote-ref-62)
62. PUCO Staff at 19. [↑](#footnote-ref-63)
63. *Id.* at 9. [↑](#footnote-ref-64)
64. *Id.* at 18. [↑](#footnote-ref-65)
65. Williams’ Direct at 17. [↑](#footnote-ref-66)
66. *Id.*  [↑](#footnote-ref-67)
67. Direct Testimony of Mr. Vest (November 18, 2022) at 5. [↑](#footnote-ref-68)
68. Williams’ Direct at 17. [↑](#footnote-ref-69)
69. *Id.* at 18. [↑](#footnote-ref-70)
70. Williams’ Direct at 18-19. [↑](#footnote-ref-71)
71. *Id.* [↑](#footnote-ref-72)
72. *Id.* [↑](#footnote-ref-73)
73. *Id.* [↑](#footnote-ref-74)
74. *Id.*  [↑](#footnote-ref-75)
75. *Id.* at 19. [↑](#footnote-ref-76)
76. Williams’ Direct at 19. [↑](#footnote-ref-77)
77. *Id.*  [↑](#footnote-ref-78)
78. *Id.* at 19. [↑](#footnote-ref-79)
79. Williams’ Direct at 19. [↑](#footnote-ref-80)
80. *Id.* [↑](#footnote-ref-81)
81. *Id.* [↑](#footnote-ref-82)
82. *Id.* [↑](#footnote-ref-83)
83. PUCO Staff at 13. [↑](#footnote-ref-84)
84. Williams’ Direct at 19. [↑](#footnote-ref-85)
85. O.A.C. 4901:1-10-10(B). [↑](#footnote-ref-86)
86. Williams’ Direct at 19. [↑](#footnote-ref-87)
87. *Id.* [↑](#footnote-ref-88)
88. *Id.* [↑](#footnote-ref-89)
89. *Id.* at 20. [↑](#footnote-ref-90)
90. *Id.* at 21. [↑](#footnote-ref-91)