

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The	)	
Dayton Power and Light Company for a	)	
Finding That Its Current Electric Security	)	Case No. 20-680-EL-UNC
Plan Passes the Significantly Excessive	)	
Earnings Test and More Favorable in the	)	
Aggregate Test in R.C. 4928.143(E).	)	

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

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Year after year, customers have been made to bail out DP&L by paying millions of dollars for surcharges that are not needed for providing actual electric service. Enough is enough. It's time for the public interest of consumers to prevail over the special interest of this electric utility.

Now DP&L wants to continue a \$79 million annual "Rate Stabilization Charge." Initial comments filed by intervenors demonstrate a strong consensus. DP&L's electric security plan ("ESP") would cost customers substantially more than a market rate offer ("MRO"). Therefore, DP&L's ESP should be terminated. The electric security plan with its expensive Rate Stabilization Charge should not continue.

To comply with R.C. 4928.143(E), DP&L must prove two things. First, it must prove that its current ESP continues to be more favorable in the aggregate than an MRO under R.C. 4928.143(E) (sometimes called the "ESP vs. MRO" test or "more favorable in the aggregate" test). Second, it must prove that prospectively, the ESP is not substantially likely to result in significantly excessive earnings (profits) under R.C. 4928.143(E) (sometimes referred to as the "prospective SEET" test). The PUCO should find that DP&L has failed both tests. And thus, the

PUCO should exercise its authority under R.C. 4928.143(E) to terminate DP&L's current ESP and order DP&L to instead file an application for an MRO.<sup>1</sup>

## **I. REPLY COMMENTS**

### **A. When evaluating DP&L's charges to consumers under its current electric security plan, consumer protection requires that the PUCO consider the impact that the coronavirus and ensuing financial emergency have had on consumers.**

DP&L wants to charge customers \$314 million over the next four years under its so-called "Rate Stabilization Charge" so that it can maintain investment-grade credit ratings and earn more profits.<sup>2</sup> In its initial comments, DP&L also says that the coronavirus emergency is good reason for *more* charges to consumers, rather than fewer.<sup>3</sup> According to DP&L, the PUCO should allow it to charge customers hundreds of millions of dollars more in bailouts to help DP&L through the coronavirus emergency.<sup>4</sup>

As the Ohio Hospital Association ("OHA") aptly questioned in its initial comments: "But what about DP&L's customers?"<sup>5</sup> As OHA noted, while DP&L complains that it is allegedly on the "ragged edge" of investment grade credit ratings, customers throughout DP&L's service territory are themselves "on the 'ragged edge' financially due to the unprecedented health and economic impacts of COVID-19."<sup>6</sup>

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<sup>1</sup> DP&L's initial comments largely are a cut and paste of its testimony filed in this case, which OCC and other parties addressed in their initial comments. OCC therefore has not specifically responded to each and every argument made by DP&L in its initial comments so as to avoid filing reply comments that simply restate OCC's initial comments.

<sup>2</sup> Initial Comments of the Dayton Power and Light Company at 3-4 (July 1, 2020) (the "DP&L Comments") (claiming that this subsidy must continue because DP&L's "projected return on equity is low" and its and its parent company's credit ratings are "poor").

<sup>3</sup> DP&L Comments at 7-8.

<sup>4</sup> DP&L Comments at 7.

<sup>5</sup> Initial Comments of the Ohio Hospital Association at 2 (July 1, 2020) (the "OHA Comments").

<sup>6</sup> OHA Comments at 2.

Even *before* the coronavirus emergency, consumers in the City of Dayton faced some of the highest poverty rates in the state: 33% living in poverty, and an alarming 59% below 200% of the federal poverty guidelines.<sup>7</sup> And when unemployment rates in Ohio skyrocketed in March of this year,<sup>8</sup> these poverty numbers certainly didn't improve. Access to food was also a problem *before* the coronavirus emergency, with 17% food insecurity in Montgomery County (the population center of DP&L's service area). According to a recent release by the Ohio Association of Foodbanks, "Food insecurity rates have nearly doubled in Ohio from 13.9% to 23%."<sup>9</sup> Suffice it to say that even more people in Montgomery County are going hungry right now. And according to recent data from the United States Census Bureau, more than 500,000 Ohioans were unable to pay their rent in June.<sup>10</sup>

This is real life for Ohioans. They are trying to scrape together money for food. They are trying to avoid homelessness. They are praying that they can get back to work and earn an income for their families.

If the PUCO requires these very same people to continue paying DP&L's "Rate Stabilization Charge," it would be sending a message to these struggling Ohio citizens: DP&L's credit ratings are more important than your health, your ability to eat, and your ability put a roof over your head.

Of course, DP&L may have the view that the Rate Stabilization Charge is only a few dollars a month (about \$6 for a typical customer using 1,000 kWh per month). But that becomes

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<sup>7</sup> See The Ohio Poverty Report at Table A7b, *available at* <https://www.development.ohio.gov/files/research/p7005.pdf>.

<sup>8</sup> See Attachment CLS-1, page 5 (showing increase in new unemployment claims increasing from just 7,000 one week to 188,000 the following week in March 2020), *available at* <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=81288192-1735-42fe-954f-617e5a803598>.

<sup>9</sup> See <http://ohiofoodbanks.org/files/2019-20/Press-Release-OAF-urges-SNAP-increase-6.15.20.pdf>.

<sup>10</sup> See <https://www.census.gov/data/tables/2020/demo/hhp/hhp8.html>, Housing Tables, Table 1b, Ohio Tab.

money unavailable to consumers for rent and food and medicine and everything else that Ohioans need. The PUCO should stop enabling DP&L to charge its customers for more money than the true cost of electric service.

The PUCO's judgment should be informed in at least two ways. First, when evaluating the qualitative portion of the ESP vs. MRO test, the PUCO should consider the current financial emergency as a factor that strongly weighs *against* any charges to consumers that are not absolutely essential for safe and reliable utility service. DP&L's Rate Stabilization Charge is not essential for safe and reliable utility service.

Second, because so many consumers are suffering, the PUCO should find that under the current circumstances, the quantitative portion of the ESP vs. MRO test (the real dollars and cents) should be given substantially more weight than the "soft" weighing of alleged qualitative factors—or the qualitative factors should be given no weight at all.

Further, DP&L argues that it should be allowed to keep charging the customers the Rate Stabilization Charge, even if it fails the ESP vs. MRO test or the prospective SEET test. To protect consumers, the PUCO should reject DP&L's proposal.

DP&L also claims that the coronavirus pandemic "creates risks for DP&L that customers will use less electricity."<sup>11</sup> According to DP&L, that "is an issue because some of DP&L's rates, charges, and riders ... are volumetrically based...."<sup>12</sup> Thus, DP&L claims that this justifies continuing to charge customers for the Rate Stabilization Charge.

This argument fails, at least as it pertains to residential customers, given that they are expected to use *more* electricity now that they are spending more time in their homes as a result of the pandemic. According to the U.S. Energy Information Administration's monthly Short-

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<sup>11</sup> DP&L Comments at 7.

term Energy Outlook, “residential sector retail electricity sales in 2020 will be similar to 2019 as less electricity use for heating in the first quarter is offset by more consumption during the rest of the year as a result of people spending more time at home.”<sup>13</sup> Given DP&L’s relative higher percentage of sales to residential customers than many electric utilities, there is no basis to conclude that the pandemic is creating additional risks for DP&L as compared to other utilities.

**B. Contrary to DP&L’s assertion, the legislative option of a Market Rate Offer would not allow it to charge consumers for environmental expenses, which refutes DP&L’s claim that an Electric Security Plan is better for consumers.**

In its comments, DP&L claims that a Market Rate Offer would be more expensive than an Electric Security Plan in part because DP&L would be allowed to charge customers for “environmental remediation at Hutchings Station,” (a power plant that has been shut down and is not serving any customers).<sup>14</sup> According to DP&L, R.C. 4928.142(D)(4) allows this charge because it refers to “costs prudently incurred to comply with environmental laws and regulations.”

But as OCC explained in its initial comments, R.C. 4928.142(D) does not apply because any MRO filed by DP&L would not be its “first application” for an MRO.<sup>15</sup> And R.C. 4928.142(D)(4) would not apply at this time anyway. R.C. 4928.142(D)(1)-(4) allow a utility to adjust its standard service offer price based on several factors related to its generation costs. But because DP&L owns no generation, its standard service offer is procured in its entirety through competitive bids from marketers. Thus, there would be no basis to make any of the adjustments found in R.C. 4928.142(D)(1)-(4).

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<sup>12</sup> DP&L Comments at 7.

<sup>13</sup> See <https://www.eia.gov/outlooks/steo/>.

<sup>14</sup> DP&L Comments at 12.

<sup>15</sup> OCC Comments at 9-10.

**C. Qualitative factors do not justify continuing DP&L's current ESP instead of transitioning to a more consumer-friendly MRO, so consumer protection requires that the PUCO terminate the ESP.**

The Ohio Energy Group ("OEG") agrees with DP&L's claim that certain non-quantifiable factors support an ESP over an MRO.<sup>16</sup> OCC explained in its initial comments why DP&L's claim is incorrect.<sup>17</sup> OEG, however, has identified what it considers to be additional qualitative factors supporting an ESP over an MRO.

In particular, OEG says that "one critical benefit of retaining the ESP is preserving the Commission's broad authority to approve a myriad of rate mechanisms that would otherwise be unavailable in the context of an MRO..."<sup>18</sup> This is not a benefit to customers. To the contrary, the PUCO's application of the ESP statute has resulted in more than a billion dollars in unlawful charges to consumers for which they'll never get a refund.<sup>19</sup> It is inconceivable for this to be considered a benefit to consumers as compared to an alternative (an MRO) that would prohibit such above-market subsidies.

OEG also claims that in the absence of an ESP, "Ohio would cede much of its electric pricing power to PJM or the Federal Energy Regulatory Commission which ... may not be in the best interests of Ohio."<sup>20</sup> This claim is unfounded and confusing. There is already a clear demarcation of jurisdiction. The PUCO is responsible for distribution rates; transmission rates are set by FERC; and wholesale generation rates are set through competitive markets at PJM (which is also under FERC jurisdiction). This would not change under an MRO. Under an MRO, the PUCO would continue to regulate distribution rates, standard service offers would continue

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<sup>16</sup> Comments of the Ohio Energy Group at 4 (July 1, 2020) (the "OEG Comments").

<sup>17</sup> OCC Comments at 11-16.

<sup>18</sup> OEG Comments at 4.

<sup>19</sup> OCC Comments at 14.

<sup>20</sup> OEG Comments at 5.



to be procured through competitive auctions, marketers would continue to procure energy and capacity through PJM, and FERC would continue to regulate transmission and generation. The PUCO would not “cede” any authority to other entities by approving an MRO.

**D. The “more advantageous alternative” to an ESP for consumer protection is an MRO—not another ESP.**

Under R.C. 4928.143(E), the utility must show that (i) its ESP continues to be more favorable in the aggregate than an MRO, and (ii) that its ESP is not substantially likely to provide the utility with significantly excessive profits. If the utility fails either of these tests, then the PUCO may terminate the ESP and “may impose such conditions on the plan’s termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative.”<sup>21</sup> OEG argues that “the more advantageous alternative” is another ESP without the \$79 million annual Rate Stabilization Charge.<sup>22</sup> Certainly, all else equal, an ESP without a \$79 million annual subsidy charge is better than one with a \$79 million annual subsidy charge. But OEG is wrong that “the more advantageous alternative” is an ESP. To the contrary, it is an MRO.

The plain language and intent of R.C. 4928.143(E) compel this result. First, under R.C. 4928.143(E), the PUCO is required to compare the ESP to an MRO. The statute does not provide that the PUCO shall compare the current ESP to another hypothetical ESP. It stands to reason, therefore, that the General Assembly intended for the PUCO to transition a utility to an MRO if an MRO is found to be more favorable than the utility’s ESP. Second, R.C. 4928.143(E) refers to a transition to “*the* more advantageous alternative.” It does not say “*a* more advantageous alternative.” Had it said, “a more advantageous alternative,” that would suggest that the PUCO

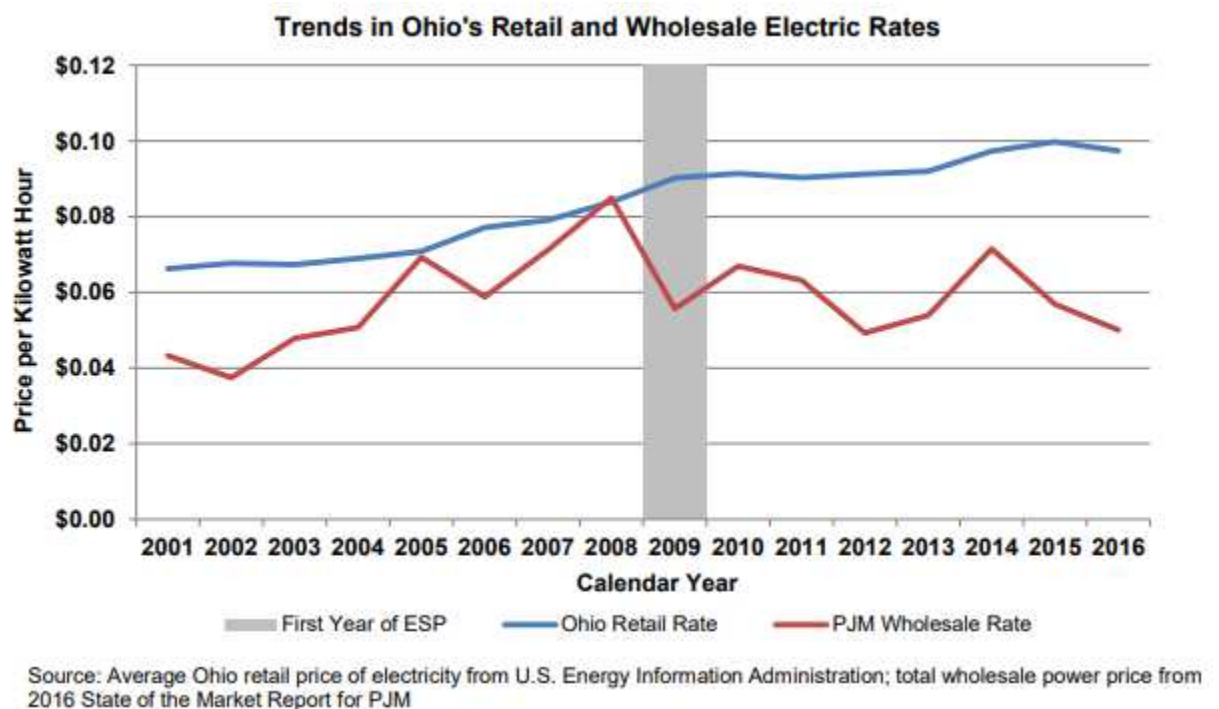
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<sup>21</sup> R.C. 4928.143(E).

<sup>22</sup> OEG Comments at 6.

can choose from a variety of potentially more advantageous alternatives. But by using the word “the” instead of “a,” the statute signals that the General Assembly was contemplating a single “more advantageous alternative.” And because this statutory provision (4928.143(E)) is used to determine whether an ESP is more favorable than an MRO, “the more advantageous alternative” should be interpreted to mean an MRO only.

Further, history has shown that electric security plans are bad for consumers. Before 2009 (when the electric security plan law was passed), PJM wholesale rates and Ohio retail rates were generally correlated, but after 2009, they diverged, with retail rates continuing to climb as wholesale rates fell, as shown in the following analysis prepared by the Ohio Legislative Service Commission:<sup>23</sup>



<sup>23</sup> See Fiscal Note & Local Impact Statement, House Bill 247 (132nd Gen. Assembly) (May 24, 2017), available at <https://www.legislature.ohio.gov/download?key=8111&format=pdf>.

**E. In consumers' interest, the PUCO should reject claims that an MRO would result in higher litigation costs than an ESP.**

According to OEG, one factor favoring ESPs over MROs is that “under an MRO, the Company and customers would be forced to incur litigation expense associated with more frequent distribution rate cases....”<sup>24</sup> This point misses the mark by a wide margin.

The cost of litigating ESPs has been significant, with dozens of parties litigating cases, sometimes for months at a time, followed by repeated appeals that have been necessary to overturn unlawful PUCO decisions. And the litigation costs of ESPs continue, year after year, as a result of an over-abundance of single-issue ratemaking “riders.” These riders require periodic updates (annually or more frequently), PUCO Staff reviews and audits, periodic outside audits, discovery, comments, testimony, hearings, and appeals of their own.

**F. To protect consumers, the PUCO should reject IGS's proposal that the Rate Stabilization Charge be converted to a bypassable charge (i.e., a charge paid only by standard service offer customers).**

IGS's initial comments are generally sound and draw the proper conclusions: that DP&L's current ESP is not more favorable in the aggregate than an MRO, that the PUCO should require DP&L to transition to an MRO, and that the Rate Stabilization Charge should be eliminated.<sup>25</sup> IGS erred, however, when it said that “the Commission should determine that DP&L's RSC should be terminated *or at least be restructured to be a bypassable charge.*”<sup>26</sup>

There is no justification for the Rate Stabilization Charge being changed from a nonbypassable charge to a bypassable one. When a charge is bypassable to shopping customers, it is because the charge is related exclusively to standard service offer service. For example, the standard service offer generation tariffs are bypassable because shopping customers pay for

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<sup>24</sup> OEG Comments at 3.

<sup>25</sup> See generally Initial Comments of Interstate Gas Supply, Inc. (July 1, 2020) (the “IGS Comments”).

generation provided by a marketer, not the SSO. But the Rate Stabilization Charge has nothing to do with the standard service offer because the standard service offer is 100% procured through competitive auctions and supplied by marketers. The Rate Stabilization Charge does not compensate DP&L for any costs it incurs to provide a standard service offer. It is nothing more than a financial integrity charge. Converting the charge to a bypassable one would nearly double the Rate Stabilization Charge for residential customers.<sup>27</sup> A typical current residential customer is already paying more than \$6 per month for the Rate Stabilization Charge.<sup>28</sup> Making the charge bypassable would increase this charge to nearly \$12 per month for a typical customer. This would be unjust and unreasonable.

In DP&L's most recent ESP case, DP&L proposed (through a settlement) a bypassable rider that would allow DP&L to charge customers for DP&L's losses associated with its interest in the Ohio Valley Electric Corporation ("OVEC").<sup>29</sup> The OVEC charge, like the Rate Stabilization Charge, has nothing to do with the standard service offer, and thus, there would be no basis for charging the OVEC subsidies on a bypassable basis. The PUCO modified the settlement in that case to make the OVEC charge nonbypassable, citing its concern that a bypassable rider would unfairly increase costs for standard service offer customers.<sup>30</sup> The same reasoning applies here in rejecting IGS's proposal that the Rate Stabilization Charge be charged only to standard service offer customers.

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<sup>26</sup> IGS Comments at 5 (emphasis added).

<sup>27</sup> See <https://puco.ohio.gov/wps/portal/gov/puco/utilities/electricity/resources/ohio-customer-choice-activity> (data for DP&L showing that residential SSO customers account for about 52.5% of total residential usage, meaning they currently pay about 52.5% of Rate Stabilization Charges but under IGS's proposal would pay 100%).

<sup>28</sup> See Tariff Sheet G12 (\$0.00634/kWh for the first 750 kWh and \$0.00517 for additional kWh, and assuming 1,000 kWh for a typical DP&L residential customer).

<sup>29</sup> Case No. 16-395-EL-SSO, Opinion & Order (October 20, 2017).

<sup>30</sup> Case No. 16-395-EL-SSO, Opinion & Order ¶¶ 63, 119 (October 20, 2017).

## II. CONCLUSION

DP&L's current ESP would cost Dayton-area customers at least \$314 million more than an MRO. This alone should suffice for the PUCO to conclude that an MRO would be more favorable to customers than an ESP. Thus, the PUCO's authority is triggered to terminate DP&L's ESP and to require it to file an MRO instead. Customers have paid bailout after bailout to DP&L, yet DP&L has its hand out for more. This time, the PUCO should protect consumers by saying no.

Respectfully submitted,

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I hereby certify that a copy of these Reply Comments has been served via electronic transmission upon the following parties of record this 16th day of July 2020.

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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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