

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") files this Application for Rehearing ("Application") to protect consumers from continuing to suffer unreliable service at the hands of their utility, The Dayton Power and Light Company ("DP&L" or "AES Ohio").

The Finding and Order harms consumers and is unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR 1: The PUCO's Finding and Order is unlawful and unreasonable because it approved the Settlement without any record evidence, in violation of R.C. 4903.09.

ASSIGNMENT OF ERROR 2: In violation of *Time Warner AxS v. Pub. Util. Comm.*, OCC was not given an opportunity to bargain for any consumer protections.

ASSIGNMENT OF ERROR 3: The PUCO's Finding and Order is unlawful and unreasonable because it violated its own long-standing precedent by reviewing the Settlement under a "simple reasonableness standard," rather than the three-prong test for the reasonableness of settlements which the Commission has employed for decades.

ASSIGNMENT OF ERROR 4: The PUCO's Finding and Order is unlawful and unreasonable because it approves the Settlement even though it was not the product of serious bargaining among capable, knowledgeable parties representing diverse interests.

ASSIGNMENT OF ERROR 5: The PUCO's Finding and Order is unlawful and unreasonable because it approves the Settlement even though the Settlement, as a package, does not benefit customers and the public interest.

ASSIGNMENT OF ERROR 6: The PUCO's Finding and Order is unlawful and unreasonable because it approves the Settlement, which violates important regulatory principles and practices which require utilities to provide adequate service and that requires forfeitures to act as a deterrent. These important regulatory principles and practices include R.C. 4928.11(A) R.C. 4905.22 and O.A.C. 4901:1-10-10.

The reasons in support of this Application for rehearing are set forth in the accompanying memorandum in support. The PUCO should grant rehearing and abrogate its Finding and Order as requested by OCC.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

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 fell short of 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.

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 -- was an insufficient amount because DP&L failed consumers again by providing inadequate service in 2021.

This miniscule forfeiture amount that the PUCO Staff agreed upon with DP&L, and the PUCO ultimately accepted, sets a bad precedent. It signals to utilities that there is little consequence for an electric utility failing its prescribed performance-based reliability standards. This harms consumers.

The PUCO should have required a higher forfeiture to enforce its minimum electric service quality standards in O.A.C. 4901:1-10-10. The PUCO’s failure to assess an appropriate forfeiture amount failed to protect consumers from the inadequate service that DP&L provided. The PUCO should have rejected the Staff’s and AES’s proposed partial Stipulation and Recommendation⁴ (“Settlement”) and instead initiated a compliance proceeding under O.A.C. 4901:1-23-05. The PUCO should have found DP&L violated O.A.C. 4901:1-10-10(E) and other related PUCO rules as addressed below, and imposed penalties and forfeitures (associated with DP&L’s past provision of inadequate service to customers) at a higher level as permitted under Ohio law and PUCO rules, which allow for a forfeiture up to \$10,000 per day per violation.

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, Stipulation and Recommendation (Dec. 9, 2021) (“Settlement”).

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” OCC filed a motion to intervene in this proceeding, which was granted. OCC also filed comments and reply comments regarding the Settlement, and requested an evidentiary hearing on the Settlement.

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, O.A.C. 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “[i]f, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.”

The statutory standard for abrogating some portions of the Finding and Order is met here. The PUCO should grant and hold a rehearing on the matters specified in this Application, and subsequently abrogate or modify its Finding and Order. The PUCO’s ruling was unreasonable or unlawful as described below.

III. ASSIGNMENTS OF ERRORS

ASSIGNMENT OF ERROR 1: The PUCO's Finding and Order is unlawful and unreasonable because it approved the Settlement without any record evidence, in violation of R.C. 4903.09.

There was no record evidence in this case that supports the PUCO's Finding and Order, because no record evidence was submitted in this matter. Neither DP&L, nor the PUCO, can rely on the "record" to support any claim that the Settlement was reasonable because the record contains no evidence. The PUCO sought to rely upon the written comments submitted by DP&L, along with proposed Settlement itself, to support its Finding and Order. However, unsworn statements, submitted as argument and lacking any evidentiary support are not part of the factual record of the case upon which the PUCO can rely. O.A.C. 4901-1-30(D) provides that "parties who file a full or partial written stipulation or make an oral stipulation must file or provide the testimony of at least one signatory party that supports the stipulation." There is no sworn testimony in this case supporting the Settlement.

In addition, Ohio R.Evid 603 requires that "every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so."⁵ OCC had no opportunity to cross-examine DP&L's unsworn statements in its written comments, in violation of the hearsay rule.⁶ Accordingly, the Finding and Order violates R.C. 4903.09 because the record evidence does not support the conclusion.⁷

⁵ Ohio R.Evid. 603.

⁶ Ohio R.Evid. 802.

⁷ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300 (2006).

The record is wholly insufficient to authorize the acceptance of DP&L's contested Settlement. The PUCO thus violated R.C. 4903.09, which requires the PUCO to base its findings on facts in the record.⁸

As a result, the PUCO should abrogate and modify the Finding and Order by revoking its unreasonable and unlawful acceptance of the Settlement and setting this matter for an evidentiary hearing.

ASSIGNMENT OF ERROR 2: In violation of *Time Warner AxS v. Pub. Util. Comm.*, OCC was not given an opportunity to bargain for any consumer protections.

As OCC explained in its Initial Comments for Consumer Protection ("OCC Initial Comments"), the Settlement contradicts the Ohio Supreme Court's admonition in *Time Warner AxS v. Publ Util. Comm.*⁹ that the PUCO should not approve a settlement which arose from settlement meetings where interested parties were excluded.¹⁰ In response, DP&L argued that "Chapter 4901:1-23 does not address other parties entering such settlements between Staff and the utility (or CRES)" and "R.C. 4903.221, which governs third-party intervention in Commission proceedings, does not demand intervention in Staff investigations that have not resulted in a proceeding."¹¹

In its Finding and Order, the PUCO determined that OCC "being permitted to intervene – and thus conduct discovery – and file comments for [PUCO's] consideration"

⁸ *Id.*

⁹ *Time Warner AxS v. Pub. Util. Comm.* (1996), 75 Ohio St.3d 229 at 233, 661 N.E.2d 1097, footnote 2.

¹⁰ *In the Matter of the Commission's Investigation into the AES Ohio's Compliance with the Ohio Administration Code and Potential Remedial Actions*, Case No. 21-1220-EL-UNC, Initial Comments for Consumer Protection by the Office of the Ohio Consumer's Counsel (April 28, 2022) ("OCC Initial Comments") at 4-5.

¹¹ *In the Matter of the Commission's Investigation into the AES Ohio's Compliance with the Ohio Administration Code and Potential Remedial Actions*, Case No. 21-1220-EL-UNC, Reply Comments of the Dayton Power and Light Company d/b/a AES Ohio in Support of the Stipulation and Recommendation (May 9, 2022) ("AES Reply Comments") at 3.

actually granted OCC “more opportunity than required by the rules.”¹² However, this finding does not comport with the well-established standard first enunciated in *Time Warner*, wherein the Supreme Court of Ohio stated its “grave concerns” about the validity of any “stipulation [which] arose from settlement talks from which an entire customer class was intentionally excluded.”¹³ Here, the PUCO effectively side-steps that long-standing tenet of utility regulation by claiming that OCC’s ability to question the Settlement after the fact, rather than actually participate in the settlement talks as required by *Time Warner*, is sufficient.

The PUCO should re-visit this incorrect determination. For the reasons explained above, and in OCC’s Initial Comments,¹⁴ the PUCO should conclude that mere after-the-fact discovery and the ability to file written comments is no substitute for actually participating in settlement discussions and does not meet the requirements of *Time Warner*. Upon that determination, the PUCO should abrogate and modify the Finding and Order by rejecting the settlement. Instead, the parties should move forward to an evidentiary hearing in this matter, with the taking of evidence and the opportunity to cross-examine.

¹² *In the Matter of the Commission’s Investigation into the AES Ohio’s Compliance with the Ohio Administration Code and Potential Remedial Actions*, Case No. 21-1220-EL-UNC, Finding & Order that the Commission adopts the Joint Stipulation and Recommendation filed by the Dayton Power and Light Company d/b/a AES Ohio and Staff resolving the issues identified in a notice of probable noncompliance issued by Staff on June 10, 2021 (Nov. 30, 2023) (“Finding and Order”) at ¶ 22.

¹³ *Time Warner AxS v. Pub. Util. Comm.* (1996), 75 Ohio St.3d 229 at 233, 661 N.E.2d 1097, footnote 2.

¹⁴ See OCC Initial Comments at 5-6.

ASSIGNMENT OF ERROR 3: The PUCO’s Finding and Order is unlawful and unreasonable because it violated its own long-standing precedent by reviewing the Settlement under a “simple reasonableness standard,” rather than the three-prong test for the reasonableness of settlements which the Commission has employed for decades.

The PUCO has a long-standing precedent of applying the following three-prong test for evaluating settlements, specifically:

- 1) Whether the settlement is a product of serious bargaining among capable, knowledgeable parties;
- 2) Whether the settlement, as a package, benefits ratepayers and the public interest; and
- 3) Whether the settlement package violates any important regulatory principles or practices.¹⁵

The PUCO uses this three-prong test to determine whether settlements are reasonable.¹⁶ The Supreme Court of Ohio has “instructed the commission to ‘respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.’”¹⁷ Indeed, the Court itself uses the three-prong test when evaluating the reasonableness of settlements approved by the PUCO.¹⁸ The Court has stated that the PUCO should be willing to deviate from precedent only “when

¹⁵ See *In re Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement*, 155 Ohio St.3d 326, 2018-Ohio-4698, 121 N.E.3d 320, ¶ 39; See also *Consumers' Counsel v. Public Utilities Com.*, 64 Ohio St.3d 123, 126, 1992-Ohio-122, 592 N.E.2d 1370 (1992).

¹⁶ *Id.*

¹⁷ *In re Complaint of Suburban Natural Gas Co.*, 162 Ohio St.3d 162, 2020-Ohio-5221, 164 N.E.3d 425, ¶ 29, quoting *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975), superseded on other grounds by statute as recognized in *Babbitt*, 59 Ohio St.2d 81, 391 N.E.2d 1376.

¹⁸ *Ohio Consumers' Counsel v. PUC*, 110 Ohio St.3d 394, 2006-Ohio-4706, 853 N.E.2d 1153, ¶ 16, citing *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 1992 Ohio 122, 592 N.E.2d 1370. See also, *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 82-83, 2002 Ohio 1735, 765 N.E.2d 862.

the need therefor is clear and it is shown that prior decisions are in error.”¹⁹ Neither a clear need for such a change, nor an error relating to the PUCO’s (and the Court’s) long-standing reliance on the Three Part Test has been proven or even alleged. Furthermore, the Court has only upheld such a deviation from precedent where the new course is “neither unreasonable nor unlawful.”²⁰

The Finding and Order failed to follow this long-standing precedent, by stating OCC “points to no Commission precedent that has applied [the three-prong] standard addressing proposed settlement agreements submitted pursuant to Ohio Adm. Code 4901:1-23-04.”²¹ However, the PUCO does not cite to any settlement where it has applied a review standard other than the three-prong test for any form of stipulation or settlement. In fact, it appears the PUCO has only mentioned the term “simple reasonableness standard” in one other decision, which relates to SmartEnergy Holdings, Inc. and was filed in September 2023, and there it was only mentioned in a footnote.²²

In the *SmartEnergy* decision, the PUCO only mentioned the term “simple reasonableness standard” once in a footnote and did not define the term in any way.²³ Furthermore, that footnote followed a sentence which stated that “pursuant to its settlement authority under Ohio Adm.Code Chapters 4901:1-23 and 4901:1-34... the issue before the [PUCO] was whether the Stipulation... is reasonable and should be

¹⁹ *Office of Consumers' Counsel v. Pub. Util. Com.*, 10 Ohio St.3d 49, 51, 461 N.E.2d 303 (1984).

²⁰ *Office of Consumers' Counsel v. Pub. Util. Com.*, 63 Ohio St.3d 531, 536, 589 N.E.2d 1273 (1992).

²¹ Finding and Order at ¶ 23, footnote 6.

²² *In the Matter of the Commission's Consideration of a Settlement Agreement Between SmartEnergy Holdings, LLC and the Commission's Staff*, Case No. 23-601-EL-UNC, Finding and Order (Aug. 23, 2023) at ¶ 7 and footnote 2.

²³ *Id.*

adopted,” without any mention of a “simple” standard.²⁴ The PUCO did not state that the “simple reasonableness standard” was an alternative to or a substitute for the three-prong test. It is also clear that the PUCO’s own Staff, and the companies which entered into stipulations with them in both *SmartEnergy* and this matter, believed the three-prong test to be the necessary measure for reasonableness, as it was cited in the Joint Stipulation and Recommendation documents submitted in both cases.²⁵

There can be no reasonable argument that the three-prong test is not the standard for determining the reasonableness of a stipulation submitted to the PUCO. The PUCO’s failure to properly apply that standard in this case is both unreasonable and unlawful. The PUCO should revisit this determination. For the reasons explained above, the PUCO should conclude the three-prong test must be applied to determine the reasonableness of the Settlement. Upon that determination, the PUCO should abrogate and modify the Finding and Order to protect Ohio consumers’ interests in this matter by finding the three-prong test has not been met and the Settlement as submitted is unreasonable and unlawful.

ASSIGNMENT OF ERROR 4: The PUCO’s Finding and Order is unlawful and unreasonable because it approves the Settlement even though it was not the product of serious bargaining among capable, knowledgeable parties representing diverse interests.

The Settlement fails to meet the first requirement of the three-prong test because it is not the product of serious bargaining among capable, knowledgeable parties

²⁴ *Id.*

²⁵ *In the Matter of the Commission’s Investigation into the AES Ohio’s Compliance with the Ohio Administration Code and Potential Remedial Actions*, Case No. 21-1220-EL-UNC, Joint Stipulation and Recommendation (Dec. 9, 2021) at 1; and *In the Matter of the Commission’s Consideration of a Settlement Agreement Between SmartEnergy Holdings, LLC and the Commission’s Staff*, Case No. 23-601-EL-UNC, Finding and Order (Aug. 23, 2023) at 1.

representing diverse interests. In fact, according to the AES response to OCC INT-1-13, AES claims that it did not even have settlement meetings with the PUCO,²⁶ and there is no evidence anywhere within the record indicating that any bargaining at all actually occurred.

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.²⁷ In the present case, the PUCO opened the case, and the Settlement was filed on the same day, giving other diverse parties no opportunity to intervene, conduct discovery and participate in the settlement negotiations. Under these circumstances, the Settlement clearly violates the first prong of the PUCO's three-prong test.

For the reasons explained above, and in OCC's Initial Comments,²⁸ the PUCO should conclude the Settlement was not the product of serious bargaining among capable, knowledgeable, parties representing diverse interests. Upon that determination, the PUCO should abrogate and modify the Finding and Order to protect Ohio consumers' interests in this matter by finding the three-prong test has not been met and the Settlement as submitted is unreasonable and unlawful.

²⁶ OCC Initial Comments at 6 and 13.

²⁷ 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 (Sept. 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 (March 31, 2016).

²⁸ OCC Initial Comments at 5-6.

ASSIGNMENT OF ERROR 5: The PUCO's Finding and Order is unlawful and unreasonable because it approves the Settlement even though the Settlement, as a package, does not benefit customers and the public interest.

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.²⁹ Under the “best efforts” standard Staff agreed to, DP&L has already failed to meet the CAIDI standard once again in 2021.³⁰ 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).³¹ However, the Settlement explicitly exempts DP&L from making any admission or finding of liability for the inadequate service it provided consumers over several years.³² The Settlement thus excuses DP&L from accountability to the consumers it serves and who must depend upon monopoly DP&L to receive adequate and reliable service.

ASSIGNMENT OF ERROR 6: The PUCO's Finding and Order is unlawful and unreasonable because it approves the Settlement, which violates important regulatory principles and practices which require utilities to provide adequate service and that requires forfeitures to act as a deterrent. These important regulatory principles and practices include R.C. 4928.11(A) R.C. 4905.22 and O.A.C. 4901:1-10-10.

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

²⁹ Settlement at 3.

³⁰ AES Reply Comments at 1 and footnote 4.

³¹ *Id.*

³² Settlement at 2.

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

O.A.C. 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.³³ In addition, the PUCO can require an electric utility to perform corrective actions to effectuate compliance,³⁴ and require restitution or damages to be provided to consumers.³⁵ The Settlement 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 2022.³⁶ 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 2020.³⁷ This miniscule forfeiture was clearly not sufficient to incentivize AES to comply, since AES failed to meet its CAIDI standard for the third consecutive year in 2021.³⁸ As a result, the PUCO should abrogate and modify the Finding and Order by revoking its unreasonable and unlawful acceptance of the Settlement and setting this matter for an evidentiary hearing.

³³ O.A.C. 4901:1-10-30(A)(1).

³⁴ O.A.C. 4901:1-10-30(A)(2).

³⁵ O.A.C. 4901:1-10-30(A)(3).

³⁶ Settlement at 3.

³⁷ Settlement at Exhibit A.

³⁸ AES Reply Comments at 1 and footnote 4.

AES Ohio, as a regulated monopoly utility, has the statutory responsibility to provide adequate and reliable electric service to Dayton-area consumers.³⁹ R.C. 4928.11 compels the PUCO to protect consumers by requiring minimum service quality, safety, and reliability requirements for noncompetitive retail electric service provided by all electric utilities in the state. The requirements for establishing minimum service reliability standards are contained in O.A.C. 4901:1-10-10. When the PUCO fails to enforce the minimum electric service quality standards in O.A.C. 4901:1-10-10, thus failing to protect consumers from the inadequate and unreliable service that AES is providing, the PUCO directly violates its obligations under R.C. 4928.11 and R.C. 4905.22 (duty to provide adequate service). Therefore, the PUCO's failure to force AES Ohio to comply with the minimum electric service quality standards of O.A.C. 4901:1-10-10, the Commission's own orders regarding minimum service quality, and AES Ohio's statutory obligations pursuant to R.C. 4905.22, is an unlawful and unreasonable act by the PUCO.

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.⁴⁰ And the PUCO explicitly required DP&L to "take all necessary steps to carry out the terms of the stipulation and the order."⁴¹ 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

³⁹ R.C. 4905.22.

⁴⁰ *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).

⁴¹ *Id.* at 5.

prima facie 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 standards.

The PUCO rules clearly specify that an electric utility failure to comply with the same performance standard for two consecutive years is a violation of its rules.⁴² Despite DP&L's clear failure to provide consumers with adequate, safe, and reliable service over multiple years, as required by R.C. 4928.11, the Finding and Order is silent regarding why the PUCO neglected to protect consumers by enforcing the reliability performance standards that it is authorized and responsible for enforcing under R.C. 4928.16(B). The harmful precedent set by the PUCO in this case by not adequately enforcing DP&L's reliability standards can serve as a disincentive for Ohio electric utilities to provide the service quality Ohioans should have a right to expect. The PUCO's Finding and Order is unlawful and unreasonable, and the PUCO should abrogate and modify the Finding and Order by applying a more appropriate forfeiture amount consistent with the level of inadequate service provided by DP&L.

IV. CONCLUSION

To protect customers from unnecessary and unlawful charges, the PUCO should abrogate and modify its Finding and Order, reject the Settlement, and set this matter for an evidentiary hearing to determine the proper forfeiture DP&L should pay. to ensure adequate and reliable electric service to Dayton-area consumers, as required by Ohio law.

⁴² O.A.C. 4901:1-10-10.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 2nd day of January 2024.

/s/ John Finnigan

John Finnigan

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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Summary: App for Rehearing Application for Rehearing by Office of the Ohio
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John.