

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Application of The)
Dayton Power and Light Company for)
Authority to Modify Its Accounting) Case No. 08-1332-EL-AAM
Procedure for Certain Storm-Related)
Service Restoration Costs.)

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

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the 460,000 residential customers of the Dayton Power and Light Company ("Company" or "DP&L") and pursuant to Ohio Rev. Code 4903.10 and Ohio Adm. Code 4901-1-35(A), applies for rehearing of the Finding and Order ("Order") issued on January 14, 2009 in the above-captioned case by the Public Utilities Commission of Ohio ("PUCO" or "Commission"). The Order approved the application ("Application") filed by DP&L on December 26, 2008, requesting authority to modify DP&L's accounting procedures and to defer incremental operation and maintenance ("O&M") costs, including carrying costs, related to the September 14, 2008 wind storm restoration efforts. The approval of the Application by the PUCO was unjust, unreasonable, and unlawful and the Commission erred in the following particulars:

**THE COMMISSION ERRED WHEN IT FAILED TO
ORDER THAT ANY DP&L PROPOSAL REGARDING THE
ALLEGED REASONABLENESS AND LAWFULNESS OF
THE DEFERRED AMOUNTS AND ANY PROPOSED
COLLECTION THEREOF FROM CUSTOMERS CAN
ONLY BE MADE IN A FUTURE RATE INCREASE CASE**

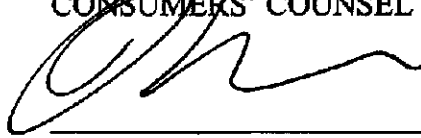
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**FILED BY DP&L UNDER R.C. 4909.18, 4909.15, AND
RELATED STATUTES.**

The reasons for granting this Application for Rehearing are set forth in the
attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Jacqueline Lake Roberts, Counsel of Record
Richard C. Reese
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
roberts@occ.state.oh.us
reese@occ.state.oh.us

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 26, 2008, DP&L filed an Application with the PUCO for authority to change accounting methods to create a regulatory asset of storm restoration operation and maintenance ("O&M") costs to defer such costs for later collection from customers. DP&L proposes future recovery from all customers of the deferred O&M expenses and carrying charges relating to that portion of its Operation and Maintenance (O&M) expenses associated with restoring electric service to its customers in the aftermath of the Hurricane Ike-related wind storm beginning on September 14, 2008. The Company proposes to defer these O&M expenses for future recovery from all customers under the authority granted in a previously approved PUCO order, over a twelve-month period.¹

On January 14, 2009, the Commission issued an Order that approved the Application with modifications.

¹ Application at 1.

II. THE COMMISSION ERRED WHEN IT FAILED TO ORDER THAT ANY DP&L PROPOSAL REGARDING THE ALLEGED REASONABLENESS AND LAWFULNESS OF THE DEFERRED AMOUNTS AND ANY PROPOSED COLLECTION THEREOF FROM CUSTOMERS CAN ONLY BE MADE IN A FUTURE RATE INCREASE CASE FILED BY DP&L UNDER R.C. 4909.18, 4909.15, AND RELATED STATUTES.

The Commission erred when it simply stated that “the reasonableness of the deferred amounts and the recovery thereof, if any, will be examined and addressed in a future proceeding before the Commission.”² The proper mechanism for DP&L to seek an increase in its distribution rates based upon increased O&M expenses is to file an application for a rate increase pursuant to R.C. 4909.18 and related statutes. The application would be subject to review pursuant to the rate setting procedures established in R.C. Chapter 4909. On rehearing, the Commission should find (or clarify) that the reasonableness and lawfulness of the deferred amounts, and any recovery thereof from customers, can only be considered, if at all, in a future rate increase case proceeding under Ohio Rev. Code 4909.18, 4909.15 and related statutes before the Commission.

A diligent review of any deferred amounts and the prudence of the activities associated with the O&M expenses, conducted in an appropriate procedural context to the extent allowed by law, is essential to protect customers from paying unreasonable rates for their electric distribution service. A future ESP case under R.C. 4928.143 would not be an appropriate proceeding to consider DP&L’s Hurricane Ike-related wind storm O&M deferrals. Fundamental to an ESP case is a utility proposal to provide generation

² Order at para. 6.

service,³ and no ESP proposal by DP&L can propose generation service in connection with distribution expenditures that took place during 2008.

Only a future distribution rate case can provide an appropriate procedural setting for DP&L to propose collection of the wind storm deferrals, if collection is even allowed by law. While the Commission cited in its Order a decision of the Supreme Court of Ohio for the proposition that “deferrals do not constitute ratemaking,”⁴ the Court stated in the same decision that *any recovery of the deferrals from customers would be considered in a rate case.*⁵ The deferrals should be denied unless DP&L agrees to request recovery of the deferrals within the procedural context of a future rate case, and the Commission Staff carefully investigates DP&L’s wind storm restoration activities and the related expenditures and make recommendations in its staff report as to reasonableness and lawfulness.

The Commission should not permit DP&L to recover these costs unless the costs and the associated activities are reviewed in the next distribution rate case under R.C. 4909.18, 4909.15, and related statutes, and DP&L proves the costs are reasonable, prudent and lawful. The Commission should so state in its Entry on Rehearing.

III. CONCLUSION

The Commission should grant rehearing in this case because DP&L has no authority to seek recovery of storm-related expenses through an increase in the

³R.C. 4928.143(B).

⁴ Order at 6.

⁵ *Elyria Foundry Co. v. Public Util. Comm.*, 114 Ohio St. 3d 305, 309, 2007-Ohio-4164 at ¶22. (emphasis added).

distribution rates that residential consumers pay unless there is compliance with the protections of Ohio's rate-making statutes. On rehearing, the Commission should make determinations consistent with the OCC's arguments on behalf of DP&L's 460,000 residential customers.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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Richard C. Reese
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Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
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reese@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing by the Office of the Ohio Consumers' Counsel* was served via Regular U.S. Mail Service, postage prepaid, to the persons listed below, this 13th day of February, 2009.



Jacqueline Lake Roberts
Assistant Consumers' Counsel

PERSONS SERVED

Duane Lucky
Attorney General's Office
Public Utilities Section
180 East Board St., 9th Fl.
Columbus, OH 43215-3793

Judi L. Sobecki
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432