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 |

**REPLY BRIEF FOR CONSUMER PROTECTION**

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# I. INTRODUCTION

Dayton Power and Light Company d/b/a/ AES Ohio (“DP&L”) wants to provide less reliable electric service to consumers. DP&L asks the PUCO to modify its CAIDI and SAIFI[[1]](#footnote-2) standards, which establish minimum standards for reliability performance. DP&L requests that the PUCO reduce the standards so that they are easier to meet. DP&L also requests that the PUCO calculate CAIDI and SAIFI in a new way that is more favorable to it. The result of granting DP&L’s requests would be longer and more frequent outages for Ohio consumers. The PUCO should say “no.”

DP&L fails to justify its request for easier reliability standards and less reliable service to its consumers. Aging infrastructure and increasing vegetation management costs are not preventing DP&L from providing reliable service, as it claims.[[2]](#footnote-3) Further, DP&L’s proposed methods of calculating its CAIDI and SAIFI standards are arbitrary and would result in increasingly worsening targets. This means less reliable service for Dayton area consumers. Particularly offensive is DP&L’s claim that consumers actually approve of less reliable service, based on a Customer Satisfaction Survey[[3]](#footnote-4) that is not an accurate tool for setting reliability standards. And DP&L’s proposal ignores its PUCO-approved commitment to improvereliability, in exchange for consumers paying $267 million for Smart Grid improvements.[[4]](#footnote-5)

DP&L wants to charge consumers more for less reliable utility service. It wants consumers to be at risk for more frequent and longer power losses. This is unjust and unreasonable. To protect consumers, the PUCO should reject DP&L’s application.

# II. LAW AND ARGUMENT

## DP&L’s explanations for its worsening reliability related to aging infrastructure and vegetation management costs are pretextual and exaggerated. They should be rejected to protect consumers.

DP&L asks the PUCO to lower its SAIFI and CAIDI standards because it faces new obstacles to providing reliable service. First, DP&L claims that its “assets are older than those of other Ohio utilities.”[[5]](#footnote-6) But this justification is pretextual. O.A.C. 4901:1-1-10 requires utilities to file with the PUCO an “action plan” when they fail to meet their reliability performance standards. An action plan is required to include “factors which contributed to the actual performance level.”[[6]](#footnote-7)

DP&L filed an action plan after it failed to meet its current minimum required CAIDI performance standard in 2017, 2019, and 2020.[[7]](#footnote-8) In none of these action reports did DP&L identify aging infrastructure as a cause for failing to meet its CAIDI reliability standard.[[8]](#footnote-9) DP&L witness Mark Vest, who helped prepare each action report, admitted this at hearing.[[9]](#footnote-10) Only now that DP&L has the chance to seek a lower reliability standard does DP&L identify aging infrastructure as a problem. The PUCO should not accept this after-the-fact justification for unreliable service.

Second, DP&L claims that it “has not been able to adequately fund its vegetation management plan due to significant increase in such costs and a lack of available qualified labor.”[[10]](#footnote-11) The PUCO should give little weight to this excuse for non-compliance The PUCO authorized a $5 million annual increase in vegetation management expenses in 2018 and a $4.3 million increase in 2022.[[11]](#footnote-12) This means DP&L’s vegetation management budget has nearly doubled, from $10.7 million to $20 million, in less than five years. This increase has also been further enhanced because DP&L authorized to defer collection from consumers an additional $7.5 million for certain tree-trimming costs.[[12]](#footnote-13) Clearly, DP&L’s vegetation management budget has grown along with costs. So increasing vegetation management costs and labor prices are no excuse for failing to provide consumers with reliable service.

Further, DP&L itself is at fault for less reliable service. DP&L is charging consumers for tree-trimming services it is not providing. DP&L is required to complete tree-trimming of all services within the right of way every 5 years, on a staggered basis.[[13]](#footnote-14) DP&L has not met its obligations for the years 2018, 2019, and 2020.[[14]](#footnote-15) DP&L was required to complete tree-trimming of 108 circuits in each of these years.[[15]](#footnote-16) The Company completed 71, 91, and 89 circuits, respectively.[[16]](#footnote-17) In addition, DP&L has not actually spent in vegetation management what it is charging consumers for through base rates and authorized deferrals.[[17]](#footnote-18) It is DP&L’s fault that its vegetation management (or lack of) is worsening reliability. The PUCO should not reward DP&L for its decision not to spend money that had been collected from consumers to meet vegetation management obligations by allowing it to provide less reliable service.

## DP&L’s reliability targets will become increasingly easier unless the PUCO calculates SAIFI and CAIDI by excluding actual performance in years DP&L failed its reliability goals.

OCC requests that in calculating DP&L’s historical baseline, DP&L’s performance be rounded down to the standard in years that the DP&L failed to meet it. In years that DP&L met the standard, DP&L’s actual performance should be used.

DP&L argues that OCC’s proposal for calculating its historical system performance is “unprecedented.”[[18]](#footnote-19) DP&L complains that this “punishes the Company for good performance.”[[19]](#footnote-20)

What “good performance” DP&L refers to is unclear. DP&L has failed to meet its CAIDI standard four out of the last five years, in 2017, 2019, 2020, and 2021.[[20]](#footnote-21) What is “unprecedented” is DP&’L’s failure to meet its reliability performance standard for three years straight – unprecedented in the Ohio electric industry since reliability standards were established.[[21]](#footnote-22) This merits an unprecedented fix.

Allowing DP&L to use actual performance in years that it did not meet its standard rewards bad behavior. DP&L’s routine failure to hit its reliability targets will constantly increase the average historical baseline upon which its next goals will be calculated. This would keep CAIDI and SAIFI goals spiraling upwards, requiring less and less reliable electric service. The PUCO cannot allow consumers to suffer this cycle of worsening performance.

Using the standard in years DP&L failed to meet it, instead of actual performance, would ensure that reliability goals improve over time, instead. This is appropriate, since DP&L is deploying $267 million in smart grid technology that should allow it to provide more reliable service over time.[[22]](#footnote-23)

## To protect consumers, the PUCO should reject DP&L’s 15 percent variance proposal because it exaggerates fluctuations in DP&L’s historical performance and is arbitrary.

DP&L proposed calculating its CAIDI and SAIFI standards by adding a 15 percent variance to its five-year average historical performance.[[23]](#footnote-24) This adder is supposed to account for “uncontrollable fluctuations in performance results” that are “not due to year-to-year differences in managing outages….”[[24]](#footnote-25) But many such fluctuations are caused by major events and transmission outages, which O.A.C. 4901:1-10-10(B)(4)(c) already excludes from reliability standards.

Still, DP&L argues that uncontrollable fluctuations in reliability are prevalent enough to require a 15% variance. But of the 10 total SAIFI and CAIDI scores that comprise DP&L’s five-year average baseline, only one represented a year-over-year change of more than 15%.[[25]](#footnote-26) DP&L exaggerates its fluctuations in reliability.

Further, that DP&L can identify *one* year-over-year 15% fluctuation is no reason to incorporate a 15% variance into calculating future CAIDI and SAIFI standards. A utility only violates O.A.C. 4901:1-10-10 if it fails its performance standard in *two consecutive years*.[[26]](#footnote-27) DP&L did not identify two total 15% year-over-year fluctuations in its 5-year performance baseline, let alone the two consecutive fluctuations that would constitute a violation. DP&L’s past performance demonstrates a 15% buffer is unnecessary.

Additionally, DP&L states that PUCO Staff has “overwhelmingly applied a 10% variance factor when setting reliability standards.”[[27]](#footnote-28) This ignores the fact that PUCO Staff has not requested a 10% adder in the last three reliability cases in which it has participated, as Staff witness Jacob Nicodemus testified.[[28]](#footnote-29) In fact, PUCO Staff recently requested a 0% adder.[[29]](#footnote-30)

Lastly, DP&L misrepresents OCC’s position on this issue by stating OCC “recommends no variance factor.”[[30]](#footnote-31) OCC recommended that the five-year average historical performance baseline be subject to “specific adjustments as required to account for system design, technological advancements, service area geography, customer perception survey results, and other relevant factors,” in compliance with O.A.C. 4901:1-10-10(B).[[31]](#footnote-32) DP&L declined to propose specific adjustments, opting instead for a blanket 15% variance. DP&L claimed several obstacles to reliable service but failed to attribute a percent variance to any of them. Since DP&L has not quantified a specific percent variance for each factor, its proposed adder is arbitrary and does not meet O.A.C. 4901:1-10-10(B)’s requirement of specificity. The PUCO should reject DP&L’s arbitrary 15% variance request.

## DP&L’s Customer Satisfaction Survey is an unreliable tool for protecting consumers and determining just and reasonable reliability standards.

DP&L argues that the results of the 2020 Customer Satisfaction Survey indicate consumers would be satisfied with less reliable service.[[32]](#footnote-33) The PUCO should not set easier reliability standards for DP&L on this basis. Consumer surveys should only be used in reliability proceedings to identify specific obstacles to providing reliable service and quantify their impact. Otherwise, DP&L could use consumer surveys to justify providing less reliable service than it is technically capable of. Providing less reliable service for no reason would violate DP&L’s obligation to furnish “necessary and adequate service and facilities,” pursuant to R.C. 4905.22. The PUCO should reject DP&L’s argument that the survey justifies less reliable service.

## Calculating SAIFI by using active customer numbers rather than premises underrepresents DP&L’s service obligation, is administratively inefficient, creates an easier reliability standard, and lessens DP&L’s SmartGrid Plan commitments, to consumers’ detriment.

DP&L argues that the PUCO should calculate SAIFI by dividing the total number of consumer interruptions by the total number of “active customers,”[[33]](#footnote-34) defined as "a current customer of the company.”[[34]](#footnote-35) This contradicts the PUCO’s past practice. The PUCO has previously calculated DP&L’s SAIFI by dividing total number of outages by total number of premises.[[35]](#footnote-36) This is a more accurate method of calculating reliability standards. DP&L is obligated to serve every premise in its service territory, even if all premises do not have an active consumer 100% of the time.[[36]](#footnote-37) So, using active consumers undercounts DP&L’s obligation to provide electricity.

DP&L’s proposed modification to the SAIFI calculation serves only to relax its reliability targets. There are 10 percent more premises in DP&L’s service territory than there are active consumers.[[37]](#footnote-38) Calculating SAIFI by dividing total outages by a smaller denominator (active consumers, rather than premises) results in a higher permissible SAIFI. This allows DP&L to provide less reliable service, for no reason.

DP&L’s proposal for calculating SAIFI is also administratively inefficient. DP&L agreed to reduce SAIFI by 15 percent relative to its 2015-2019 average historical baseline as part of its Smart Grid Plan.[[38]](#footnote-39) DP&L must make this reduction by 2026.[[39]](#footnote-40) DP&L’s 2015-2019 SAIFI was calculated using the traditional denominator – premises. Between now and 2026, while DP&L is deploying new smart grid technology, DP&L’s reliability targets should be calculated the same way its 2015-2019 average historical baseline was. This eliminates confusion of comparing past and present reliability targets that were calculated in different ways.

Maintaining the 2015-2019 SAIFI formula also ensures that DP&L makes the full reliability improvement it committed to in its Smart Grid Plan, commitments which were approved by the PUCO. Again, dividing total outages by consumers rather than premises would inevitably result in a higher SAIFI target (which means worse service reliability for consumers). So using a future SAIFI (based on consumers) to determine whether DP&L met past SAIFI commitments (based on premises) would allow DP&L to make lesser improvements to performance than it promised.

## DP&L’s service reliability should improve as it implements its grid modernization plan, to consumers’ benefit.

DP&L argues that the PUCO should adopt its proposed reliability standards because they are “consistent with other Ohio utilities.”[[40]](#footnote-41) But DP&L has made commitments to improve reliability that other utilities have not. DP&L agreed to decrease its 2015-2019 average historical SAIFI performance by *15 percent* by 2026.[[41]](#footnote-42) That agreement obligates DP&L to meet a SAIFI of 0.67.[[42]](#footnote-43)

In this proceeding, DP&L instead asks the PUCO to permit an increase in SAIFI performance to 1.02.[[43]](#footnote-44) And this is after the PUCO authorized DP&L to collect $267 million through its Infrastructure Investment Rider for grid modernization.[[44]](#footnote-45)

 As DP&L deploys new smart grid technology, it should be improving service towards its 2026 reliability goals. But instead, DP&L requests the opposite. Consumers are paying for more reliable service. DP&L is not providing it. The PUCO should not reward DP&L for its continuing failure to meet its plan to provide more reliable service by setting easier CAIDI and SAIFI targets. This is doubly bad for consumers.

# 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 in years DP&L failed to meet it).

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. The PUCO should hold DP&L to its commitments.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Reply Brief for Consumer Protection was served via electronic transmission to the persons listed below on this 14th day of February 2023.

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

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1. CAIDI refers to Customer Average Interruption Duration Index. SAIFI refers to System Average Interruption Frequency Index. [↑](#footnote-ref-2)
2. DP&L Initial Brief (January 30, 2023) at 5. [↑](#footnote-ref-3)
3. *Id.* at 2. [↑](#footnote-ref-4)
4. *Transmission and Distribution Inspection, Maintenance, Repair and Replacement Programs Pursuant to Section 4901:1-10-27, Ohio Administrative Code, Regarding Electric Companies*, Case No. 18-1837-EL-ESS (December 17, 2018) at 11. [↑](#footnote-ref-5)
5. DP&L Initial Brief at 5. [↑](#footnote-ref-6)
6. O.A.C. 4901:1-10-10(a). [↑](#footnote-ref-7)
7. Direct Testimony of PUCO Staff Witness Jacob Nicodemus at Exhibits 3, 4, and 5 (“Nicodemus Direct”). [↑](#footnote-ref-8)
8. *Id.*  [↑](#footnote-ref-9)
9. Tr. at 17:13-16; Tr. 19:24-20:2; and Tr. 21:9-12. [↑](#footnote-ref-10)
10. DP&L Initial Brief at 5. [↑](#footnote-ref-11)
11. Case No. 15-1830-EL-AIR, Stipulation and Recommendation (June 18, 2018) at 18; *In re AES Ohio*, Case No. 20-1651-EL-AIR, Opinion and Order (December 14, 2022), ¶ 114. [↑](#footnote-ref-12)
12. *In re AES Ohio*, Case No. 20-1651-EL-AIR, Opinion and Order (December 14, 2022), ¶ 114. [↑](#footnote-ref-13)
13. *In the Matter of the Application of the Dayton Power and Light Company to Amend its Transmission and Distribution Inspection, Maintenance, Repair and Replacement Programs Pursuant to Section 4901:1-10-27, Ohio Administrative Code, Regarding Electric Companies.* Case No. 18-1837-EL-ESS (December 17, 2018) at 11. [↑](#footnote-ref-14)
14. *In the Matter of the Application of the Dayton Power and Light Company to Amend its Transmission and Distribution Inspection, Maintenance, Repair and Replacement Programs Pursuant to Section 4901:1-10-27, Ohio Administrative Code, Regarding Electric Companies.* Case No. 18-1837-EL-ESS (December 17, 2018) at 11. [↑](#footnote-ref-15)
15. *In the Matter of the Electric Service and Safety Standards, Pursuant to Rule 4901:1-10-26(B) of the Ohio Revised Code,* Case No. 19-1000-EL-ESS, System Improvement Plan Report, (April 1, 2019) at 31; *In the Matter of the Electric Service and Safety Standards, Pursuant to Rule 4901:1-10-26(B) of the Ohio Revised Code,* Case No. 20-1000-EL-ESS, System Improvement Plan Report, (March 30, 2020) at 31; *In the Matter of the Electric Service and Safety Standards, Pursuant to Rule 4901:1-10-26(B) of the Ohio Revised Code,* Case No. 21-1000-EL-ESS, System Improvement Plan Report, (March 26, 2021) at 30. [↑](#footnote-ref-16)
16. *Id.*  [↑](#footnote-ref-17)
17. Direct Testimony of OCC Witness James D. Williams at JDW-08 (“Williams Direct”). [↑](#footnote-ref-18)
18. DP&L Initial Brief at 7. [↑](#footnote-ref-19)
19. *Id.* at 7. [↑](#footnote-ref-20)
20. Williams Direct at 12. [↑](#footnote-ref-21)
21. *Id.*  [↑](#footnote-ref-22)
22. Case No. 18-1837-EL-ESS (December 17, 2018) at 11. [↑](#footnote-ref-23)
23. DP&L Initial Brief at 8. [↑](#footnote-ref-24)
24. *Id* at 9. [↑](#footnote-ref-25)
25. *Id.* at 10. [↑](#footnote-ref-26)
26. O.A.C. 4901:1-10-10(E). [↑](#footnote-ref-27)
27. DP&L Initial Brief at 9. [↑](#footnote-ref-28)
28. Nicodemus Direct at 14. [↑](#footnote-ref-29)
29. *Id.*  [↑](#footnote-ref-30)
30. DP&L Initial Briefat 12. [↑](#footnote-ref-31)
31. OCC Initial Brief at 2. [↑](#footnote-ref-32)
32. DP&L Initial Brief at 13. [↑](#footnote-ref-33)
33. DP&L Initial Brief at 15. [↑](#footnote-ref-34)
34. Direct Testimony of DP&L Witness Jason Virtue at 4 (“Virtue Direct”). [↑](#footnote-ref-35)
35. Virtue Direct at 3. [↑](#footnote-ref-36)
36. Williams Direct at 11. [↑](#footnote-ref-37)
37. Virtue Direct at 4. [↑](#footnote-ref-38)
38. Case No. 18-1875-EL-GRD, Opinion and Order (June 16, 2021) at 51-52. [↑](#footnote-ref-39)
39. *Id.*  [↑](#footnote-ref-40)
40. DP&L Initial Brief at 16. [↑](#footnote-ref-41)
41. *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, Opinion and Order (June 16, 2021) at 51-52. [↑](#footnote-ref-42)
42. Williams Direct at 12. [↑](#footnote-ref-43)
43. Amended Application at 3. [↑](#footnote-ref-44)
44. *In the Matter of the Application of the Dayton Power and Light Company to Amend its Transmission and Distribution Inspection, Maintenance, Repair and Replacement Programs Pursuant to Section 4901:1-10-27, Ohio Administrative Code, Regarding Electric Companies.* Case No. 18-1837-EL-ESS (December 17, 2018) at 11. [↑](#footnote-ref-45)