BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of The Commission's	)	
Investigation into AES Ohio's	)	Case No. 21-1220-EL-UNC
Compliance with the Ohio Administrative	)	
Code and Potential Remedial Action.	)	

INITIAL COMMENTS FOR CONSUMER PROTECTION BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

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April 28, 2022

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BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

The Dayton Power and Light Company ("DP&L" or "AES Ohio"), as a regulated monopoly utility, has the statutory responsibility to provide adequate and reliable electric service to Dayton-area consumers.[1] The Public Utilities Commission of Ohio ("PUCO") has the statutory responsibility for protecting consumers from inadequate and unreliable electric service.[2] Furthermore, the PUCO is vested with the statutory authority to levy forfeitures (up to $10,000 per day per violation) against electric utilities who fail to provide consumers with adequate and reliable service.[3]

In this case, both DP&L and the PUCO Staff have fallen short on their statutory responsibility. DP&L failed to provide adequate and reliable electric utility services to consumers in 2019 and 2020. The PUCO Staff did not adequately protect DP&L consumers when it entered into an agreement with DP&L for a mere $10,000 forfeiture for the substandard electric service DP&L provided consumers in 2019 and 2020.

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[1] R.C. 4905.22.

[2] R.C. 4905.22, R.C. 4905.06.

[3] R.C. 4905.54; R.C. 4928.16.

Not surprisingly, the too-low $10,000 forfeiture -- with the potential for an additional $20,000 forfeiture that Staff agreed to hold in abeyance as an "incentive" for DP&L to meet the reliability standards in 2021 and 2022 -- did not remedy the previous years' inadequate service. In fact, DP&L already failed consumers again by providing inadequate service in 2021.

This miniscule forfeiture amount that the PUCO Staff was willing to agree upon with DP&L also sets a bad precedent for utilities. It signals to utilities that there is little consequence for an electric utility failing its prescribed performance-based reliability standards.

The PUCO should stringently enforce its minimum electric service quality standards in O.A.C. 4901:1-10-10 to protect consumers from the inadequate service that DP&L is providing. The PUCO should reject the Staff's and AES's proposed partial Stipulation and Recommendation[4] ("Settlement") and instead initiate a compliance proceeding under O.A.C. 4901:1-23-05. The PUCO should require DP&L to show cause within 60-days as to why it should not be found in violation of O.A.C. 4901:1-10-10(E) and other related PUCO rules as addressed in these comments.

In addition, the PUCO should require DP&L to show cause why the PUCO should not impose penalties and forfeitures (associated with DP&L's past provision of inadequate service to customers) at the maximum level permitted under Ohio law and PUCO rules - $10,000 per day per violation. The PUCO should also schedule this matter for an evidentiary hearing.

[4] *In the Matter of The Commission's Investigation into the AES Ohio's Compliance with the Ohio Administration Code and Potential Remedial Actions*, Case 21-1220-EL-UNC (Dec. 9, 2021).

II. BACKGROUND

The PUCO Staff filed a memorandum to open this case on December 9, 2021.[5] On the very same day, DP&L filed a "Joint Stipulation and Recommendation" that was reached between itself and the PUCO Staff. The PUCO settled the case before any interested stakeholders had an opportunity to even intervene and participate in any negotiations.

The Settlement relates to DP&L's failure to comply with the PUCO's minimum distribution reliability performance standards set forth in O.A.C. 4901:1-10-10(B). The Staff found that AES had missed its Customer Average Interruption Duration Index ("CAIDI") standard for two consecutive years in 2019 and 2020 thus constituting a violation of O.A.C. 4901:1-10-10(E).[6] Staff issued a notice of probable non-compliance to DP&L on June 10, 2021, with a request for an action plan that addressed Staff identified concerns.[7]

Under Ohio law, the PUCO is required to protect consumers by adopting rules that specify the minimum service quality, safety and reliability requirements for noncompetitive retail electric service supplied by each Ohio Electric Distribution Utility ("EDU").[8] The PUCO has adopted two reliability performance standards through the System Average Interruption Frequency Index ("SAIFI") and the CAIDI.[9]

SAIFI is the measure for the average number of annual interruptions that customers should experience. CAIDI is the measure for the average length of time

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[5] Memorandum to Open Case (Dec. 9, 2021).

[6] Settlement, Exhibit A (Dec. 9, 2021).

[7] *Id.*

[8] R.C. 4928.11(A).

[9] O.A.C. 4901:1-10-10(B).

(measured in minutes) that customers should be without service following an outage. Both are crucial and equally important measures of the service reliability that DP&L and every other Ohio EDU provides consumers.

DP&L's current SAIFI and CAIDI reliability standards were established in 2013 through Case No. 12-1832-EL-ESS.[10] The current SAIFI standard is 0.88 and the CAIDI standard is 125.04 minutes. The following table provides a summary of the DP&L SAIFI and CAIDI reliability performance on an annual basis between 2013 and 2021 compared with its standard.

AES Distribution Reliability Performance Compared with Its Standards (2013-2021) Excluding Major Events

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021
CAIDI Standard (Minutes)	125.04	125.04	125.04	125.04	125.04	125.04	125.04	125.04	125.04
CAIDI Performance (Minutes)	110.51	121.86	117.69	119.08	**133.07**	118.41	**133.29**	**132.17**	**129.52**
SAIFI Standard	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88
SAIFI Performance	0.70	0.82	0.85	0.69	0.68	0.83	0.88	0.88	0.72

As shown above, DP&L has met its SAIFI standard each year since the reliability standards were set. SAIFI increased in 2018, 2019, and 2020, indicating an upward (bad) trend with consumers experiencing more frequent outages. While DP&L met the CAIDI standard between 2013 and 2016, it has missed the CAIDI standard in four of the last five years. In fact, even since the Settlement was filed, DP&L has disclosed that it failed to meet its 2021 CAIDI standard - - now constituting an unprecedented three-year miss of a

[10] *In the Matter of the Application of The Dayton Power and Light Company for Establishing New Reliability Targets,* Case No. 12-1832-EL-ESS, Opinion and Order (Oct. 2, 2013).

PUCO-mandated minimum reliability performance standard.[11] This situation is unacceptable for consumers, who need more protection from their state regulator.

III. COMMENTS

In evaluating settlements, the ultimate issue for the PUCO's consideration is whether the agreement "is reasonable and should be adopted."[12] In answering this question, the PUCO has adopted the following three-prong test:[13]

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit customers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?

The PUCO sometimes also considers diversity of interests among settlement signatories.

A. In violation of Time Warner AxS v. Pub. Util. Comm.,[14] OCC was not given an opportunity to bargain for any protections for consumers.

In the present case, the PUCO opened the docket for this matter and the Settlement was filed on the same day. There was no transparency or public process. There is also no evidence in the record or elsewhere indicating that any bargaining occurred. OCC was not notified or invited to any meeting discussing a potential settlement. OCC was not provided any documents regarding the terms and conditions of a

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[11] *In the matter of the Annual Report of Electric Distribution System Reliability Pursuant to Rule 4901:1-10-10(C)*, Case No. 22-0995-EL-ESS, Annual Reliability Report for 2021 (Mar. 31, 2022).

[12] *In re Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Tariffs*, Case No. 04-571-GA-AIR, (Apr. 13, 2015).

[13] *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992).

settlement. The first time OCC heard of the settlement or any discussion of the Settlement was the day when the Settlement was docketed.

As a result, the Settlement contradicts the Ohio Supreme Court's admonition in *Time Warner AxS v. Publ Util. Comm.* that the PUCO should not approve a settlement which arose from settlement meetings where interested parties were excluded.[15] The PUCO should therefore reject the Joint Stipulation and Recommendation and advise DP&L and Staff to re-start settlement negotiations in a manner that allows OCC to fully participate.

B. The Settlement violates the first prong of the PUCO's three-part test for approving settlements because it was not a product of serious bargaining among capable and knowledgeable parties."

The settlement does not meet the first prong of the PUCO's test for approving settlements because there was no "serious bargaining among capable and knowledgeable parties." In fact, there is no clear evidence in the record or elsewhere indicating that any serious bargaining occurred.

Interestingly, according to the AES response to OCC INT-1-13 (see attached), AES claims that it did not even have settlement meetings with the PUCO. OCC submitted a public records request to the PUCO (see attached) asking for correspondence involving the investigation into AES Ohio's failure to comply with the reliability standards. In response, the PUCO claimed that correspondence is not retained in that manner. This is despite OCC's clear request for PUCO public records related to documents and correspondence specific to case number 21-1220-EL-UNC and AES's failure to comply with the PUCO mandated reliability standards.

[14] (1996), 75 Ohio St.3d 229 at 233, 661 N.E.2d 1097, Footnote 2.

The PUCO has sometimes taken into account the diversity of interests among the signatory parties, finding that diversity of interests is indicative of serious bargaining.[16] In the present case, the PUCO opened the case and the Settlement was filed on the same day, giving diverse parties no opportunity to intervene, conduct discovery and participate in the settlement negotiations. Under these circumstances, the Settlement violates the first prong of the PUCO's three-prong test.

C. The Settlement violates the second prong of the PUCO's three-part test for approving settlements because it is not in the public interest.

According to the Settlement, the Staff and DP&L agreed that the "Joint Stipulation will benefit the public interest".[17] However, the Settlement fails to provide even a single fact to support that assertion. In fact, at a minimum, the Settlement fails to be in the public interest for each of the following reasons.

1. DP&L made no commitment to provide consumers adequate service going-forward.

The Settlement fails to document any agreement between Staff and DP&L for any remedial actions that DP&L must undertake to assure that consumers are provided with adequate service going-forward. In fact, the Settlement only requires DP&L to use its "best efforts" to meet the CAIDI standard going forward.[18] Under the "best efforts" standard Staff agreed to, DP&L has already failed to meet the CAIDI standard once again

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[15] *Time Warner AxS v. Pub. Util. Comm.* (1996), 75 Ohio St.3d 229 at 233, 661 N.E.2d 1097, Footnote 2.

[16] *See, e.g., In re Application of the Dayton Power & Light Co. for Approval to Modify its Competitive Bid True-up Rider*, Case No. 14-563-EL-RDR (Sep. 9, 2015*); In re Application of the Columbus S. Power Co. & Ohio Power Co*., Case No. 05-376- EL-UNC (Feb. 11, 2015); *In re Application of Columbus S. Power Co. & Ohio Power Co., for an Increase in Electric Distrib. Rates,* Case No. 11-351-EL-AIR (Dec. 14, 2011); *In re Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co. & The Toledo Edison Co. for Authority to Provide a Standard Serv. Offer*, Case No. 14-1297-EL-SSO (Mar. 31, 2016).

[17] *Id.* at 1.

[18] *Id.* at 3.

in 2021. That constitutes a three-year miss of the minimum PUCO reliability standards and yet another violation of O.A.C. 4901:1-10-10(E).

2. The Staff's agreement to excuse DP&L from being held liable for providing inadequate service to consumers over multiple years is a violation of O.A.C. 4901:1-10-10 (E) and not in the public interest.

The Settlement explicitly exempts DP&L from making any admission or finding of liability for the inadequate service it provided consumers over several years.[19] The Settlement thus excuses DP&L from being held responsible and accountable to the consumers it serves and who must depend upon monopoly DP&L to receive adequate and reliable service.

In 2019, consumers were harmed with average customer interruption being 8.25 minutes longer than allowed under the minimum PUCO service standards. The same holds true in 2020 and 2021 where the average DP&L restoration times following outages are 7.13 minutes and 4.48 minutes more respectively than the time permitted under the minimum PUCO service standards. Unfortunately, neither DP&L nor Staff provided any determination of the cost of the service interruption to consumers by calculating the Value of Lost Load.[20]

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[19] *Id.* at 2.

[20] *See, e.g., Value of Lost Load (VOLL) and Scarcity Pricing,* MISO Market Subcommittee Report (Sept. 10, 2020).

3. The $10,000 forfeiture amount (with the potential for $20,000 more depending on future performance) agreed upon by Staff and DP&L in the Settlement is unreasonable because of the harm to consumers and because it will not serve as an effective deterrent to DP&L for violating the minimum reliability standards in the future.

The Settlement between Staff and AES includes a $10,000 forfeiture, payable within 30 days of approval of the Settlement, and $20,000 more held in abeyance to be paid if DP&L fails to comply with the CAIDI standard in either or both 2021 and 2022.[21] Yet the Notice of Probable Non-Compliance that Staff served upon DP&L was associated with the failure to comply with the CAIDI standard for two consecutive years in 2019 and 2020. [22]

This case started as an unreasonably low proposed penalty for failing to meet the PUCO service quality standards in 2019 and 2020. By providing a potential $20,000 additional forfeiture for 2021 and 2022, the Settlement expands the reach of the failed Settlement to even more years of inadequate service without proper PUCO oversight and action.

DP&L has already failed to comply with its 2021 reliability standards. So the mere $10,000 forfeiture amount (with the potential for $20,000 more) if approved by the PUCO, would be the only (minimal) consequence to DP&L for providing inadequate service to customers between 2019 and 2022.

As discussed earlier, the economic and health harm to consumers as a result of DP&L's inadequate and unreliable electric services are substantial and ongoing. The proposed forfeiture is simply not enough to "compensate" consumers for the harm they

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[21] *Id.* at 3.

[22] Settlement, Exhibit A (Dec. 9, 2021).

have suffered. Nor will it serve as a deterrent to DP&L to stop it from providing inadequate and unreliable utility service to consumers in the future.

4. The public interest would be served if the PUCO orders sufficient forfeitures that hold DP&L accountable for the inadequate service that it is continuing to provide consumers over multiple years. The PUCO should assess the maximum forfeiture of $10,000 per day with each day's violation constituting a separate offense.

Ohio Adm. Code 4901:1-10-30 describes the penalties for an electric utility that fails to comply with the PUCO rules and standards included in the electric service and safety standards. These penalties include forfeiture amounts of up to $10,000 for each failure, with each day's continuance of the violation being a separate offense.[23] In addition, the PUCO can require an electric utility to perform corrective actions to effectuate compliance,[24] and require restitution or damages to be provided to consumers.[25] The Settlement failed to disclose how the proposed forfeiture was calculated and in any event it is inadequately low.

D. The Settlement violates the third prong of the PUCO's three-part test for approving settlements because it violates important regulatory principles and practices such as the legal requirement that a utility provide adequate service to consumers and regulation should serve as a deterrent to prevent utility violations of Ohio law and rules.

This settlement violates the foundational regulatory principle of requiring a regulated utility to provide adequate service to consumers in exchange for receiving monopoly status. Furthermore, this Settlement violates the regulatory principle that regulation should serve as a deterrent for utilities to prevent violations of Ohio law and

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[23] O.A.C. 4901:1-10-30(A)(1).

[24] O.A.C. 4901:1-10-30(A)(2).

[25] O.A.C. 4901:1-10-30(A)(3).

PUCO rules. This regulatory deterrent is important because utilities lack the market discipline to otherwise adequately protect consumers.

E. The Settlement between Staff and DP&L fails to address DP&L's systemic failure in complying with multiple PUCO rules and orders that impact the reliability and adequacy of the electric service it provides consumers.

The Staff Notice of Probable Non-Compliance was specifically targeted towards O.A.C. 4901:1-10-10(E) and the missed CAIDI reliability standards in 2019 and 2020. But DP&L has systemically failed to comply with other PUCO rules and orders that have contributed to the Utility failure in meeting reliability standards and in providing inadequate service to consumers.[26] A reasonable settlement would have addressed DP&L's neglect in complying with other PUCO rules and orders that contributed to its failure in providing adequate service including:

1. DP&L failed to comply with the requirements in the PUCO order that established the current reliability standards.

The current SAIFI and CAIDI reliability standards were established through the PUCO approval of a Settlement that was reached between Staff and DP&L in Case No. 12-1832-EL-ESS.[27] And the PUCO explicitly required DP&L to "take all necessary steps to carry out the terms of the stipulation and the order."[28] In that Order, the PUCO approved a SAIFI standard of 0.88 and a CAIDI standard of 125.04 minutes. Yet DP&L's failure to meet the minimum CAIDI standard in four of the last five years is

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[26] *See, e.g., In the Matter of the Annual Report of Electric Distribution System Reliability Pursuant to Rule 4901:1-10-10(C),* Case No. 22-995-EL-ESS, Electric Safety Standards Annual Report (March 31, 2022) (failure to comply with required reliability standards in 2021); *In the Matter of the Annual Report of Electric Distribution System Reliability Pursuant to Rule 4901:1-10-10(C),* Case No. 21-995-EL-ESS, Electric Safety Standards Annual Report (March 31, 2021) (failure to comply with required reliability standards in 2020).

[27] *In the Matter of The Dayton Power and Light Company for Establishing New Reliability Standards,* Case No. 12-1832-EL-ESS, Opinion and Order (Oct. 2, 2013).

prima facia evidence that the Company is not in compliance with the PUCO order requiring that DP&L take all necessary steps to annually comply with the PUCO SAIFI and CAIDI standard.

2. DP&L's unreasonable failure to comply with its PUCO approved vegetation management program has contributed to its failure in providing reliable service.

Ohio Adm. Code 4901:1-10-27(E) requires electric utilities to establish, maintain, and comply with written programs, policies, procedures, and schedules for the inspection, maintenance, repair, and replacement of its transmission and distribution circuits and equipment.[29] Furthermore, the programs are to establish preventive requirements for maintaining safe and reliable service that include right-of-way vegetation control.[30] The inspection, maintenance, repair and replacement programs are required to be approved by the PUCO.[31]

The PUCO approved DP&L's vegetation management program in Case No. 18-1837-EL-ESS.[32] This program requires DP&L to perform a five-year cycle-based vegetation management program across all circuits in its service territory.[33] Testimony filed by OCC and DP&L witnesses in DP&L's pending rate case demonstrated that DP&L is not performing tree-trimming based on its PUCO approved five-year cycle-

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[28] *Id*. at 5.

[29] O.A.C. 4901:1-10-27(E)(1).

[30] O.A.C. 4901:1-10-27(E)(1)(f).

[31] O.A.C. 4901:1-10-27(E)(3).

[32] *In the Matter of the Application of the Dayton Power and Light Company to Amend its Transmission and Distribution Inspection, Maintenance, Repair and Replacement Programs Pursuant to Section 4901:1-10-27, Ohio Administrative Code, Regarding Electric Companies,* Case No. 18-1837-EL-ESS (Dec. 17, 2018).

[33] *Id*. at 10.

based program and that tree caused outages are increasing.[34] Based on a review of DP&L's annual system improvement plans,[35] DP&L has failed to comply with the five year cycle based vegetation management since at least 2018. In attempting to justify why it's not following its PUCO approved vegetation management program, the standard excuse in its system improvement plan has become:

> Challenging labor market conditions affecting the entire vegetation management industry have led to widespread price increases and schedule completion shortfalls for many utilities. Currently there is not enough qualified labor in the utility vegetation management industry to effectively meet the increasing needs of electricity providers. As a result, AES Ohio has faced significant challenges in trying to overcome the labor shortages and the related price increases. To the best of its ability, AES Ohio made strategic decisions to focus its vegetation management efforts in such a way as to maximize the potential benefit to customers by prioritizing circuits based on safety, reliability and vegetation risk.[36]

Despite being compensated in rates for providing consumers with reliable and adequate service, DP&L on its own chose to ignore its PUCO approved vegetation management program and is trimming trees according to an undefined and unapproved program. And consumers are suffering with substandard reliability. Every other Ohio electric utility (except DP&L) managed the challenges associated with complying with their PUCO approved vegetation management program in 2021.

Failure to comply with PUCO-approved vegetation management programs is a serious issue and one in which the PUCO has enforced with other Ohio electric utilities. Such was the case when the PUCO ordered AEP Ohio to expend $10 million (not to be

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[34] *In re DP&L Rate Case*, Case No. 20-1651-EL-RDR, Direct Testimony of Mark L. Vest at 3 (Dec. 12, 2020).

[35] *In the matter of the Annual Report of the Electric Service and Safety Standards, Pursuant to Rule 4901:1-10-26(B) of the Ohio Administrative Code*, Case No. 22-1000-EL-ESS (Mar. 31, 2022). *See also* Case Nos. 19-1000-EL-ESS, 20-1000-EL-ESS, and 21-1000-EL-ESS.

[36] *Id*. at 29.

collected from customers) for additional vegetation management activities.[37] Similarly, the PUCO should order AES to expend the additional funds that are necessary to comply with its distribution reliability standards and vegetation management plans.

3. DP&L's failure to comply with the action plans for past violations contributed to its failure to meet the reliability standards in 2020 and in 2021.

DP&L was required under O.A.C. 4901:1-10-10(D)(1) to submit an action plan to the Staff following its failure to meet the CAIDI standard in 2019 and again in 2020. The action plans are required to describe factors that contributed to the poor reliability performance and a proposal for improving the reliability performance, and actions that are being taken to meet the standard the following year. Failure to comply with the action plan itself constitutes a violation of O.A.C. 4901:1-10-10(D).

The action plan that DP&L submitted to Staff (see attached) after missing the CAIDI standard in 2019 committed but failed to meet the CAIDI standard in 2020. This further demonstrates DP&L's systemic failure in complying with PUCO rules and orders and in taking reasonable actions necessary to meet its reliability standards.

F. The PUCO should reject the Joint Stipulation and Recommendation, make a finding of inadequate service under R.C. 4905.22 and other laws and rules, and assess appropriate forfeitures against DP&L.

The record is clear that DP&L was in violation of the PUCO's service quality standards throughout 2019 and 2020.[38] As discussed above, DP&L has a practice of violating these standards and continues to do so. DP&L has a statutory duty to provide

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[37] *In the Matter of the Self-Complaint of Columbus Southern Power Company and Ohio Power Company Regarding the Implementation of Programs to Enhance Distribution Service Reliability*, Case No. 06-222-EL-SLF, Entry (May 16, 2007) at 5.

[38] Settlement, Exhibit A (Dec. 9, 2021).

adequate and reliable service.[39]. The PUCO should open an enforcement proceeding against DP&L and require it to show cause why it should not be subject to the maximum forfeitures of $10,000 per day for each day of 2019-2020. Also, the PUCO should find that DP&L has failed to provide adequate service as required by R.C. 4905.22 and other laws and rules.

IV. CONCLUSION

The PUCO must enforce its minimum electric service quality standards in O.A.C. 4901:1-10-10 by protecting consumers from the inadequate service that DP&L is providing. The PUCO should reject the Staff and AES proposed Settlement and instead initiate a compliance proceeding under O.A.C. 4901:1-23-05. The PUCO should schedule this matter for an evidentiary hearing so that there is an opportunity for parties to present evidence why DP&L should be held financially responsible and accountable for its inadequate and unreliable electric service.

Respectfully Submitted,

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[39] R.C. 4905.22.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Initial Comments was served on the persons stated below via electronic transmission, this 28th day of April 2022.

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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February 10, 2022

VIA ELECTRONIC DELIVERY

Ms. Angela Hawkins, Legal Director
Legal Department
The Public Utilities Commission of Ohio
180 E. Broad St., 12th Floor
Columbus, Ohio 43215

Re: Public Records Request (Regarding Case No. 21-1220-EL-UNC, Commission's Investigation into AES Ohio's Non-Compliance with the PUCO Distribution Reliability Performance Standards)

Dear Ms. Hawkins:

The Office of the Ohio Consumers' Counsel ("OCC") seeks public records in the possession of the Public Utilities Commission of Ohio ("PUCO") related to the PUCO's Investigation into AES Ohio's failure to comply with distribution reliability performance standards as required pursuant to Ohio Adm. Code 4901:1-10-10(E). The authority for this request is R.C. 149.43 *et seq*.

As background, the PUCO, in Case No. 21-1220-EL-UNC filed a Joint Stipulation and Recommendation ("Settlement") between the Staff and AES Ohio on December 9, 2021, that purportedly resolves the issues associated with AES Ohio's failure to comply with its distribution reliability performance standards in 2019 and 2020.

Please promptly provide the following public records[1] to OCC:

(a) All documents, including draft reports, describing the results of the PUCO's investigation into AES Ohio's failure to comply with the PUCO mandated distribution reliability performance standards in 2019 and 2020.

(b) All documents, including drafts, of PUCO Staff notices of probable non-compliance involving AES Ohio's failure to comply with the 2019 and 2020 distribution reliability performance standards.

(c) All documents, including drafts, of any correspondence between PUCO Staff, PUCO Staff Management, the PUCO Commissioners, and AES Ohio pertaining to the investigation PUCO Staff conducted due to AES Ohio failing to meet its distribution reliability performance standards in 2019 and 2020.

[1] Public records are as defined by R.C. 149.43.

(d) All documents, including drafts, of any correspondence between any PUCO Staff member, PUCO Staff management, or the PUCO Commissioners involving the investigation of AES Ohio's failure to comply with its distribution reliability performance standards.

(e) Copies of all documents, including drafts, of the evaluation and assessment criteria that is used by PUCO Staff—including the methodology for calculating the level of proposed forfeitures, restitution, or damages to consumers associated with the enforcement provisions in Ohio Adm. Code 4901:1-10-30.

Please promptly prepare and provide these records in an electronic format. If electronic versions are unavailable, make the requested documents available for inspection during regular business hours. If there are any fees for these records, please inform me if the cost to OCC will exceed $400.

If the PUCO expects a delay in completely responding to this request by March 11, 2022, please contact me by February 25, 2022, with information about when copies will be provided. Please provide records as they become available; please do not wait until the response is complete to respond to this request.

If the PUCO denies any portion of this request, in part or whole, please provide an explanation for the denial including citations to the applicable legal authority for each record, or portion thereof, that is denied. If records responsive to this request existed but no longer exist, please explain.

If you have any questions, please contact me at (614) 466-1292 or by email at: ambrosia.wilson@occ.ohio.gov .

Thank you for your anticipated assistance with this request.

Sincerely,

/s/ Ambrosia E. Wilson

Ambrosia E. Wilson
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel

April 6, 2022

Ambrosia Wilson
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel

RE: Records Request 24-22

Dear Ms. Wilson:

Thank you for contacting the Public Utilities Commission of Ohio ("PUCO"). I am writing in response to your records request dated February 10, 2022. You requested information relating to PUCO Case No. 21-1220-EL-UNC.

Specifically, your multipart request asks for:

a) All documents, including draft reports, describing the results of the PUCO's investigation into AES Ohio's failure to comply with the PUCO mandated distribution reliability performance standards in 2019 and 2020.
b) All documents, including drafts, of PUCO Staff notices of probable non-compliance involving AES Ohio's failure to comply with the 2019 and 2020 distribution reliability performance standards.
c) All documents, including drafts, of any correspondence between PUCO Staff, PUCO Staff Management, the PUCO Commissioners, and AES Ohio pertaining to the investigation PUCO Staff conducted due to AES Ohio failing to meet its distribution reliability performance standards in 2019 and 2020.
d) All documents, including drafts, of any correspondence between any PUCO Staff member, PUCO Staff management, or the PUCO Commissioners involving the investigation of AES Ohio's failure to comply with its distribution reliability performance standards.
e) Copies of all documents, including drafts, of the evaluation and assessment criteria that is used by PUCO Staff—including the methodology for calculating the level of proposed forfeitures, restitution, or damages to consumers associated with the enforcement provisions in Ohio Adm. Code 4901:1-10-30.

Unfortunately, after thorough review, in accordance with Ohio Revised Code ("R.C.") 149.43(B)(2), we find your request to be overly broad because it is so inclusive that the PUCO is unable to identify the records sought based on the manner in which the office routinely organizes and accesses records. Accordingly, your request must be denied pursuant to Ohio Revised Code 149.43(B)(2).

"[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue." *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d

33, 2006-Ohio-6365, ¶29, quoting *State ex rel. Fant v. Tober*, 68th Dist. Cuyahoga No. 63737, 1993 WL 173743, *1, aff'd, 68 Ohio St.3d 117, 1993-Ohio-154, 623 N.E.2d 1202 (1993). Further, a governmental office has no duty to "seek out and retrieve those records which would contain the information of interest to the requester." *State ex rel. Fant v. Tober,* 68th Dist. Cuyahoga No. 63737, 1993 WL 173743, *1, aff'd, 68 Ohio St.3d 117, 1993-Ohio-154, 623 N.E.2d 1202 (1993). A public office is under no obligation to search for records containing selected information. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 30 (2006), citing *State ex rel. Lanham v. Ohio Adult Parole Auth.*, 80 Ohio St.3d 425, 1997-Ohio-104, 687 N.E.2d 283 (1997). Public agencies are not required to perform research or create new files in responding to requests for records. *State ex rel. Daugherty v. Mohr*, 10th Dist. Franklin No. 11AP-5, 2011-Ohio-6453, ¶ 8. The use of discovery-styled requests has been found overbroad and thus improper. See, *State ex rel. Daugherty v. Mohr*, 10th Dist. No. 11AP-5, 2011-Ohio-6453.

In all subparts of your request, you ask for "all documents, including drafts" regarding or about a topic. These requests fail to request records in the manner in which they are stored by the PUCO and fails to provide the information necessary for the PUCO to search for the records you are requesting. Further, in parts (c) and (d) of your request asks for "any correspondence" involving or pertaining to Staff's investigation into AES Ohio's failure to comply with reliability standards. The PUCO's emails are not organized by topic or the substance of the email. In order for the PUCO to search for email communications, please provide the email addresses of the persons you would like us to search for – so, if you want emails the PUCO received from AES Ohio, you will need to provide us with either the email address, or domain name for the email accounts you wish us to search for. A date range is also very helpful as it helps to narrow the search.

As all or portions of your request has been denied, Ohio law affords you with the opportunity to revise your request. In order to assist you, please see the following link to the PUCO records retention schedules https://apps.das.ohio.gov/RIMS/GeneralSchedule and https://apps.das.ohio.gov/RIMS/Schedule. The PUCO maintains and accesses its records in the ordinary course of its duties based on their function and use.

The PUCO is committed to providing access to public records in accordance with Ohio law. In an effort to be as cooperative and forthcoming as possible, as a courtesy to you we attempted to perform an initial search and located the attached records that may be responsive to your request. It includes the action plans AES Ohio submitted to the PUCO for reporting years 2019 and 2020, and the Rule 10 Summary Reports for 2019 and 2020.

This correspondence concludes the PUCO's response to your request, and this matter is closed unless we receive further communication from you. If you require further assistance in clarifying or revising your request, please feel free to contact our office. Thank you.

Sincerely,

Megan De Lisi

Megan De Lisi

DP&L.

March 27, 2020

Mr. Rob Fadley
The Public Utilities Commission of Ohio
Director, Service Monitoring and Enforcement Department
180 East Broad Street
Columbus, OH 43215

Re: Ohio Admin. Code 4901:1-10-10(D)

Dear Mr. Fadley:

Ohio Admin. Code 4901:1-10-10(D) requires that an electric utility submit an action plan if the annual performance of an electric utility does not meet the electric utility's performance standard for any index. Accordingly, The Dayton Power and Light Company (the "Company") hereby submits the following action plan for failing to meet its 2019 annual CAIDI standard. This plan identifies the factors that contributed to the actual performance and proposes steps for improving performance to a level that meets or exceeds the performance standard.

DP&L monitors its reliability performance on an hourly, daily, weekly and monthly basis and adjusts its operations accordingly to improve reliability and ultimately meet its reliability standards. However, in 2019 DP&L missed its CAIDI standard. The company has determined that weather, equipment failure, and trees "out of right of way (ROW)" were the three largest contributing factors for missing CAIDI.

Contributing Factors

Weather

In 2019, DP&L experienced an abnormally active storm season including 23 minor storms with a daily SAIDI of over 1 as detailed in the enclosed SAIDI chart. While the Major Event Day (MED) daily SAIDI threshold is 3.53, some storms, such as November 27th (daily SAIDI of 3.45) and October 31st (daily SAIDI of 3.18), came close to being MED storms but are still included in reliability performance. Though near-MED storms are challenging on their own, they are often not isolated events. For example, DP&L also experienced storms on June 27, July 2, July 16 and October 12 with daily SAIDIs over 2, which also were included in reliability performance.

The Memorial Day Tornadoes on May 27th and May 28th (daily SAIDIs of 382.87 and 31.77, respectively) were MED storms. While DP&L did an outstanding job restoring service to over 70,000 customers within 10 days from 15 tornadoes, the cleanup took weeks and daily operations and additional storms did not stop. This occurrence of consecutive storms, including MED storms and non-MED storms alike, takes a significant toll on already exhausted resources.

Equipment Failure

Equipment failure is consistently the number one outage cause in terms of customer minutes interrupted (CMI). Equipment failure events decreased 11% from 2018 to 2019 however, CMI increased over 18% for the same period. The proactive replacement of A.B. Chance (Porcelain) cutouts has lessened the frequency of short durations outages and reduced cutout related equipment outages however, longer duration outages remain.

The proactive replacement of underground (URD) cable while focusing on higher customer count areas has reduced the overall volume of customer interruptions related to URD cable. Over the past 3 years, DP&L has replaced over 871,000 feet of URD cable and in doing so, the Company has experienced a 27% reduction in URD failures. In contrast, DP&L has experienced a corresponding 32% increase in average duration time since the subsequent URD cable failures that have occurred are more difficult to troubleshoot and restore.

Out of Right of Way Trees

"Out of ROW" trees continue to plague the electric utility industry, including DP&L. This cause code is the second largest contributor to CMI. These are typically long duration outages because of the damage and the amount and types of resources needed to restore service. Due to the increasing frequency of whole tree and large limb failures in connection with issues such as the Emerald Ash Borer, DP&L is experiencing more catastrophic and damaging vegetation impacts which have contribute to a nearly a 19% increase in average outage duration.

Action Plan

The Company is committed to meeting its CAIDI standard going forward. As mentioned above, DP&L's goal is to provide safe and reliable service to its customers daily. In order to do so, DP&L will continue take a proactive approach to replacing and modernizing electric infrastructure including cutouts and underground primary cable. If you have any questions or need additional information, please contact me at (937) 331-4003.

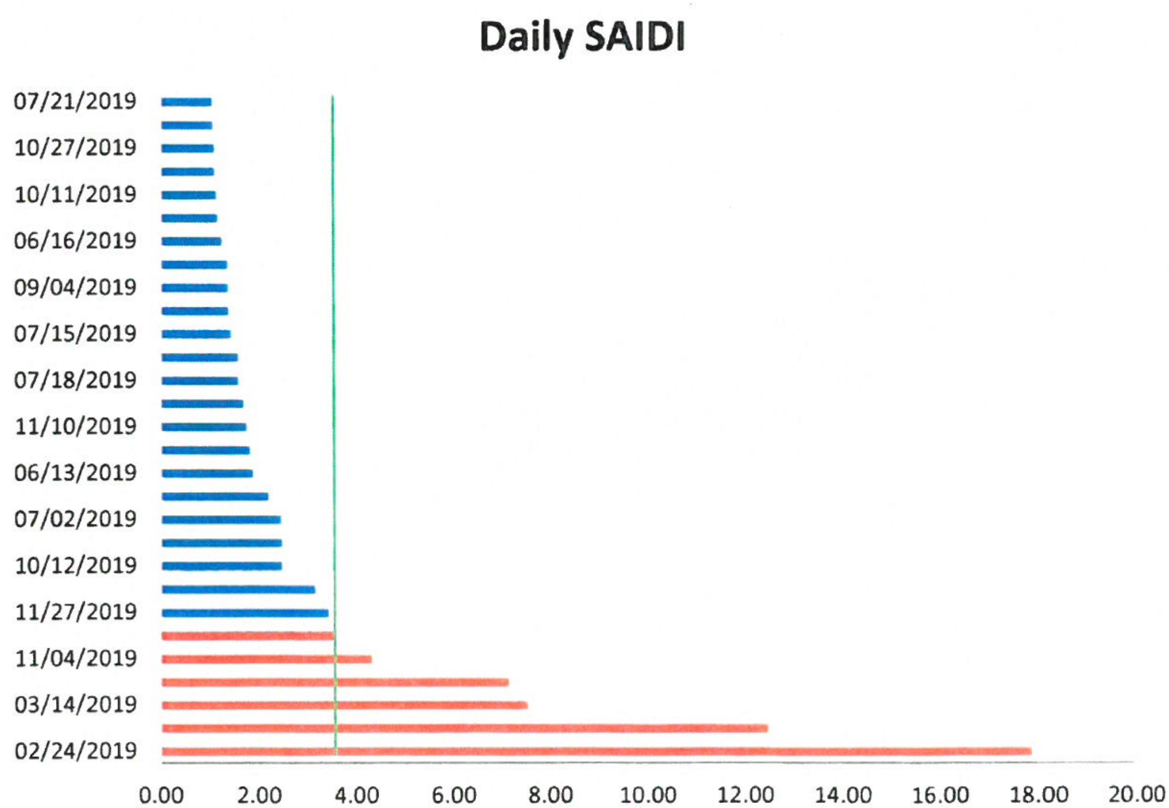
Sincerely,

Barry J. Bentley

Barry J. Bentley
Vice President, US Utilities

Enclosures: Daily SAIDI chart

cc: Sharon Schroder, Director- Regulatory Operations



Memorial Day Tornadoes Daily SAIDI Not Shown

INT-1-13. Identify the date of each settlement meeting that was held with the PUCO Staff involving the Joint Stipulation and Recommendation and include the names of each participant from AES Ohio and from the PUCO Staff.

RESPONSE: