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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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 Revised Tariffs.)	Case No. 08-1095-EL-ATA
)	
)	
In the Matter of the Application of the Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13.)	Case No. 08-1096-EL-AAM
)	
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.)	Case No. 08-1097-EL-UNC
)	
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**REPLY COMMENTS
BY
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Separation Plan.)	

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") submits the following reply comments regarding the Dayton Power and Light Company's ("DP&L") revised independent business cases for deployment of an advanced metering infrastructure ("AMI") and Smart Grid. A smart grid is not a single upgrade to the electric transmission and distribution systems but a complete overhaul with 21st century infrastructure, metering and communications technologies. AMI will enable direct two-way communication between a utility and the customer that will provide a variety of information, such as real-time pricing and usage information over certain time periods.

Both the Smart Grid and AMI, if implemented correctly, have the potential to tell consumers how energy is used, what it costs them and what kind of impact that usage has on the environment. But these concepts are still new and quite costly. DP&L states in its Revised Business Plan that the proposed total cost will be \$600 million. Any increased financial burden placed on the residential customers served by DP&L needs to be carefully assessed. The implementation of these AMI and Smart Grid programs should be separated and deployed incorporating a prioritization of the components thereby enabling customers to realize the quickest benefits.

The PUCO-established procedural schedule for this case permits interested parties the opportunity to provide comments and reply comments regarding DP&L's revised filing. Initial comments to DP&L's revised AMI and Smart Grid business filing were filed on December 15, 2009 by five parties: OCC, the City of Dayton, the Ohio Partners for Affordable Energy ("OPAE"), the Kroger Company ("Kroger"), and the Staff of the Public Utilities Commission of Ohio ("PUCO Staff"). According to the hearing examiner's December 21, 2009 Entry, reply comments addressing the initial comments submitted by the parties are to be filed by January 8, 2010.

OCC's reply comments address the initial comments submitted by the City of Dayton, OPAE, Kroger and the PUCO Staff regarding DP&L's AMI and Smart Grid programs and request that the programs be resubmitted to provide a more deliberate and well-defined discussion of costs and actions. The Commission's review of the proposals must also take into consideration the economy in the DP&L service territory and the fact that DP&L's implementation timeframe no longer has the urgency it once had related to the Company's pursuit of a federal grant.

Silence on the part of OCC regarding any of the comments made by the other parties in the December 15, 2009 filings should not be considered acquiescence. Rather, OCC has chosen to focus on the comments that we believe represent the greatest degree of importance.

II. REPLY COMMENTS

A. Consistent With OCC's Initial Comments, Comments By The PUCO Staff And OPAE Oppose DP&L's Shared Savings Proposal.

DP&L seeks to collect an incentive payment from customers of 10% of its projected Smart Grid operation and maintenance savings, line loss savings, and depreciation savings through a shared-savings mechanism.¹ The OPAE comments express a concern over the customer bill impacts of the Company's shared savings proposal.² This amounts to a proposal to collect \$147 million from customers over ten years.³

The PUCO Staff comments supported the opposition of shared savings incentive for DP&L "Due to the substantial amount of "soft benefits" reliant on customer's future response to prices and those risks borne directly by its customers, the Staff does not recommend any shared savings in this case."⁴ OCC's initial comments identified four additional reasons that the Commission should not permit DP&L to have the added benefit of a "shared savings" provision, including the fact that there is no precedent for such a "shared savings" provision by the other utilities in Ohio and customers should get

¹ In their original filing they had proposed a 50 percent shared savings, Seger-Lawson, Book II, page 6.

² OPAE Comments at 8.

³ See Schedule C-5.

⁴ PUCO Staff Comments at 8.

the full benefit of the operational savings for the hefty bill that will be collected from them.⁵

B. DP&L Should Revise Its Smart Grid Benefit Valuation With Timely And Appropriate Data And Re-File Its Revised Business Case.

The PUCO Staff Comments appropriately recognize that estimated benefits attributable from both the avoided capacity and reduced energy demand are overstated for Smart Grid. The PUCO Staff Comments further indicate that the estimated benefits for the proposed AMI business case are also over valued, “Those valuations are subject to the same issues that apply to the AMI business case.”⁶ OCC agrees with the PUCO Staff Comments on these matters and also recommends that both the avoided capacity benefit calculations and the forward energy price curve used by DP&L be revised and updated. OCC further recommends that the Commission order the Company to make its projection of costs for the next 3 years based on a trend of the last 10 years in acknowledgement that current low energy prices will rise when the economy rebounds, Greenhouse Gas legislation is passed, or if the U. S. EPA ends up regulating carbon.

C. The Commission Should Order The Company To Revise Its Revised Business Case And Develop Separate AMI And Smart Grid Programs And Riders -- If Both Programs Are Ultimately Approved.

The PUCO Staff Comments oppose DP&L’s proposed full AMI implementation at this time.⁷ The PUCO Staff Comments also recommend that the Company “systematically revisit” the proposed Smart Grid business case.⁸ In addition, the PUCO

⁵ OCC Comments at 7-8

⁶ PUCO Comments at 15.

⁷ PUCO Staff Comments at 8.

⁸ PUCO Staff Comments at 15.

Staff Comments recommend that the Company “revisit” these plans applying two separate rates.⁹ The City of Dayton also asserts that the Company should split the AMI and Smart Grid charges.¹⁰

OCC supports the positions stated in both the PUCO Staff Comments and the City of Dayton Comments on this issue and recommends that, if approved, the Company develop separate AMI and Smart Grid riders for collection of program costs from customers. In addition, decisions regarding the implementation of the Smart Grid and the AMI programs should be made only after taking into consideration the effect these program costs will have on the dire economic situation residential consumers already face in DP&L’s territory.

D. Recommendations By The Staff And The City Of Dayton To Recover All AMI And Smart Grid Program Costs Through A Fixed Charge Will Place A Larger Burden On Low Use Customers And Should Not Be Adopted.

The Company proposal incorporated a bifurcated rate with 43% of the total revenue requirement being collected from customers through a fixed charge and 57% of revenue requirement being collected from customers through a volumetric charge.¹¹ The PUCO Staff Comments state that the costs for both AMI and Smart Grid should be collected from customers through separate fixed customer charges.¹² The PUCO Staff Comments propose the collection of all costs through the fixed charge because Staff could not identify any costs that vary with energy usage.¹³ The City of Dayton’s

⁹ PUCO Staff Comments at 16.

¹⁰ City of Dayton Comments at 3.

¹¹ Revised Business Plan.

¹² PUCO Staff Comments at 16.

¹³ PUCO Staff Comments at 2.

Comments also oppose the Company's bifurcated rate stating that high voltage customers, like the City of Dayton, would have to pay proportionally more of the AMI and Smart Grid costs under the bifurcated scheme because of their more demanding electricity needs.¹⁴

OCC's Initial Comments also raised concerns with the Company's proposed bifurcated rate.¹⁵ OCC requests that all aspects of a fixed charge be removed.¹⁶ For one, the partial fixed cost component of DP&L's new bifurcated rate design put more of a bill burden for paying the total cost of AMI and Smart Grid on low-income residents who are typically associated with using less electricity per month. In light of the current economic climate and public policy considerations, OCC suggests an approach that would be more sensitive to lower energy users, particularly low-income and fixed income residents.

A fixed charge is a step further in the wrong direction. A fixed charge will shift significantly more of the burden of paying the costs of AMI and Smart Grid to customers using relatively lower amounts of energy than the Company's bifurcated rate proposal. To offset the regressive nature of a fixed customer charge on low-use low or fixed income customers, OCC again proposes a fully volumetric kWh rider. In the alternative, OCC would be amenable to discussing a volumetric revenue decoupling mechanism.

¹⁴ City of Dayton Comments at 6-7.

¹⁵ OCC Comments at 6-7.

¹⁶ OCC Comments at 6-7.

E. In Order To Take Advantage Of The Full Value Of An AMI Deployment, DP&L Should Immediately Commence The Implementation Of A New Electronic Billing System.

DP&L proposes to purchase, install, and deploy a new billing system as part of its AMI and Smart Grid project. DP&L's request for a new billing system is not new. As identified in the PUCO Staff's Comments, DP&L requested a new billing system many years ago, in Case No. 03-2441-EL-ATA et al.¹⁷ The PUCO Staff Comments also recognized that DP&L and its customers will be unable to fully exploit the value of an AMI deployment unless DP&L first implements a new billing system capable of handling time differentiated rates and the other potential advantages of an AMI deployment.¹⁸

Kroger's comments also calls for a new DP&L electronic billing system.¹⁹ Kroger states that an initiative to install advanced metering technology without electronic billing would be, in effect, "using 'smart' meters to provide 'dumb' bills"²⁰ thereby diminishing the usefulness of smart meters.²¹

If the Commission determines that DP&L should go forward with its AMI deployment, OCC supports the position of Kroger and the PUCO Staff that a new, electronic billing system is needed to take full advantage of the potential benefits of AMI. This billing system should be required to accommodate a variety of dynamic rate designs and should be subject to Commission review. However, to the extent a new billing system benefits the Company and its shareholders, the costs attributed to those benefits,

¹⁷ PUCO Staff Comments at 7.

¹⁸ Id.

¹⁹ Kroger Comments at 6.

²⁰ Id.

²¹ Id. at 7.

not be borne by customers alone, as proposed, through the Infrastructure Improvement Rider – IIR.

F. The Company Should File A Separate Application Regarding The Modernization Of The Company's Billing System Where The Company Will Appropriately Support Its Proposed Upgrades.

The PUCO Staff's Comments point out that DP&L's need for a new billing system is independent of its AMI proposal.²² The PUCO Staff relied upon the direct testimony filed by DP&L witness Karen Garrison in this case to support its position.²³ Ms. Garrison testified that DP&L has needed a new billing system since at least 2004.²⁴ Because the Company's need for a new billing system existed prior to its AMI and Smart Grid program proposals, the PUCO Staff contends that the cost of a new billing system should not be collected from customers through the IIR.²⁵ The PUCO Staff Comments acknowledge the fact that some upgrades to the Company's current billing system will be needed if the Company is expected to be capable of handling time differentiated rates.²⁶ Accordingly, the PUCO Staff Comments propose that the Company file a separate distribution rate application regarding a billing system that will incorporate the upgrades that have been needed since at least 2004 and those upgrades that are needed for the Company to support time differentiated rates.²⁷ The City of Dayton's Comments echo the PUCO Staff's Comments regarding the cost of the new billing system and the IIR.

²² PUCO Staff Comments at 7.

²³ PUCO Staff Comments at 7.

²⁴ PUCO Staff Comments at 7.

²⁵ PUCO Staff Comments at 7.

²⁶ Id. at 16.

²⁷ Id. at 16.

OCC fully supports the positions articulated by the PUCO Staff comments and the comments by the City of Dayton. Customers should not be required to pay for the billing system upgrades that are not related to AMI or Smart Grid as part of this proceeding.

G. DP&L's Advanced Metering Program Should Provide Customers Direct And Real-Time Access To Smart Metering Information At No Additional Charge.

In its Comments, the Kroger Company asserts that DP&L should invest in an advanced metering system that “provides commercial and industrial customers real-time access to energy consumption data directly from customer’s meters at no additional cost to the customer.”²⁸ Kroger asserts that a relatively small investment in a system that provides direct and real-time energy consumption data “will likely have a material effect on reducing electric demand in DP&L’s service territory.”²⁹ Kroger further suggests that all customers should also not be charged to access such advanced meters that they have already paid for through DP&L’s Rider IIR – because a charge may discourage customers from using the data to reduce energy consumption and energy expenses.³⁰

OCC agrees with Kroger’s Comments that direct, real-time energy consumption data is a crucial benefit of, and principal reason for investing in, an advanced metering system. OCC also agrees that a customer charge for direct, real-time energy consumption data would discourage customers from using a smart meter system and therefore, partially defeat the purpose of installing such a system. Large customers and residential customers alike are being asked to pay DP&L’s IIR Rider, and demand reduction through

²⁸ Kroger Comments at 5.

²⁹ Id. at 4.

³⁰ Id.

the informed energy use of both classes of customers is a fundamental goal of an advanced metering system.

II. Smart Meters May Potentially Lead To Significant Invasions Of Privacy, And Therefore, The Commission Should Require DP&L To Establish Clear Policies And Mechanisms To Protect The Personal Information Of Consumers.

In addressing the downside of smart meters, both OCC and OPAE's Comments note the potential for significant invasions of consumer privacy. Smart meters can provide a detailed record of how and when energy is consumed. This information can then be used to amass a wealth of personal information about consumers.³¹

OCC shares the privacy concerns stated in OPAE's Comments. Smart metering could bring about significant privacy concerns and these issues must be fully addressed by DP&L. As is the case with behavioral advertising and the internet, the collection of personal information can be lucrative for companies that collect and sell this data to advertisers or other interested parties.³² Such a scenario would infringe upon consumer rights. By addressing these issues preemptively, the Commission and utilities can protect consumers from these privacy problems.

Specifically, electricity providers such as DP&L should establish clear policies before implementing Smart Grid technologies that inform consumers how their personal information will be handled before any data is collected. Similar to most major websites, DP&L should establish a privacy policy stating how they will collect and use personal information collected by smart meters. Data regarding a customers' usage should not be sold or given to third parties without a customer's written approval.

³¹ http://voices.washingtonpost.com/securityfix/2009/11/experts_smart_grid_poses_privacy.html

³² <http://www.nytimes.com/2008/03/10/technology/10privacy.html>

Along these same lines, DP&L should clarify how its system design provides privacy safeguards of a consumer's personal information. For example, by encrypting collected data, limiting data flow throughout the system, or aggregating home or community usage data, the infrastructure of the grid could protect the collection and availability of personal information. Such a system would protect consumers from all forms of privacy invasion including security breaches. DP&L should consider a "Privacy by Design" approach to its Smart Grid implementation and address how its system will handle these privacy issues.³³

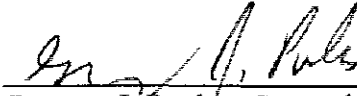
III. CONCLUSION

OCC appreciates the opportunity to reply to comments filed in response to DP&L's revised business plan as permitted in the December 30, 2009 Entry. OCC requests that the Commission order stakeholder meetings so that a better understanding can be reached leading the Company to resubmit the Smart Grid and AMI programs to provide a more deliberate and well-defined collection of costs and actions.

³³ <http://www.thestar.com/comment/article/726528>

Respectfully submitted,

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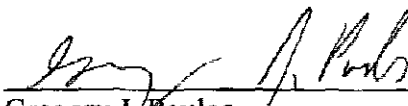


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Reply Comments by the Office of the Ohio Consumers' Counsel has been served upon the below-stated parties, via electronic transmission this 8th day of January, 2010.



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