

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of :
The Dayton Power and Light Company for a : Case No. 18-1257-EL-WVR
Limited Waiver of Rule 4901:1-18-06(A)(2), :
Ohio Administrative Code :

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN
OPPOSITION TO THE APPLICATION FOR REHEARING BY THE OFFICE OF
THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION AND BACKGROUND

The Dayton Power and Light Company (“DP&L” or “the Company”) initiated this proceeding for a limited waiver of the personal notification of disconnection for non-payment set forth in Ohio Adm. Code 4901:1-18-06(A)(2) only as it relates to customers that have been deemed “Code Red” customers, i.e., customers who have acted violently or aggressively toward DP&L representatives in the past, generally requiring a police escort for visits to the premise. To accomplish this task, DP&L proposes to install meters capable of remote connectivity in order to protect utility personnel from violent or threatening situations. To support the filing, DP&L made certain commitments for customer protections and documentation practices. On November 27, 2018, Staff filed its Review and Recommendation concluding that it did not oppose DP&L’s request for a limited waiver.

In response to a procedural entry set forth by the Attorney Examiner, the Office of the Ohio Consumers’ Counsel (“OCC”) filed Comments arguing that the Public Utilities Commission of Ohio (“PUCO” or “the Commission”) should defer ruling on DP&L’s request for waiver because it could result in costs duplicative of the Company’s request in its Distribution

Modernization Plan filing (Case No. 18-1875-EL-GRD) leading to unjust costs. (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 ("OCC Comments") at p.3 (April 10, 2019)). OCC also generally raised recommendations of certain safeguards as set forth in the AEP waiver case – PUCO Case No. 16-1773-EL-WVR (OCC Comments at p. 6), which prompted DP&L to set forth further commitments in its Reply Comments. In its June 19, 2019 Entry in this case, the Commission granted DP&L's limited waiver, conditioned upon certain consumer safeguards listed in the Entry, which substantially tracked the AEP waiver order referenced by OCC. Nevertheless, OCC filed an Application for Rehearing raising two assignments of error that should not be granted.

OCC's first assignment of error argues that the Commission's Entry granting DP&L's request for waiver was unreasonable because it does not safeguard against costs that are duplicative of the waiver request made in DP&L's Grid Modernization case and should be consolidated and addressed in that action. (Application for Rehearing by The Office of the Ohio Consumers' Counsel ("OCC AfR") at pp. 2-6 (July 19, 2019)). In so arguing, OCC fails to recognize the basis of the Commission's ruling as well as the fact that DP&L is not seeking cost recovery associated with its Application in this matter. OCC argues, in its second assignment of error, that the Commission's ruling was unreasonable "because it mandates no meaningful recordkeeping standards on DP&L" as it relates to documentation required to support designating customers as Code Red (OCC AfR at pp. 6-9). But OCC's argument yields an unreasonable result in lieu of the Commission's appropriate balancing of interests.

II. STANDARD OF REVIEW

Applications for rehearing following a Commission order must "set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful."

R.C. 4903.10(B). The Supreme Court of Ohio strictly construes that requirement, holding that when an appellant's grounds for rehearing fail to specifically allege in what respect the Commission's order was unreasonable or unlawful, “the requirements of R.C. 4903.10 have not been met.” *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 59. *Accord: City of Cincinnati v. Pub. Util. Comm.*, 151 Ohio St. 353, 378, 86 N.E.2d 10 (1949) (“[T]he General Assembly indicated clearly its intention to deny the right to raise a question on appeal where the appellant's application for rehearing used a shotgun instead of a rifle to hit that question.”).

III. IT WAS NOT UNREASONABLE FOR THE COMMISSION TO GRANT DP&L'S LIMITED WAIVER OF O.A.C. 4901:1-18-06(A)(2) SEPARATE FROM THE DISTRIBUTION MODERNIZATION PLAN AND WITHOUT EXPRESS REFERENCE TO DUPLICATIVE COSTS.

OCC's first assignment of error is based upon the erred assumption that DP&L may pass onto customers duplicative costs associated with implementing the technology necessary to remotely disconnect Code Red customers. OCC assumes that the metering system that DP&L installs for Code Red customers might not be compatible with the metering system that DP&L seeks to install as part of its Distribution Modernization Plan. Thus, the crux of OCC's concern is that the costs associated with metering technology necessary to enable the Code Red remote dysconnectivity might not be cost-effective, prudently incurred, or just and reasonable. (OCC AfR at p. 5). OCC uses this to urge the Commission to wait to address the waiver in the Distribution Modernization Plan case, or in the alternative, to expressly condition implementation on limitations associated with cost recovery that is not a part of this case. (OCC AfR at pp. 5-6). In the meantime, DP&L field personnel are being put in harm's way, and additional costs are incurred by DP&L and local law enforcement authorities accompanying DP&L field personnel. (*See*, Reply Comments of The Dayton Power and Light Company in

Response to the Office of the Ohio Consumers' Counsel ("DP&L Reply Comments") at p. 2 (April 24, 2019)).

As argued in DP&L's Reply Comments, DP&L has not requested cost recovery in this waiver request nor has it indicated any intention of seeking cost recovery at this time, so OCC's concerns are unfounded and premature. (*See*, DP&L Reply Comments at p. 2). When/if DP&L seeks recovery for meters that are equipped to carry out the remote connectivity associated with the Code Red waiver and its Distribution Modernization Plan, OCC will have the opportunity to raise whether the costs were prudently and reasonably incurred. To that end, the Commission correctly and expressly found 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." Entry at ¶ 10. Indeed, DP&L's request for waiver of in-person disconnection in the Distribution Modernization Plan case is on a system-wide scale, as opposed to this limited waiver to "avoid[] potentially dangerous situation[s] for DP&L employees." Entry at ¶ 10.

Moreover, there are a very small number of customers that have been declared Code Red; thus, even if there were duplicative costs to enable the requisite technology, the safety concerns for DP&L field personnel and local law enforcement, along with costs being pushed onto those local jurisdictions, exceed the minimal amount of costs associated with implementation of Code Red remote connectivity. Nevertheless, DP&L intends to employ technology that is consistent with the technology that would be employed as part of its Distribution Modernization Plan. For these reasons, the Commission should reject OCC's first assignment of error.

IV. THE COMMISSION STRUCK AN APPROPRIATE BALANCE OF INTERESTS BY REQUIRING DP&L TO EMPLOY “BEST EFFORTS” TO RETAIN DOCUMENTATION ASSOCIATED WITH CUSTOMERS IDENTIFIED AS CODE RED.

The Commission appropriately balanced the interests of protections for customers with the safety interests of DP&L metering personnel by ordering that “for new Code red designations . . . DP&L make best efforts to collect and record [certain] information and shall endeavor to provide the same information for all pre-existing Code Red accounts.” Entry at ¶ 10(b). The Commission should reject OCC's second assignment of error, which incorrectly suggests that the Commission's Order, which employed the terms “best efforts” and “endeavor,” was unreasonable because there were “no meaningful recordkeeping standards on DP&L” as it relates to documentation required to support designating customers as Code Red. (OCC AfR at p. 6). OCC argues that DP&L should have to abide by the same requirements placed upon AEP based on the premise that DP&L's application was “identical in substance” to the waiver sought by AEP (OCC AfR at p. 8), but that is not true.

DP&L's Application was indeed substantially based upon what was approved in the similar AEP Code Red waiver case, including express commitments to maintain and retain documentation and maintaining certain information in permanent account notations. Unlike the AEP case, however, DP&L indicated that information cannot always be captured in the heat of the moment. (*See*, Reply Comments at p. 3). Thus, DP&L committed to and requested to make “best efforts” to document the date of the aggressive action, the name of the aggressor, the date

and type of threat, the reason for designation as Code Red. (*See*, DP&L Application at p.3; DP&L Reply Comments at p. 3).

Absent this unique request by DP&L that differed from AEP's request, the same commitments that were imposed on AEP were also imposed upon 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

In Re the Application of Ohio Power Company for a Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)(2), 16-1773-EL-WVR, Entry at ¶ 19 (Feb. 8, 2017).; *In Re the Application of The Dayton Power and Light Company for a Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)(2)*, 18-1257-EL-WVR, Entry at ¶ 10(b) (June 19, 2019). DP&L was afforded additional latitude based upon its unique request that was supported with good cause justification.

The Commission may waive any requirement, standard or rule set forth in O.A.C. Chapter 4901:1-18 for good cause shown. O.A.C. 4901:1-18-02(B)(3). OCC points out the ramifications associated with the waiver of the rule (OCC AfR at p. 9) and DP&L takes this seriously. It is for that reason, DP&L proposed as part of its Application numerous consumer protections, which were adopted by the Commission. Moreover, Code Red customers are still afforded the myriad of other protections and notice provisions set forth in O.A.C. 4901:1-18-06. As mentioned in DP&L's Reply Comments, the associated remote connectivity technology will also allow for quicker reconnection for those customers that are disconnected. Thus, the Commission found good cause, with certain express consumer protections, to grant DP&L the limited waiver of O.A.C. 4901:1-18-06(A)(2), which "facilitates the efficient disconnection and

reconnection of a customer's electric utility service while avoiding [] potentially dangerous situation[s] for DP&L employees.” Entry at ¶ 10.

If the Commission were to adopt OCC's suggestion, DP&L might not be able to utilize the waiver for all customers that are deemed a Code Red customer. Instead, it could require DP&L employees to put themselves in harm's way once again in order to redocument the activity with the specifics that the Commission has recently identified in its Entry. Adopting such a suggestion would produce an unreasonable result. The Commission employed an appropriate balancing of the safety interests of DP&L's field personnel with the interests of DP&L's customers that have been hostile toward utility personnel, which was not unreasonable or unlawful decision.

V. CONCLUSION

For these reasons, the Commission should deny OCC's Application for Rehearing and affirm its ruling and customer safeguards set forth in its June 19, 2019 Entry granting DP&L a limited waiver of Ohio Adm. Code 4901:1-18-06(A)(2).

Respectfully submitted,

/s/ Michael J. Schuler
Michael J. Schuler (0082390)
THE DAYTON POWER AND
LIGHT COMPANY
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 228-7358
Telecopier: (937) 259-7178
Email: michael.schuler@aes.com

Attorney for The Dayton Power and
Light Company

CERTIFICATE OF SERVICE

I certify that on the 29th day of July, 2019, a copy of The Dayton Power and Light Company's Memorandum in Opposition to the Application for Rehearing by The Office of the Ohio Consumers' Counsel was served on the persons stated below via electronic transmission:

amy.botschner.obrien@occ.ohio.gov
barbara.bossart@puco.ohio.gov

john.jones@ohioattorneygeneral.gov

/s/ Michael J. Schuler
Michael J. Schuler (0082390)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/29/2019 4:47:07 PM

in

Case No(s). 18-1257-EL-WVR

Summary: Memorandum in Opposition to the Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Mr. Alan M. O'Meara on behalf of The Dayton Power and Light Company