

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of Chapter 4901:1-35 of the Ohio) Case No. 18-1188-EL-ORD
Administrative Code.)

**REPLY COMMENTS OF
THE DAYTON POWER AND LIGHT COMPANY**

In accordance with the July 31, 2019 Entry in this matter, The Dayton Power and Light Company ("DP&L") files these Reply Comments in response to the Comments filed by the Office of the Ohio Consumers' Counsel ("OCC").

I. The Commission Should Refrain from Making Changes to Rules that are Redundant and Conflict with or Otherwise Usurp Active PUCO Proceedings.

DP&L objects to OCC's recommended edits to O.A.C. 4901:1-35-03(B)(9)(g), which are unnecessarily redundant and serve as an end-run around on DP&L's filed and pending grid modernization plan. Specifically, OCC seeks amendments to require that certain information be included in grid modernization filings (e.g. cost-benefit analysis, quantification of reliability improvements, verification of benefits to customers) (Comments by the Office of the Ohio Consumers' Counsel ("OCC Comments") at pp -4-6. (Aug. 23, 2019)). Anytime an EDU files an application, including grid modernization plans, the EDU has the burden of proof to establish the lawfulness and reasonableness of the request. *See e.g. In Re Ohio Edison Company, the Cleveland electric Illuminating Company, and Toledo Edison Company for a Grid Modernization Business Plan*, Case No. 16-481-EL-UNC, at ¶106 (July 17, 2019). On December 21, 2018, DP&L filed a distribution grid modernization plan in Case No. 18-1875-EL-GRD. *See, In Re The Application of The Dayton Power and Light Company for Approval of its Plan to Modernize its Distribution*

Grid, Case No. 18-1875-EL-GRD, (Dec. 21, 2018). DP&L has included a cost-benefit analysis and quantified its projected reliability benefits as set forth in Workpapers A, B, and C and supported by the testimony of multiple witnesses. DP&L has also proposed to return operational benefits back to customers. *In Re 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, Direct Testimony of Robert J. Adams at p. 5 (Dec. 21, 2018). If OCC deems the filed information to be insufficient to meet the Company's burden of proof, OCC can raise those issues in the pending case. Instead, OCC is attempting to codify their litigation positions that are more appropriately handled in the hearing room. These types of issues should be addressed in the individual cases in which they are proposed.

OCC also recommends prudence reviews should be conducted before costs are charged to customers. (OCC Comments at p. 4). But OCC does not recommend any language to support its position. Nevertheless, this type of traditional ratemaking one would see as part of a rate case filed pursuant to R.C. 4905.18 and defeats the entire concept of single-issue ratemaking authorized by R.C. 4928.143. For these reasons, the Commission should not adopt OCC's recommended edits to O.A.C. 4901:1-35-03(B)(9)(g).

II. The Commission Should Not Amend its Rules to in a way that Creates an Impossible Scenario.

OCC recommends requiring an SSO application to project rate impacts of placeholder riders initially set at zero-dollar rates. (OCC Comments at p. 6). The Supreme Court of Ohio has allowed the use of placeholder riders in ESPs. *In re Ohio Power Co.* 155 Ohio St.3d 320, 2018-Ohio-4697, 121 N.E.3d 315, ¶ 14 (declining to invalidate AEP's PPA Rider). Moreover, if a placeholder rider has an initial zero-dollar rate, that is because the rate impacts are incapable of being calculated because it will require a future filing that may or may not even be composed

and will then be subject to litigation, Commission review/modification, and judicial appeal. For instance, DP&L's Distribution Investment Rider ("DIR") was initially set at \$0 as set forth in DP&L's ESP III Stipulation and Recommendation that was approved by the Commission. *In Re The Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 16-395-EL-SSO, Opinion and Order at p. 7 (Oct. 20, 2017). It would have been impossible to predict how much DP&L could have included in the DIR or the caps that were ultimately imposed as part of the Stipulation and Recommendation that was later approved in DP&L's distribution rate case. *In Re The Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case No. 15-1830-EL-AIR, Opinion and Order at pp. 25-26 (Sept. 26, 2018). Also, OCC recommends adding to the standard filing requirements an evaluation of the proposed ESP under the ESP vs. MRO test. (OCC Comments at p. 7). This recommendation, however, is redundant. The ESP statute already requires evaluation of a proposed ESP under the ESP vs. MRO test. *See*, R.C. 4928.143(C)(1).

Finally, the Commission should view OCC's proposals with heavy skepticism in light of its transparent attempt to "elevate the use of market rate offers instead of electric security plans." (OCC Comments at p. 8). Ohio law expressly allows EDUs to provide standard service offers in the form of *either* a market rate offer under R.C. 4928.142 *or* an electric security plan under R.C. 4928.143. R.C. 4928.141. The Commission should not adopt regulations with the underlying intent to make the latter, lawful option impossible to implement. Therefore, these recommendations should be rejected.

III. Utilities Should Only be Required to Produce Rate Case Expense for ESP if they are Going to Receive Recovery.

OCC recommends that the rules require an SSO application to include a schedule detailing line-item expenses to process and litigate the ESP, such as external legal and consulting fees, identified by law firm or consultant; a comparison of projected expenses to the actual and projected expenses in the most recent ESP; and current and prior write-offs of ESP expenses to operating income. (OCC Comments at p. 8). To the extent those costs are recoverable, DP&L supports OCC's proposal. This can be accomplished with the following edit to OCC's recommended addition of O.A.C. 4901:1-35-03(C)(9) "(9) To receive recovery of case expense associated with an ESP case, Each electric utility shall provide a detailed schedule with its original ESP filing that identifies line-item expenses to process and litigate the ESP case." Any such rule, however, should not supersede or limit in any way the right of an EDU to withhold information that is privileged or protected attorney work product, and any submission of expenses under such rule should not be deemed a waiver of those rights by the EDU.

IV. Conclusion

DP&L appreciates the opportunity to provide Reply Comments and urges the Commission to refrain from adopting the recommendations set forth by OCC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served via electronic mail upon the following counsel of record, this 6th day of September, 2019.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/6/2019 4:08:08 PM

in

Case No(s). 18-1188-EL-ORD

Summary: Comments Reply Comments electronically filed by Mr. Robert J Adams on behalf of The Dayton Power and Light Company