

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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
In the Matter of the Application of the Dayton Power and Light Company for Approval of a Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)(2).	) ) ) )	Case No. 18-1876-EL-WVR
In the Matter of the Application of the Dayton Power and Light Company for Approval of Certain Accounting Methods.	) ) )	Case No. 18-1877-EL-AAM
In the Matter of the Application of the Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm. Code 4901:1-35-10 for 2018.	) ) ) ) )	Case No. 19-1121-EL-UNC
In the Matter of the Application of the Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm. Code 4901:1-35-10 for 2019.	) ) ) ) )	Case No. 20-1041-EL-UNC
In the Matter of the Application of The Dayton Power and Light Company for a Finding that its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and the More Favorable in the Aggregate Test in R.C. 4928.143(E).	) ) ) ) ) )	Case No. 20-680-EL-UNC

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**REPLY BRIEF OF THE SIERRA CLUB**

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**I. Introduction**

On February 12, 2021, parties to this proceeding filed initial briefs on the Joint Stipulation and Recommendation (“Stipulation”) proposed to resolve the above-captioned cases. Sierra Club filed an initial brief in support of the Stipulation and the modest Electric Vehicle (“EV”) Rebate

Program that is included within it. We urged the Commission to approve the EV Rebate Program because it is well-designed to address key barriers to EV adoption, it will support numerous benefits for Dayton Power & Light (“DP&L”) customers, and it will deliver critical learnings that will help the Commission maximize those benefits as EV adoption grows. Sierra Club submits that the Stipulation satisfies the Commission’s three-part test and should be approved.

We now submit this reply brief to respond to certain arguments made by the Office of the Ohio Consumers’ Counsel (“OCC”) in opposition to the EV Rebate Program. Specifically, the OCC contends that the Commission must reject the EV Rebate Program pursuant to its recent decision in the *Investigation Into Electric Vehicle Charging Service in the State*, where the Commission found that non-utility providers of EV charging services are not subject to Commission regulation.<sup>1</sup> OCC makes this argument despite a clear statement in the Commission’s Finding and Order declining to address the role for electric distribution utilities (“EDUs”) in the development of EV charging infrastructure. The Commission’s decision, while related to EVs, is simply not applicable to the EV Rebate Program at issue in this case. Because OCC’s narrow view of the Commission’s jurisdiction and the role for EDUs is squarely at odds with the Commission’s own decision, the OCC’s arguments should be rejected.

## II. Argument

### a. **The OCC’s assertion that the Commission’s decision in 20-434-EL-COI compels the Commission to reject the EV Rebate Program is contradicted by the plain text of the Finding and Order.**

The Commission initiated its *Investigation Into Electric Vehicle Charging Service in the State* on February 26, 2020. The Entry issued on that day requested stakeholder comment on a single issue: whether providers of EV charging services (“EVCS”) were “engaged in the business

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<sup>1</sup> See Initial Brief for Consumer Protection by Office of Ohio Consumers’ Counsel at 84.

of supplying electricity for light, heat, or power purposes to consumers within [the] state.”<sup>2</sup> The purpose of this inquiry was to determine whether such operators constituted “public utilities” under Ohio law and were therefore within the Commission’s jurisdiction and subject to its regulation.<sup>3</sup> As some 30 other States have done, the Commission answered this question with a resounding “no,” finding that providers of EVCS do not meet the test for a public utility.<sup>4</sup> The decision is also clear that the Commission was acting to resolve that issue and that issue alone. It expressly declined to address stakeholder comments on issues “outside of the narrow scope of the question posed thus far in this docket,”<sup>5</sup> including comments on the role for EDUs with respect to the development of EV infrastructure. The Finding and Order state:

[T]he comments also consisted of vigorous debate among the parties concerning the appropriate level of EDU involvement in the development of the EVCS market and EV infrastructure. The Commission recognizes that issues surrounding EVCS, including ensuring a sustained development of the EV market through the electrification of travel corridors, mindful investments in distribution infrastructure, and protection against potential market deficiencies, may necessitate involvement by EDUs; **however, the Commission will not address EDU involvement arguments in this order.**<sup>6</sup>

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<sup>2</sup>*In The Matter of The Commission’s Investigation Into Electric Vehicle Charging Services in the State*, Case No. 20-434-EL-COI, Finding and Order (July 1, 2020) at 1-2 (explaining that “the Commission issued an Entry seeking comments specifically on whether any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, which is providing EVCS in this state, is ‘engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state.’”).

<sup>3</sup> *Id.* at 14-18.

<sup>4</sup> *Id.* 1, 14-18, 19.

<sup>5</sup> *Id.* at 18.

<sup>6</sup> *Id.* (emphasis added).

Despite this clear language, the OCC relies on the Commission’s decision to argue that the EV Rebate Program included in the Stipulation must be rejected. OCC Witness Williams asserted in testimony that “[t]he PUCO has already determined that it does not have jurisdiction over Electric Vehicle Charging Services (EVCS) and as such, the PUCO must reject a settlement that results in DP&L customers paying for EV rebates that are intended to incentivize and promote charging services.”<sup>7</sup> In response to questions from Sierra Club counsel at hearing, Mr. Williams claimed that the Finding and Order established a policy that would prohibit an electric distribution utility from establishing an EV rebate program that is funded by its customers.<sup>8</sup> These arguments over-interpret and misunderstand the purpose of the Commission’s decision, which is to provide regulatory certainty to current and future providers of EVCS which are not regulated utilities and may be concerned about burdensome regulation. The Commission recognized as much in its decision, finding that certainty around the regulatory treatment for EVCS will help foster the development of a sustainable and innovative EV technology market in State.<sup>9</sup>

By its own terms, the decision does not speak to the role for EDUs in developing EV charging stations. It simply cannot also be the case that the Commission intended for its decision to ban EV-related investments by EDUs, as OCC asserts. In fact, the decision contemplates just the opposite, acknowledging that “ensuring a sustained development of the EV market through the electrification of travel corridors, mindful investments in distribution infrastructure, and protection against potential market deficiencies, may necessitate involvement by EDUs.”<sup>10</sup> Similarly, the Finding and Order states: “[t]he Commission will continue to monitor the development of the

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<sup>7</sup> OCC Ex. 6 (Williams Direct) at 29.

<sup>8</sup> Tr. Vol. V at 828:11-829:25.

<sup>9</sup> *In The Matter of The Commission’s Investigation Into Electric Vehicle Charging Services in the State*, Case No. 20-434-EL-COI, Finding and Order (July 1, 2020) at 17.

<sup>10</sup> *Id.* at 18.

EVCS market and take further action to encourage and help spur its growth when deemed appropriate by itself or the General Assembly.”<sup>11</sup> These statements clearly contemplate ongoing and future involvement by EDUs in the development of EV charging stations. The Commission should find that action to encourage and help spur the growth of EV infrastructure is appropriate in this case and approve the EV Rebate Program together with the Stipulation.

#### **IV. Conclusion**

For the reasons stated above and in our Initial Brief, Sierra Club urges the Commission to approve the EV Rebate Program together with the Joint Stipulation.

Dated: March 5, 2021

Respectfully submitted,

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PHV-15055-2021

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<sup>11</sup> *Id.*

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Initial Post-Hearing Brief of the Sierra Club* was served by electronic mail, upon the following Parties of Record, this 5<sup>th</sup> day of March, 2021.

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