

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 18-1875-EL-GRD
Approval of Its Plan to Modernize Its)	
Distribution Grid.)	
)	
In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 18-1876-EL-WVR
Approval of a Limited Waiver of Ohio)	
Adm. Code 4901:1-18-06(A)(2).)	
)	
In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 18-1877-EL-AAM
Approval of Certain Accounting Methods.)	

**REPLY TO DP&L’S MEMORANDUM IN OPPOSITION TO THE
ENVIRONMENTAL LAW & POLICY CENTER’S MOTION TO DISMISS
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

This case is about a monopoly utility (DP&L) seeking even more money (\$867 million) from its customers for “Grid Modernization.”¹ More importantly, this case is about the consumers who DP&L would make pay the \$867 million. In Dayton, 32.7% of these consumers are living at or below the federal poverty level.²

To its credit, the Environmental Law and Policy Center (“ELPC”) called out DP&L for filing an application that lacks the information necessary for the PUCO to determine whether DP&L’s plan (and proposed huge cost) are just and reasonable.³

¹ See Application (December 21, 2018) at 5.

² See <https://www.census.gov/quickfacts/daytoncityohio>.

³ ELPC’s Motion, Memorandum in Support at 4-11 (September 19, 2019).

ELPC asked the PUCO to dismiss DP&L's inadequate application. On October 7, 2019, OCC supported ELPC's proposed dismissal (but not ELPC's secondary proposal for merely requiring DP&L to file more testimony). There, OCC also significantly expanded ELPC's list of consumer issues that DP&L failed to explain for its proposed huge charges. The PUCO should not allow a monopoly application of close to a billion dollars in charges to consumers on little more than DP&L's "trust us" and "give us the money" approach.

The Office of the Ohio Consumers' Counsel ("OCC") agrees that the PUCO should dismiss the application. OCC disagrees with ELPC's alternative suggestion that DP&L be allowed to file more supportive testimony in lieu of dismissing the application. The application is so fundamentally flawed that it cannot be saved by additional testimony. OCC recommends that the PUCO dismiss the application altogether.

On October 7, 2019, DP&L filed a memorandum in opposition to ELPC's motion. DP&L makes five arguments against the motion: (1) that ELPC lacks standing to file its motion; (2) that DP&L's plan to negotiate with parties will lead to the best result in this case; (3) that its cost-benefit analysis is reasonable and complete; (4) that its Modernization Plan is consistent with the PUCO's PowerForward Roadmap; and (5) that dismissal of the entire application is not an appropriate remedy.⁴ DP&L's arguments against ELPC's motion are without merit. The PUCO should dismiss the application in this case.

⁴ DP&L's Memorandum in Opposition at 3-9. DP&L also argued that ELPC's attorneys are engaged in the unauthorized practice of law in Ohio. *Id.* at 9-10. OCC does not agree with DP&L's assertion.

II. DISCUSSION

A. DP&L's argument that ELPC lacks standing to file the motion is out of time and without merit.

In its opposition to ELPC's motion, DP&L first challenges ELPC's standing to file the motion. DP&L bases its claim on ELPC's support for DP&L's customers.⁵ DP&L claims that ELPC has not shown that it is a DP&L customer or that saving customers money is germane to ELPC's mission to protect the environment.⁶ DP&L's argument regarding ELPC's standing is late and without merit.

DP&L should have raised the standing argument in response to ELPC's motion to intervene, which was filed in this case on January 30, 2019. But DP&L did not. The time has expired for DP&L to oppose ELPC's motion to intervene for lack of standing or any other grounds.⁷

In its motion to intervene, ELPC stated that it "has an interest in ensuring the cost-effective implementation of grid modernization technologies to reduce energy consumption and produce corresponding environmental benefits, and in ensuring that utilities recognize the value of distributed energy resources."⁸ ELPC also stated that it seeks the PUCO's "careful scrutiny of DP&L's proposal to ensure it is reasonably designed to deliver cost-effective grid modernization measures that maximize energy savings and environmental benefits."⁹ Cost-effective grid modernization is necessary to

⁵ *Id.* at 3.

⁶ *Id.* at 4-5.

⁷ *See* Ohio Adm. Code 4901-1-12(B)(1).

⁸ ELPC's Motion to Intervene (January 30, 2019), Memorandum in Support at 2.

⁹ *Id.*

help save consumers money. OCC welcomes ELPC's efforts to make utilities' programs more cost-effective so that consumers might be charged less for the programs.

In arguing that ELPC lacks standing to file the motion to dismiss, DP&L cites to various passages from the motion. Included in those passages are two that specifically mention the cost-effectiveness of DP&L's plan.¹⁰ Based on these passages and others that relate to consumer benefits, DP&L claims that ELPC lacks standing to file the motion.¹¹ But because DP&L did not challenge ELPC's motion to intervene in this case (which discussed cost-effectiveness as support for ELPC's intervention), DP&L should not be allowed to raise the standing issue now.

Further, the PUCO's rules do not require that a party's motion must somehow be connected to the party's purpose for participating in a case, as DP&L contends.¹² DP&L's argument is without merit and the PUCO should reject it.

B. DP&L's application lacks important information for parties and the PUCO to evaluate whether programs would be cost-effective.

ELPC's motion specifically addresses the shortcomings of DP&L's application regarding four pilot programs: its distributed energy demonstration projects; its microgrid pilot; its electric vehicle charging initiative; and its conservation voltage reduction and volt/VAR optimization initiative.¹³ As ELPC noted, when a utility proposes to undertake a pilot, "it supports that proposal with detailed expert testimony and analysis explaining how much the project will cost, how it will benefit customers, and how it will be

¹⁰ DP&L's Memorandum in Opposition at 4.

¹¹ *Id.*

¹² *Id.* at 5.

¹³ ELPC's Motion, Memorandum in Support at 4-11.

designed and implemented.”¹⁴ In this case, however, DP&L provided scant information about even essential details of the pilots.

In response, DP&L claims that working with parties to hammer out the details of the pilots will lead to “the best result.”¹⁵ DP&L said that different parties have different views regarding whether the demonstration projects should exist and how they should be structured.¹⁶ DP&L also stated that some of the parties to the case have more experience than DP&L regarding the demonstration projects.¹⁷ DP&L stated that the best way to implement the best possible demonstration projects was to work with a team of interested parties.¹⁸ Regardless of a proposed process for accomplishing the implementation of the demonstration projects, DP&L should at least have an estimate of the costs consumers would be charged for the projects. But it does not.

As ELPC pointed out, DP&L does not know how much either the battery storage or the solar demonstration project will cost.¹⁹ DP&L does not provide any information on the costs, benefits, design, implementation, evaluation, or even the location of the proposed microgrid project.²⁰ Similarly, DP&L’s application has no information regarding the costs, benefits, and user fees associated with the electric vehicle charging pilot.²¹ There isn’t even any detail regarding how customers may host a charging

¹⁴ *Id.* at 4.

¹⁵ DP&L’s Memorandum in Opposition at 5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ ELPC’s Motion, Memorandum in Support at 6.

²⁰ *Id.* at 8.

²¹ *Id.* at 10.

station.²² And regarding the conservation voltage reduction and volt/VAR optimization initiative, DP&L offers no rationale for its proposed deployment and no metrics for evaluating the initiative's performance.²³

To protect consumers, the PUCO should require a more detailed application than the one DP&L has filed in this case. DP&L is planning to spend over \$575 million in capital when it does not have sufficient financial resources to implement the Modernization Plan without the extension of the modernization charge to customers. The current level of detail in DP&L's application does not support this expenditure.

C. DP&L's cost-benefit analysis lacks quantifiable benefits to consumers.

In its motion to dismiss, ELPC noted that the cost-benefit analysis in the application makes it impossible for the PUCO to determine whether specific components are just and reasonable and will provide net benefits to consumers.²⁴ DP&L responds that its cost-benefit analysis need only show the costs and benefits of the entire plan – not each specific component.²⁵ However, DP&L's cost-benefit analysis is flawed.

DP&L's application lacks quantifiable benefits to justify the Modernization Plan's high implementation costs to consumers. Most of the alleged benefits are supported through assumptions about increased service reliability and reductions in customer interruptions that are highly speculative at best. For example, despite a full deployment of grid modernization technology in Duke's service territory, Duke has had

²² *Id.*

²³ *Id.* at 11.

²⁴ *Id.*

²⁵ DP&L's Memorandum in Opposition at 6-8.

substantial difficulty in meeting its reliability performance standards.²⁶ AEP Ohio has also failed to meet its performance standards in 2018, despite having considerable deployment of grid modernization technology in its territory.²⁷ Both the Duke and AEP Ohio deployments have come at significant cost to consumers. And in both Duke and AEP Ohio cases, the consumer benefits have been slow to materialize.

Finally, DP&L's advanced meter infrastructure deployment could result in reduced consumer protections that do not benefit consumers. Even prior to deploying a single advanced meter, DP&L proposed a waiver to support remote shut-offs for customers²⁸ and an electric pre-pay program²⁹ that is likely well outside Ohio consumer protection laws, especially regarding disconnection of service. DP&L's cost-benefit analysis does not account for consumer detriments that its Modernization Plan would create. This is a fatal flaw in DP&L's application.

D. DP&L's application does not allow the PUCO to assess whether the costs and benefits of the Grid Modernization Plan are consistent with PowerForward Roadmap principles for consumers.

ELPC argues that the application does not provide the PUCO with enough information to assess whether the Grid Modernization Plan is consistent with the PowerForward Roadmap.³⁰ Specifically, ELPC contends that the application has insufficient information for the PUCO to examine it in light of the following PowerForward principles:

²⁶ See, e.g., Case No. 16-1602-EL-ESS, Direct Testimony of James D. Williams (June 25, 2018) at 11-12.

²⁷ See Case No. 19-992-EL-ESS, Annual Report of Electric Distribution System Reliability (March 29, 2019) at 2,

²⁸ Application at 9-10.

²⁹ *Id.* at 7.

³⁰ ELPC's Motion, Memorandum in Support at 12.

- Maintaining the delivery of safe, reliable electric service at fair prices;
- Insisting that electric distribution utilities spend ratepayer dollars wisely and in a manner that delivers eventual net value to the customer; and,
- Ensuring that investments create societal benefit and allow for an enhanced customer electricity experience accessible to all customers.³¹

In response, DP&L claims that its cost-benefit analysis provides the PUCO with “ample information....”³² DP&L is wrong.

As discussed in the previous section, DP&L’s cost-benefit analysis is based on highly speculative assumptions regarding service reliability. The PUCO cannot determine whether DP&L’s Grid Modernization Plan will result in fair prices for consumers, wise spending of consumer dollars, or a net value for consumers. And because many aspects of the Plan are detrimental to consumers, the Plan might not provide societal benefits or an enhanced customer experience. The PUCO should require a more complete application from DP&L.

E. Dismissal of the application is the best course for the PUCO to take.

ELPC suggested that if the PUCO does not dismiss the application, it should require DP&L to file additional testimony to cure the application’s flaws.³³ DP&L

³¹ *Id.*

³² DP&L’s Memorandum in Opposition at 8.

³³ ELPC’s Motion, Memorandum in Support at 13.

argues that dismissal of the application is not an appropriate remedy.³⁴ But there are too many flaws in the application. The PUCO should dismiss the application without prejudice and require DP&L to file a new, complete application.

Fundamentally, the application fails to comply in providing the basic information that the PUCO has determined is needed for evaluating grid modernization applications.³⁵ This includes detailed cost benefit analysis for all components of the plan, proposed performance based ratemaking metrics, structured audits to verify that such metrics are achieved, and assurance that customer money is being spent prudently. Further, the application has no protections against DP&L collecting the same charges from customers through multiple riders. The Modernization Plan is funded through a Smart Grid Rider. Other riders, such as the Distribution Modernization Rider (“modernization charge”) and Distribution Investment Rider, are seemingly intended to serve the same purpose.

In addition, DP&L has tied its Grid Modernization Plan to PUCO approval for a continuation and expansion of its distribution modernization charge in Case No. 19-162-EL-RDR.³⁶ All funds collected from customers through the modernization charge will be used toward paying DP&L’s debt.³⁷ That debt is linked to its generation assets, not to distribution. That makes the distribution modernization charge an illegal transition charge or equivalent revenue that the Supreme Court of Ohio has deemed unlawful.³⁸

³⁴ DP&L’s Memorandum in Opposition at 8-9.

³⁵ Power Forward Roadmap (August 29, 2018) at 35.

³⁶ Application at 10.

³⁷ See Case No. 16-395-EL-SSO, DP&L’s Initial Post-Hearing Brief, Public Version (May 5, 2017) at 44.

³⁸ See *In re Application of Columbus Southern Power Co.*, 147 Ohio St. 3d 439, 444, 2016-OHIO-1608, ¶21; *In re Dayton Power & Light Co.*, 147 Ohio St. 3d 166, 2016-OHIO-3490.

The flaws in DP&L's application cannot be cured by further testimony or other modifications filed in this case. The PUCO should dismiss DP&L's application.

III. CONCLUSION

DP&L has filed an application that is lacking in sufficient information, and would put more charges on consumers with no guarantee of consumer benefits. To protect DP&L's customers, especially the 32.7% of Dayton residents who live at or below the federal poverty level, the PUCO should dismiss DP&L's application. DP&L should be required to file a new, complete application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply was served electronically on the parties listed below on this 15th day of October 2019.

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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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Summary: Reply Reply to DP&L's Memorandum in Opposition to the Environmental Law & Policy Center's Motion to Dismiss by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.