BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Authority to Recover Certain Storm-Related Services Restoration Costs.	))))	Case No. 12-3062-EL-RDR
In the Matter of the Application The Dayton Power and Light Company for Approval of Certain Accounting Authority.	))))	Case No. 12-3266-EL-AAM

INITIAL POST-HEARING BRIEF
BY
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I. INTRODUCTION

The question before the PUCO[1] is whether it should approve an agreement that would result in customers of the Dayton Power and Light Company[2] paying eighteen (18) times more for storm restoration costs than the amount recommended by those who audited the costs—the PUCO Staff. The answer is no. Customers should pay no more than what is just and reasonable under Ohio law.

DP&L filed an Application seeking to charge customers for expenses associated with its major storm repairs in 2008, 2011, and 2012, after those same customers suffered through extended outages, spoiled food, substitute lodging expense, and/or other risks because of the storms. A Stipulation and Recommendation ("Stipulation" or "Settlement") was entered between the Utility, the PUCO Staff and the Kroger Company. The Stipulation provides DP&L $22.3 million for settlement of its storm restoration costs

[1] Public Utilities Commission of Ohio.

[2] ("DP&L" or "Utility").

for major storms occurring in 2008, 2011, and 2012. The Office of the Ohio Consumers' Counsel ("OCC") recommends that the PUCO limit DP&L's charges to slightly more than $1 million, for the Utility's approximately 455,000 residential customers. That position is consistent with the PUCO Staff's recommendations in its Audit Report and Comments.

The many reasons the PUCO should protect DP&L's customers from unreasonable charges by rejecting the Stipulation are explained in the following pages.

II. BACKGROUND AND SUMMARY

On December 21, 2012, DP&L filed its Application in these cases. The Utility requested authority to charge customers over $65 million for Operation and Maintenance ("O&M") expenses and capital expenditures related to major event storms in 2008, and 2012, as well as the Utility's request for deferral and collection of 2011 storm costs and the institution of a Storm Cost Recovery Rider ("Storm Rider") for collecting the $65 million.[3] In response to DP&L's Application, OCC, the PUCO Staff, and the Kroger Company filed Comments and Reply Comments on June 17, 2013 and July 1, 2013, respectively.

On October 23, 2013, the PUCO issued an Entry denying DP&L's request to charge customers for $27.6 million in capital expenditures associated with the 2008, 2011, and 2012 storm restoration efforts.[4] In the same Entry, the PUCO ordered its Staff

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[3] Application at 2 (December 21, 2012).

[4] Entry at 7-8 (October 23, 2013); See also, PUCO Staff's Audit Report at 4 (January 3, 2014).

to conduct a full audit of the storm repair expenditures incurred in the years in which DP&L requests recovery – 2008, 2011, and 2012.[5]

As ordered, on January 3, 2014, the PUCO Staff filed an Audit Report. In the Audit Report, the PUCO Staff renewed and furthered the positions set forth in its Comments – indicating that DP&L should not be permitted to charge customers for any costs incurred during the 2008 and 2011 storms. Alternatively, the PUCO Staff maintained in its Audit Report that—to the extent that the PUCO authorized DP&L to collect any of the costs incurred as a result of the 2008 and 2011 storms, that amount should be no more than $23.4 million.[6]

The Stipulation filed on May 1, 2014, if approved, will permit DP&L to collect $22.3 million from its customers. That amount of money is unjust and unreasonable for customers to pay for storm restoration efforts. The Stipulation, as a package, does not benefit customers and the public interest and violates important regulatory practice and principles. For these reasons, the PUCO should reject the Stipulation.

III. STANDARD OF REVIEW

The standard of review for consideration of a stipulation has been discussed in a number of Commission cases and by the Ohio Supreme Court. The Ohio Supreme Court stated in *Duff*:

> A stipulation entered into by the parties present at a commission hearing is merely a recommendation made to the commission and is in no sense legally binding upon the commission. The commission may take the stipulation into consideration, but must

[5] Entry at 8 and 10 (October 23, 2013). (The PUCO ordered the Staff Audit Report ("Audit Report") to be filed by January 3, 2014).

[6] Audit Report at 4 (January 3, 2014). The PUCO alternative included carrying charges for the historic and recovery period.

> determine what is *just and reasonable* from the evidence presented at the hearing.[7]

The Court in *Consumers' Counsel* considered whether a just and reasonable result was achieved with reference to criteria adopted by the PUCO in evaluating settlements:

> 1. Is the settlement a product of serious bargaining among capable, knowledgeable parties? In this regard, the PUCO considers whether the signatory parties to the stipulation represent diverse interests.[8]
>
> 2. Does the settlement, as a package, benefit ratepayers and the public interest?
>
> 3. Does the settlement package violate any important regulatory principle or practice?[9]

The ultimate question to be answered is whether, in light of the record, the Stipulation is just and reasonable and complies with Ohio law. In this proceeding, the PUCO must ensure that the Stipulation complies with Ohio law that requires utilities to charge customers rates that are just and reasonable.[10]

The Supreme Court of Ohio has examined the burden of proof for a utility to show that its expenses to repair storm damage were prudently incurred and reasonable.[11] The Court emphasized that in order to reduce or disallow the collection of storm costs from customers, "[t]he Commission did not have to find the negative: that the expenses

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[7] *Duff v. Pub. Util. Comm*. (1978), 56 Ohio St.2d 367 (emphasis added).

[8] See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger Is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates,* Case No. 11-351-EL-AIR, Opinion and Order at 9 (December 14, 2011).

[9] *Consumers' Counsel*, note 10 supra.

[10] R.C. 4905.22.

[11] *In Re Application of Duke Energy Ohio, Inc., to Establish and Adjust the Initial Level of its Distribution Reliability Rider,* 131 Ohio St.3d 487, 2012-Ohio-1509, 967 N.E.2d 201, ¶8.

were imprudent."[12] Instead, **the utility** has to prove a positive point – that its expenses had been prudently incurred – in order to collect those costs from customers.[13] With regard to that appeal, the expert witness that OCC presented at the PUCO hearing (with testimony to disallow Duke's proposed charges) is the same witness, Mr. Yankel, along with other witnesses who OCC presented in this case.

As the evidence in this proceeding demonstrates, the Stipulation does not meet the PUCO's criteria for approval. The settlement provides the Utility eighteen times the cost recovery that was proposed by the Staff in its Audit Report. The settlement also allows unprecedented and unreasonable delay by a utility to seek permission in deferring expense and to collect expenses that were not previously authorized to be deferred. In addition, the Stipulation demonstrates everything that is wrong with single-issue ratemaking.

IV. ARGUMENT

A. The Signatory Parties to the Settlement Do Not Represent Diverse Interests Because No Representative of Residential Customers Agreed That Customers Should Pay DP&L $22.3 Million More For Storm Damage in 2008, 2011, and 2012.

The Signatory Parties to the Settlement do not represent diverse interests.[14] The signatory parties to the Stipulation include DP&L, the PUCO Staff, and the Kroger Company. But the largest segment of DP&L's customer base – residential customers – is not represented among the signatory parties to the Stipulation.

[12] Id.

[13] Id.

[14] OCC Ex. 16 (Direct Testimony of Tony Yankel Testimony) at 10 (May 23, 2014).

OCC's witness testified that the Stipulation does not reflect diverse interests.[15] OCC, the statutory representative of residential utility consumers, did not sign the Stipulation. A Stipulation that does not reflect the interests of residential customers (the largest segment of DP&L's customer base) is not diverse, especially one where the non-residential stipulators agreed that residential customers will absorb the lion's share of the agreed-to amount of $22.3 million for storm restoration expenditures.[16]

B. The Settlement—That Permits DP&L To Collect $22.3 Million From Customers For Storm Damage—As A Package, Does Not Benefit Customers Or The Public Interest.

The Stipulation does not benefit customers or the public interest. In fact, the Stipulation would harm customers because the Stipulation would require them to pay for storm restoration costs that are not just and reasonable. Costs that DP&L sought to collect from customers in this case that are identified in the Stipulation include the following categories of costs: (1) costs that were not authorized to be deferred by the PUCO, (2) costs for carrying charges that were never authorized, (3) costs for non-major storms. Additionally, the Stipulation provides DP&L with collection of costs that includes adjustments recommended by Staff in the Audit Report, and adjustments recommended by OCC witnesses discussed in more detail below.

1. A settlement that, if approved, authorizes a Utility charge its customers (18) eighteen times the amount of costs that the PUCO Staff Audit Report recommended customers should pay does not benefit customers or the public interest.

OCC witness Dr. Duann testified that a Settlement that far exceeds the PUCO Staff Audit Report recommendations is unjust and unreasonable. Dr. Duann stated:

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[15] Id.

[16] Id.

> Additionally, it is unreasonable and unjust for DP&L to be permitted to collect eighteen (18) times the amount of money recommended in the PUCO Staff's Audit Report. As I discussed earlier, in its Audit Report, the PUCO Staff recommended that customers pay DP&L a total of $1 million ($1,010,600)[17] plus associated carrying costs of approximately $249,342 for DP&L's storm restoration efforts. Based on the PUCO Staff's Audit Report, comments, and analysis, and OCC's testimony, comments, and analysis, DP&L's customers should pay no more than $1.26 million ($1,259,942) for the storm restoration events requested in DP&L's Application.
>
> A settlement that requires customers to pay approximately 18 times more money (18 x $1,259,942=$22,678,956) to have their electric restored than the findings identified in a full PUCO Audit does not benefit them. The settlement, that unjustly enriches DP&L, at the expense of its many struggling customers, is not in the public interest. It should be rejected.[18]

The Staff Audit Report is the only evidence in this proceeding that provides a comprehensive, detailed, and supported analysis performed by the PUCO Staff, as ordered by the PUCO,[19] regarding all the relevant issues in this proceeding. The Staff Audit Report is also consistent with the Staff's positions and conclusions derived from its earlier analysis as evidenced in the Comments and Reply Comments filed in June and July 2013, respectively. The $1 million in storm-related costs plus associated carrying charges, as recommended by the PUCO Staff, should be given great weight when deciding whether to approve the Stipulation.

The PUCO Staff did not testify at the three-day evidentiary hearing. In regard to the Stipulation, the PUCO Staff provides neither testimony nor analysis supporting the Stipulation and its $22.3 million price tag. The PUCO Staff also fails to quantify the

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[17] Audit Report at 4 (January 3, 2014). ($1,010,600 = $4,763,244 - $3,482,366 - $144,611 - $104,925 - $4,301 - $16,441.)

[18] OCC Ex. No. 23 (Testimony of Daniel Duann, Ph.D. In Opposition to the Stipulation) at 6-7 (May 24, 2014).

[19] See October 23, 2013 Entry at paragraph 15.

benefits, if any, to customers associated with the additional costs of $21 million from the proposed Stipulation.

This unsupported discrepancy between the $22.3 million Settlement figure and the $1 million the PUCO Staff recommended (contained in its Audit Report) does not benefit customers and is not in the public interest. Therefore, the PUCO should reject the Stipulation.

2. The settlement as a result of single-issue ratemaking does not benefit customers and is not in the public interest.

Providing DP&L with an opportunity to collect storm restoration costs from its customers via a rider mechanism is single-issue ratemaking. The single-issue regulatory process advantages the Utility and disadvantages customers who are being asked to pay these charges through a rider. This is most evidently demonstrated by the Stipulation submitted in this case, which would require the PUCO to look at major storm restoration costs in a vacuum without taking other facts and circumstances into consideration. For instance, the Stipulation does not address the changes in labor expenses and distribution-related capital improvements that may affect storm restoration costs. Nor does the Stipulation take into consideration DP&L's extraordinary high earnings (as measured by the return on equity) since 1999, which have far exceeded its authorized return. Moreover, DP&L's decision to unnecessarily delay recovery of storm expenses has increased the amount of costs that it seeks to charge customers through accrued carrying charges. These baseless components disadvantage customers and demand rejection of the Stipulation because it does not advance the public interest.

a. The amount of money that DP&L has collected from customers in base distribution rates since 1991 for major storm restoration costs is unknown.

DP&L's current distribution rates were established during the 99-1687-EL-ETP case, when Ohio SB 3 required all electric utilities to unbundle their then-current rates into transmission, distribution, and generation rates. The base distribution rates resulting from that case are in effect today.[20] The 1999 rates that were unbundled were developed in the Utility's last full rate case, which was Case No. 91-414-EL-AIR based on a 1991 test year.[21]

DP&L admits that the level of storm restoration costs included in base distribution rates is unknown. DP&L's witness states:

> While the Stipulation in DP&L's 1991 rate case did not identify a specific level of storm cost recovery, there must have been some level of storm costs included in those base rates. As discussed above, rates were established based on a 1991 test year, and there would have been storms that had occurred or were assumed to occur during the test year. **However, since that case was settled via a black box settlement, is it unclear what level of storm cost recovery would have been included in base distribution rates**.[22]

Furthermore, based on that 1999 unbundling of rates, it remains impossible to determine how much major storm restoration costs are included in the base distribution rates that are in effect today. It would not be in the public interest to award DP&L the ability to collect storm costs from customers that very well could be a part of their distribution base rates, when the Utility has failed to carry its burden of establishing otherwise.

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[20] DP&L Ex. No. 4 (Direct Testimony of Dona Seger-Lawson) at 3 (December 21, 2014).

[21] Id.

[22] Id. (Emphasis added).

b. The PUCO's use of a three-year average to limit DP&L's major storm restoration cost collection from customers is a sufficient balance between customers and shareholders.

In light of DP&L's admission that its base rates include some unidentified level of storm restoration costs, the PUCO has taken the approach of approving DP&L's deferral request, less a three-year average of major storm restoration costs.[23] The PUCO explained its rationale for the three-year average adjustment in its Entry on Rehearing in the case authorizing DP&L's 2012 deferral request. The PUCO stated, if the restoration costs are not reduced by the three-year average,[24] then the Utility could be double-recovering such costs from its customers.[25] Relying upon this authority, the PUCO Staff, in the Audit Report, deducted the three-year average of major storm repair expenses from each year.[26] The "black box"[27] Stipulation, however, does not indicate that that the three-year average that the PUCO has so ordered was indeed removed. Allowing DP&L to recover storm costs without explicitly deducting the three-year average thereby possibly allowing the Utility to double-recover costs would be unjust and unreasonable and certainly not in the public interest.

[23] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify Its Accounting Procedure for Certain Storm-Related Service Restoration Costs,* Case No. 08-1332-EL-AAM, Order at 1 (January 14, 2009); see also *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedure for Certain Storm-Related Services Restoration Costs* Case No. 12-2281-EL-AAM, Entry on Rehearing at 4 (February 13, 2013).

[24] The three-year average adjustment is important in assuring that customers are not charged twice for the same costs, once in base rates and once in the mechanism for collecting storm costs. ***See*** *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedure for Certain Storm-Related Services Restoration Costs* Case No. 12-2281-EL-AAM, Entry on Rehearing at 4 (February 13, 2013).

[25] Id.

[26] Audit Report at 5 (January 3, 2014).

[27] "Black box" meaning it is impossible to determine how much of the $22.3 million settlement is attributable to any of the individual storm years.

c. The PUCO should take into consideration DP&L's financial performance, since 1999, because allowing additional collection of storm restoration costs for 2008 and 2011 will not benefit the Utility's customers or the public interest.

Since 1999, DP&L has enjoyed very high earnings as measured by the return on equity ("ROE"). In fact, DP&L's authorized ROEs from 1999 through 2011 were exceedingly high. The PUCO Staff pointed this fact out in Comments filed in this case, stating:

> [T]he 2008 deferred expenses for Hurricane Ike and other major storms previously deferred are not appropriate for recovery because the Company underspent by approximately $150 million in O&M expenses **and the Company's return on equity has averaged 19.65% since 1999**."[28]

Because of these consistently high ROEs, the PUCO Staff recommended that DP&L not be permitted to charge customers for the storm costs incurred during 2008 and 2011.[29]

OCC witness Dr. Duann arrived at the same conclusion after analyzing DP&L's earnings:

> Because DP&L has more than fully recovered its total costs (which include all storm-related O&M expenses and a very high return on invested capital) of providing electric service in 2008, there is no financial need for DP&L to collect any deferred 2008 storm-related O&M expenses from its customers. To allow DP&L to charge for the 2008 storm costs that were incurred when the Utility was earning a particularly high ROE would harm DP&L's customers.[30]

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[28] Comments Filed on Behalf of the Staff of the Public Utilities Commission of Ohio at 4 (June 17, 2013).

[29] See, for example, Staff Comments at 5-6 (June 17, 2013), and Staff Audit Report at 3 (January 3, 2014).

[30] OCC Ex. No. 23 (Testimony of Daniel Duann, Ph.D. in Opposition to the Stipulation) at 14-15 (May 23, 2014).

Specifically, for the years at issue in this case, DP&L earned a 20.04% return on equity in 2008 and a 14.05% return on equity in 2011.[31]

The PUCO has an obligation to approve just and reasonable rates. In light of the earnings during the 2008 and 2011 storm years, it would be unjust and unreasonable to authorize DP&L to collect additional amounts for storm costs (incurred in 2008 and 2011) from customers. Allowing DP&L to collect additional charges incurred in 2008 and 2011, during the periods DP&L was earning very high ROE, will only unfairly burden customers and go against the public interest.

Shockingly, even if DP&L had expensed its major storm restoration costs in 2008, rather than deferring these costs, DP&L would have still exceeded its authorized ROE and earned an 18.99% return on equity.[32] It is also interesting to note that in 2011, DP&L did expense the 2011 storm costs and the ROE exceeded its authorized return for that year as well.[33] The explicit consideration of a utility's earnings in determining whether to allow or disallow the collection of deferred expenses is not a new concept – it is well recognized and applied.[34]

DP&L counters OCC's arguments with unfounded contentions that significant distribution rate increases between 2008 and 2012 were justified. According to DP&L witness Seger-Lawson, DP&L's 2008 through 2012 revenue requirement was $348 million higher than the 1991 rate case amount.[35] This alleged increased revenue

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[31] Id. at 12.

[32] Id. at 13-15.

[33] Id. at 17.

[34] See, for example, Staff Comments (June 17, 2013) at 5-6, and Staff Audit Report (January 3, 2014) at 3.

[35] DP&L Ex. No. 5 (Supplemental Testimony of Dona Seger-Lawson) at DRSL-Exhibit A (January 17, 2014).

requirement is unsupported and irrelevant. The expenses, rate base, and rate of return underling this figure were never verified or audited by a third party or independent source. Rather, this number was manufactured by DP&L in 2012 to justify what it could have done in an earlier period. Furthermore, it is noteworthy that the relevant stipulations that governed DP&L's distribution rate freeze routinely provided DP&L with the opportunity to seek emergency rate relief under R.C. 4909.16. R.C. 4909.16 states:

> When the public utilities commission deems it necessary to prevent injury to the business or interests of the public or of any public utility of this state in case of any emergency to be judged by the commission, it may temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedules, or order relating to or affecting any public utility or part of any public utility in this state. Rates so made by the commission shall apply to one or more of the public utilities in this state, or to any portion thereof, as is directed by the commission, and shall take effect at such time and remain in force for such length of time as the commission prescribes.

However, DP&L never availed itself of the opportunity to seek such relief because such a request was unwarranted and unjustified.

Furthermore, DP&L agreed to various Stipulations that imposed a distribution rate freeze through December 31, 2012.[36] Interestingly, all other electric utilities in Ohio that unbundled their rates in 1999 and were subject to a distribution rate freeze period, subsequently applied to the PUCO for distribution rate relief.[37] Obviously, given DP&L's extraordinary high ROE, it is likely that DP&L would not be able to justify any increase in its base distribution rates even if DP&L was filing a base distribution rate case before 2008.

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[36] Application at 1 (December 21, 2012).

[37] *In re Duke Distribution Rate Case,* Case No. 12-1682-EL-AIR, et al.; *In re Ohio Power Distribution Rate Case*, Case No, 11-352-EL-AIR, et al.; *In re Columbus Southern Power Distribution Rate Case*, Case No. 11-351-EL-AIR, et al.; *FirstEnergy Distribution Rate Case*, Case No. 07-551-EL-AIR, et al.

Finally, it should be noted that DP&L recently passed up an opportunity to fulfill one of the requirements for collecting up to $45.8 million via the Service Stability Rider Extension (SSR-E) for the period of January 1, 2017 to April 30, 2017 granted by the Commission in the ESP II proceeding.[38] In the ESP II order and subsequent entries on rehearing, the PUCO impose several conditions that DP&L must meet in order to file an application to collect the SSR-E. One of the conditions is that DP&L needed to file an application for a distribution rate case by July 1, 2014.[39] However, DP&L chose not to file an application for a distribution rate case on July 1, 2014. Therefore, DP&L has foregone the collection of an additional $45.8 million in SSR-E revenues. This is further indication that DP&L's financial circumstances are not as grave as DP&L leads the PUCO to believe, and that the collection of the storm restoration costs in these cases should be rejected by the PUCO in light of DP&L's excessive ROEs during the years 2008 and 2011.

Given the extraordinary profits that DP&L earned for the better part of a decade, it would be unjust and unreasonable for the PUCO to authorize DP&L to collect any of the 2008 and 2011 storm restoration costs from its customers.

d. The 2008 and 2011 storm cost deferral decisions do not support DP&L's argument that the settlement benefits customers and is in the public interest.

The PUCO has ruled in multiple proceedings that the authorization to defer is not authorization to collect.[40] Specifically, the PUCO stated, "[t]he determination of the

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[38] See *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan,* Case No. 12-426-EL-SSO et al, Entry Nunc Pro Tunc at 2 (September 6, 2013) and Second Entry on Rehearing at 16 (March 19, 2014).

[39] See *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan,* Case No. 12-426-EL-SSO et al, Opinion and Order at 27 (September 4, 2013).

[40] See Duann Direct Testimony at 21-22 (January 31, 2014).

reasonableness of the deferred amounts and the recovery thereof, if any, will be examined and addressed in a future proceeding before the Commission. As the Supreme Court has previously held, *deferrals* do not constitute ratemaking. See *Elyria Foundary Co., v. Pub. Util. Comm*. (2007), 114 Ohio St.3d 305."[41] Consequently, DP&L still has the burden to demonstrate all the storm-related expenses in 2008 it seeks to collect from customers are reasonable and prudent, but failed to meet this burden.

DP&L sought authority to defer its 2008 major storm restoration costs on December 26, 2008.[42] DP&L then waited nearly four years until December 21, 2012 to seek recovery of the 2008 storm costs.[43] DP&L argues that there is no time limit for a utility to seek recovery of a deferral.[44] But it stands to reason that DP&L waited to seek recovery of the 2008 storm costs because the Utility's earnings during the 2008 through 2011 time period exceeded its authorized return.[45] Furthermore, it is certain that the delay has yielded DP&L an additional $4 million in carrying costs.[46]

DP&L's decision not to timely seek deferral of the costs associated with the 2011 storms is particularly peculiar because of the immediacy with which the Utility pursued the costs associated with 2008 and 2012 storms. The 2008 wind storms associated with Hurricane Ike struck Ohio on September 14, 2008. In response, DP&L filed an application "for approval of accounting authority to defer as a regulatory asset the portion

[41] Id. at 22.

[42] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify Its Accounting Procedure for Certain Storm-Related Service Restoration Costs,* Case No. 08-1332-EL-AAM, Application (December 26, 2008).

[43] Application (December 21, 2012).

[44] Tr. Vol. I. at 160 (Campbell) (June 3, 2014).

[45] OCC Ex. No. 24 (Direct Testimony of Daniel Duann, Ph.D.) at 13 (January 31, 2014); see also testimony corrections Tr. Vol. III at 492 (Duann) (June 5, 2014).

[46] Tr. Vol. III (Dona Seger-Lawson) at 425(June 6, 2014).

of its Operations and Maintenance expenses associated with restoring electric service" 103 days later on December 26, 2008.[47] Similarly, after the June 29, 2012 *derecho* that struck Ohio, DP&L filed an application for authorization to defer costs only 42 days later on August 10, 2012.[48] Even at that time, DP&L inexplicably chose not to include the costs of the 2011 storms with the 2012 Application. Instead, DP&L waited until late December 2012 to file the instant application.

It is also a mystery who participated in the decision to defer the 2011 storm costs in 2012. During this time period, DP&L witness Campbell served in the capacity as either the Director of Accounting Policy and Reporting or the Vice President and Controller.[49] Despite admitting that he was involved in the decisions determining when to defer the 2008 major storm restoration costs[50] and when to defer the 2012 major storm restoration costs;[51] however, Mr. Campbell testified that he was not involved in the decision on when to defer the 2011 major storm restoration costs.[52] Nor could Mr. Campbell identify who was a party to that decision-making process.[53] It seems inexplicable that an accounting decision on over $10,000,000 could have been made without the knowledge of such a senior member of DP&L's Accounting Department. It would not be in the best interests of the public to approve a Stipulation where the Utility

[47] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify Its Accounting Procedure for Certain Storm-Related Service Restoration Costs,* Case No. 08-1332-EL-AAM, Application (December 26, 2008.

[48] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedure for Certain Storm-Related Services Restoration Costs* Case No. 12-2281-EL-AAM, Application (August 10, 2012).

[49] Tr. Vol. I at 65 (Campbell) (June 3, 2014).

[50] Tr. Vol. I at 82-83 (Campbell) (June 3, 2014).

[51] Tr. Vol. I at 125 (Campbell) (June 3, 2014).

[52] Tr. Vol. II at 253 (Campbell) (June 3, 2014).

[53] Tr. Vol. I at 142 (Campbell) (June 3, 2014).

failed to establish how and why it delayed its request to defer the 2011 storm costs, which allowed over $4 million in carrying charges to accrue on the 2008 storm costs, when such delay was seemingly done to prevent drawing regulatory attention to the fact that the Utility's shareholders were earning astounding returns on their investment

For all these reasons, single-issue ratemaking does not benefit customers and is not in the public interest. Therefore, the PUCO should reject the Stipulation.

3. The settlement does not benefit customers and is not in the public interest because DP&L's 2008 and 2011 earnings were so much higher than its authorized return and the return of other Ohio electric utilities that it would be unjust and unreasonable to authorize DP&L to additionally collect 2008 and 2011 major storm restoration costs from customers.

The Stipulation resolves all three storm years for DP&L – 2008, 2011, and 2012 – for a total amount of $22.3 million.[54] But this Settlement is a "black box," and as such, it is impossible to determine how much of the $22.3 million settlement is attributable to any of the individual storm years.[55] However, Dr. Duann confirmed there it is mathematically impossible to collect the entire $22.3 million without at least having a portion of the O&M costs from each of the three years—2008, 2012, and 2011. Dr. Duann stated:

> DP&L requests to collect storm costs from its customers incurred in 3 years—2008, 2011, and 2012—in this proceeding. The proposed Stipulation is a "Black Box" settlement. This means that the Stipulating parties have reached agreement with regards to the dollar amount that DP&L will charge its customers for all three storm years (2008, 2011, and 2012).[56] Absent any quantification of the amount of storm costs for the individual years at issue, there is no way to determine how much of the $22.3 million was assessed and will be collected from customers for each individual

[54] Joint Ex. No. 1 (Stipulation) at 2 (May 1, 2014).

[55] Tr. Vol. I at 89 (Campbell) June 3, 2014).

[56] *See,* Paragraph II, 1 of Stipulation and Recommendation (May 1, 2014).

> year. Nonetheless, DP&L seeks just over $4.7 million dollars (plus carrying costs) for year 2012. Black Box or not—authorizing DP&L to collect $22.3 million, as contemplated in the proposed Stipulation, is authorizing DP&L to collect some unknown level of funding from customers for 2008 and 2011 storm-related costs.[57]

As discussed above, OCC witness Dr. Duann testified that DP&L's earnings in 2008 and 2011 were so high that DP&L should not be allowed to assess customers additional charges for costs incurred in those years. Moreover, it should be noted DP&L is and has been collecting storm-related costs (whether major-storms or non-major storms) through its base distribution rates. Dr. Duann stated with regards to the 2008 storm costs:

> Approving the proposed Stipulation would not benefit customers because, as shown in Table 1, DP&L's per-book ROE of 20.04% in 2008 was the highest among Ohio's seven major electric utilities. Even if the deferred storm-related costs were fully expensed (instead of deferred), DP&L's re-calculated earned ROE of 18.99% in 2008 was higher than its authorized ROE (12.06% - 13.19%) approved by the PUCO in DP&L's last rate case (Case No. 91-414-EL-AIR).[58] Additionally, DP&L's 18.99% ROE is considerably higher than the 11.30% ROE that was approved by the PUCO in DP&L's 2008 ESP.[59] Such a high ROE (18.99%) indicates that in 2008 DP&L's revenues from the rates it collected from its customers more than covered all the O&M costs it incurred (including all storm-related O&M expenses incurred in 2008) and at the same time the company earned an extremely high return on its invested capital (i.e., ROE). Because DP&L has more than fully recovered its total costs (which include all storm-related O&M expenses and a very high return on invested capital) of providing electric service in 2008, there is no financial need for DP&L to collect any deferred 2008 storm-related O&M expenses from its customers. To allow DP&L to charge for the 2008 storm

[57] OCC Ex. No. 23 (Testimony of Daniel Duann, Ph.D. in Opposition to the Stipulation) at 7-8 (May 23, 2014).

[58] PUCO Case No. 12-3062-EL-RDR, Comments Filed on Behalf of the Staff of the Public Utilities Commission of Ohio at 4 (June 17, 2013).

[59] *See,* DP&L Ex. No. 5 (Direct Testimony of Gregory S. Campbell) at 8 (Dec. 21, 2012).

> costs that were incurred when the Utility was earning a particularly high ROE would harm DP&L's customers.[60]

Such a high ROE for DP&L in 2008 demonstrates the fact that DP&L has already charge customers for **all** of the 2008 storm-related costs (including Ike and all major and non-major storms) through the rates DP&L charged its customers. DP&L has not demonstrated that there is any financial need to collect additional charges from its customers for the 2008 incremental storm-related costs. Thus it would be unjust and unreasonable to authorize DP&L to collect 2008 storm costs from customers.[61]

Similarly, DP&L should be precluded from collecting the 2011 storm costs from customers. There is simply no justification for DP&L to collect the 2011 incremental storm-related O&M expenses that were never authorized to be deferred. More importantly, the 2011 incremental storm-related expenses were already fully expensed. Despite this accounting treatment, DP&L had a 2011 net income of $193.2 million, a preferred dividend of $0.9 million, and average shareholder equity of $1,368.7 million, yielding a 14.05% return on equity.[62] As Dr. Duann testified:

> The settlement should be rejected because it authorizes DP&L to collect 2011 storm expenses from customers when it earned a ROE of 14.05% in 2011. As shown in Table 1, DP&L's 14.05% ROE was one of the highest among major Ohio electric utilities in 2011. It is also higher than the PUCO-approved ROEs for DP&L in prior rate cases (approving an ROE between 12.06% – 13.19%) and in the 2008 ESP (approving an ROE of 11.30%).[63]

[60] OCC Ex. No. 23 (Testimony of Daniel Duann, Ph.D. in Opposition to the Stipulation) at 14-15 (May 23, 2014).

[61] Tr. Vol. III (Duann) at 501 (June 5, 2014).

[62] OCC Ex. No. 23 (Testimony of Daniel Duann, Ph.D. in Opposition to the Stipulation) at 17 (May 23, 2014).

[63] Id. at 18.

It would be unjust and unreasonable to authorize DP&L to collect 2011 storm costs from customers when the Utility benefitted from such a high ROE in 2011.[64]

The PUCO Staff, in the Audit Report, took a position consistent with Dr. Duann – suggesting that DP&L be denied the ability to collect 2008 and 2011 major storm restoration costs from customers. The Staff stated:

> In its June 17, 2013 Comments, Staff recommended that the Company not be allowed to recover expenses for the repair of damage associated with Hurricane Ike because the Company had spent approximately $149.4 million less than the amount allowed in base rates from the year 2000 until 2011. **Additionally, the Company's rate of return has been substantially higher than that which was allowed in the last rate case in 1991.**
>
> * * *
>
> In its June 17, 2013 Comments, Staff recommended that deferral of 2011 storm repair expenditures is not appropriate because the storms occurred in 2011 and the Company is asking for deferral at the end of 2012 and, as mentioned above, **because the Company had been under-spending the allowed O&M and had high equity rates of return over most of the last several years**.[65]

DP&L has experienced such high earnings that even expensing the major storm restoration costs in 2008 and 2011 does not reduce the ROE below DP&L's authorized return. While DP&L's ESP Stipulation provided an exception to its distribution rate freeze for storm cost recovery, implicit in that exception according to Dr. Duann is that those costs are prudent and reasonable. On cross-examination from the bench, Dr. Duann explained that concept:

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[64] Tr. Vol. III (Duann) at 501 (June 5, 2014).

[65] Audit Report at 2 (January 3, 2014) (Emphasis added). See also Staff Comments at 6 ("That the 2008 deferred expenses for Hurricane Ike and other major storms previously deferred are not appropriate for recovery because the Company underspent by approximately $150 million in O&M expenses **and the Company's return on equity has averaged 19.65% since 1999**.") (Emphasis added).

> Q. Okay. And the "and reasonable" was the part I was going to get to. Did you apply your earnings test to whether or not the recovery is reasonable? Can you explain for the Bench why you think that's implicit in this language too?
>
> A. Because I think when -- it is my understanding as a regulatory economist and has been involved in public utility regulation for over 20 years, I think it is -- I believe it is in the public interest and it is in the -- a fundamental principle of utility regulation that the utility can only recover prudent and reasonable costs, yeah.[66]

Therefore, it would be unjust and unreasonable to charge DP&L's customers for 2008 and 2011 major storm restoration costs in light of the sustained level of significant earnings during the periods DP&L experienced major storm activity.

Because DP&L's earnings since have consistently exceeded the Utility's authorized returns, allowing DP&L to collect major storm restoration costs from 2008 and 2011does not benefit customers and is not in the public interest. Therefore, the PUCO should reject the Stipulation.

4. The settlement does not benefit customers and is not in the public interest because certain adjustments (reductions) made by the PUCO Staff in the Audit Report (and recommended by OCC) are being charged to customers.

a. A $5,383,952 adjustment (reduction) for the three-year average for major storm restoration costs is a necessary adjustment to prevent double recovery of storm costs from customers.

The PUCO issued two Findings and Orders authorizing DP&L to defer 2008 and 2012 major storm costs. In both those entries, the PUCO instructed DP&L to reduce its

[66] Tr. Vol. III (Duann) at 537 (June 5, 2014).

deferral request by a three-year average of major storm repair expenses.[67] The Audit Report complied with the PUCO's Entries and carried forward the adjustment for the three-year average of major storm restoration expenses. The PUCO Audit Report stated the following reason in support of the three-year average adjustment:

> Staff believes that base rates have minor storm repair expenditures and some element of major storm expenditures included in them. Per the Commission's Entry on Rehearing in Case No. 12-2281-EL-AAM, the Commission stated, "The Commission finds that it would be inconsistent with Commission precedent to allow DP&L to defer the full amount, and that deferral of the full amount may result in double recovery of O&M expenses."[68] Therefore, a three-year average of major storm repair expenses should be deducted from the total. Staff has recalculated the three-year averages for each year of the storms expenses requested in this case to account for the other adjustments recommended for each year above.[69]

The stated rationale for PUCO Staff's three-year average adjustment is to recognize that a certain level of major storm restoration costs is in DP&L's base distribution rates, and absent this adjustment, DP&L may experience double recovery – once through base rates and once again through a storm rider mechanism.

OCC witness Anthony Yankel agreed with the PUCO Staff's three-year average adjustment. Mr. Yankel stated in his testimony in opposition to the Stipulation:

> ***Q22. WHY IS [THE TREATMENT OF THE THREE-YEAR AVERAGE IN THE SETTLEMENT] OF CONCERN?***
>
> ***A22.*** First of all, it is a PUCO decision and requirement upon which the Utility must comply. Second, it is the rationale for the PUCO to require the reduction in restoration costs by the three-

[67] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify Its Accounting Procedure for Certain Storm-Related Service Restoration Costs,* Case No. 08-1332-EL-AAM, Finding and Order at 1(January 14, 2009). See also DP&L 2008 Storm Cost Deferral Application at 1 (December 26, 2008). See also *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify Its Accounting Procedure for Certain Storm-Related Service Restoration Costs,* Case No. 12-2281-EL-AAM, Finding and Order at 3(December 19, 2012).

[68] Case No. 12-2281-EL-AAM, Entry on Rehearing at 4 (February 13, 2013).

[69] Audit Report at 5 (January 3, 2014).

> year average that is important. As the PUCO stated in its decision, if the restoration costs are not reduced by the three-year average, then the Utility could be double-recovering such costs from its customers. Without addressing the appropriate three-year average, DP&L's customers could be charged twice for storm restoration costs.[70]

The three-year average adjustment is an important adjustment to DP&L's deferral request. As argued above, the contents of DP&L's base distribution rates cannot be determined because DP&L's last rate case was 1991. Furthermore, those 1991 rates were then revised as part of a 1999 unbundling of generation, transmission, and distribution rates further complicating the understanding of what is included in DP&L's distribution rates.

Furthermore, the PUCO has rejected DP&L's argument that its current distribution rates do not include major storm costs. Specifically, the PUCO held "that allowing DP&L to recover the full amount could allow for DP&L to engage in double-recovery for the O&M expense, first from base distribution rates and second from this proceeding."[71] Therefore, based on the doctrine of collateral estoppel, DP&L is precluded from re-litigating this issue. The doctrine of collateral estoppel states:

> Collateral estoppel may be applied in a civil action to bar the relitigation of issues already determined by an administrative agency and left unchallenged if the administrative proceeding was judicial in nature and if the parties had an adequate opportunity to litigate their versions of the disputed facts and seek review of any adverse findings.[72]

[70] OCC. Ex. No. 16, (Testimony of Anthony Yankel in Opposition to the Stipulation) at 16 (May 23, 2014).

[71] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify Its Accounting Procedure for Certain Storm-Related Service Restoration Costs*, Case No. 12-2881-EL-AAM, Entry on Rehearing at ¶7 (Feb. 13, 2013).

[72] *Tedesco v. Glenbeigh Hospital of Cleveland* (1989), 1989 Ohio App. LEXIS 899, 903.

The doctrine of collateral estoppel applies to administrative decisions as well as to judicial decisions.[73] Accordingly, the PUCO should not revisit DP&L's arguments that its current rates lack recovery for major storm damage.

Absent the three-year adjustment—as the PUCO has recognized—DP&L's customers could pay twice for the same costs (once in base rates and once through the storm cost recovery mechanism). Therefore, it would be unjust and unreasonable for DP&L to experience double recovery at the expense of its customers. However, the Stipulation is a black box, which makes the understanding of the contents of the $22.3 million settlement amount (and the treatment of the three-year average) impossible to determine. There is no evidence that a $5,383,952—or any adjustment—was made for the three-year average as mandated by the PUCO for major storm costs. For this reason the Stipulation should be rejected.

b. The PUCO specifically denied DP&L authority to defer $3,574,934 in 2008 non-Ike storm restoration costs which should not be collected from customers.

The PUCO Staff made an adjustment in the Audit Report to exclude DP&L's 2008 non-Ike storm restoration costs. The adjustment was consistent with the PUCO's Finding and Order authorizing DP&L's deferral of 2008 storm costs. The PUCO Staff stated in the Audit Report:

> The Company's application includes, along with Hurricane Ike repair costs, repair costs associated with non-major storms in 2008. The Application to defer 2008 costs (Case No. 08-1332-EL-AAM) includes "other" storms; however, per the Commission's Finding and Order, only Hurricane Ike expenses were approved for deferral:

[73] See, e.g., *Consumers' Counsel v. Pub. Util. Comm*. (1985), 16 Ohio St.3d 9. The Ohio Supreme Court recently supported the general application of collateral estoppel to Commission proceedings. *Migden-Ostrander v. Public Util. Comm.* (2004), 102 Ohio St.3d 451, 2004-Ohio-3924, ¶25.

"**The Commission finds that the application seeking authority to modify the Company's accounting procedures to defer incremental O&M expenses associated with the September 14, 2008, wind storm, with carrying costs, is reasonable and should be approved.**"[74]

The PUCO specifically limited DP&L's 2008 storm costs deferral request to the costs associated with restoration efforts following the Hurricane Ike event.[75] Therefore, it would be unjust and unreasonable for DP&L to recover such non-Ike restoration costs from its customers. However, the Stipulation is a black box, and that makes the understanding of the contents of the $22.3 million settlement amount (and the treatment of the 2008 non-Ike 2008 storm restoration costs) impossible to determine.

c. The removal of union straight time costs of $820,679 is a necessary adjustment to prevent double recovery of those costs from customers.

The PUCO Staff Audit Report identified certain costs that customers already pay because they are included in base rates. These costs should not be collected again from customers now through a storm rider. If these costs are included in the Settlement, it will result in an unlawful double recovery. The Audit Report states:

> The Company's employees who work on storm repairs are instructed to record all of their time to the proper project code for the storm for which they are performing repairs. Due to union contracts, the majority of Company labor for storm repairs is paid at minimum time and a half rates. However, in any given week, the first 40 hours of each employee's straight time labor is already being paid for by customers in the Company's base rates. Therefore, Staff recommends a total adjustment of $820,679 to exclude the amount already recovered in base rates. The overtime portion of the employees' hourly rates and the pay for the extra

[74] Audit Report at 6 (January 3, 2014) (emphasis added).

[75] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify Its Accounting Procedure for Certain Storm-Related Service Restoration Costs*, Case No. 08-1332-EL-AAM, Finding and Order at 2 (January 14, 2009).

> hours are truly incremental labor for which Staff is not making an adjustment.[76]

Absent the union straight-time labor adjustment from the amount that DP&L is authorized to collected for storm restoration efforts, DP&L's customers will be paying twice for the same costs (once in base rates and once through the storm cost recovery mechanism). Therefore, it would be unjust and unreasonable for DP&L to experience double recovery of such costs from its customers. However, the Stipulation is a black box, and that makes the understanding of the contents of the $22.3 million settlement amount (and the treatment of the union straight-time labor adjustment) impossible to determine.

d. The PUCO Staff made an adjustment for management labor costs which are either straight time costs ($337,137) that are imbedded in base rates or costs that represent over-time incentive payments to management employees ($494,124), neither of which should be collected from customers.

The PUCO Staff made an adjustment for management labor. According to DP&L witness Nickel, the adjustment is comprised of two components. The first component is straight-time management labor cost ($337,137), and the second component is overtime paid to management employees as part of the DP&L Storm Incentive Program ($494,124).[77] The PUCO Staff stated in the Audit Report:

> Management's regular work hours are built into base rates. To include them in the total cost of the rider would mean that customers would be paying twice for the same labor. Therefore, it is inappropriate to include management's regular labor in the rider. Regarding management overtime, management employees are typically paid a salary for performing a job and are generally not compensated for working a specific number of hours a week.

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[76] Audit Report at 6 (January 3, 2014).

[77] DP&L Ex. No. 2, Supplemental Testimony of Bryce Nickel at 5 (January 17, 2014).

> Recovery should not include management labor paid in excess of 40 hours. While Staff understands that during a storm restoration period, as the need arises, some exempt employees are asked to work more than 40 hours per week, but Staff believes that customers should not have to pay for this management overtime. Therefore, Staff recommends a total adjustment of $831,361 for management labor.[78]

Absent the straight-time management labor adjustment, DP&L's customers could pay twice for the same costs (once in base rates and once through the storm cost recovery mechanism). Therefore, it would be unjust and unreasonable for DP&L to experience double recovery of such costs from its customers, which would certainly not be for the public benefit.

The PUCO Staff Audit Report opposes the collection of management over-time costs from customers. The DP&L Storm Incentive Program is intended to improve storm restoration efficiency.[79] Storm restoration efficiency is an important consideration for both customers and for DP&L's management and shareholders. As DP&L witness Nickel admitted while a customer is experiencing an outage, the meter is not spinning and DP&L's revenues are impacted. Witness Nickel stated:

> Q. But you agree there is a financial hit to the Company when their revenues are down, and getting service back up is beneficial to the Company.
>
> A. Sure. Absolutely. When the meters aren't spinning, we aren't selling any power.[80]

Nevertheless, DP&L proposes that all charges associated with the storm team incentive compensation program be charged to customers.[81] Given that the Utility also benefits by

[78] Audit Report at 5-6 (January 3, 2014).

[79] Tr. Vol. I at 29-30 (Nickel) (June 3, 2014).

[80] Tr. Vol. I at 32 (Nickel) (June 3, 2014).

[81] Tr. Vol. I at 31 (Nickel) (June 3, 2014).

getting customers back in service sooner, it is unreasonable to expect consumers to pay management over-time to improve storm restoration efficiency for which DP&L and its shareholders receive a financial benefit.

However, because the Stipulation is a black box, it makes the analysis and quantification of the contents of the $22.3 million settlement amount (and the treatment of the management labor adjustment) impossible to determine.

e. The PUCO Staff's Audit found other miscellaneous adjustments ($151,252) that should not be collected from customers.

The PUCO Staff recommended the following adjustments as part of its Audit Report:

> **Out-of-Period Labor Charges**
>
> In 2008 and 2012, some labor was charged to storm projects for work done months after the storms occurred for which the projects were charged. Staff believes that these charges should have been charged to regular O&M and recommends an adjustment of $84,926.
>
> **Specific Invoice Deductions**
>
> Staff recommends the following adjustments for specific invoice charges. Some are for work that was done either before or well after the arrival of the storm as referenced in the invoices, prompting Staff to believe that they should have been charged to normal (non-storm) O&M.
>
> **<u>CWG LLC</u>: An invoice shows work being done on in December 2008 for a September storm. As a result, Staff recommends an adjustment of $10,003.**
>
> (Per DP&L witness the Utility is not contesting this adjustment.)[82]
>
> <u>Asplundh</u>: On invoice number 402502, the rates charged do not match the contract. Staff calculated the difference and recommends an adjustment of $16,602.

[82] Tr. Vol. I at 25 (Nickel) (June 3, 2014).

(Per DP&L witness, these costs were incurred from a crew released from a mutual assistance contract crew.[83] However, DP&L has a contract with this Company (Asplundh) for a lower rate and the work done in DP&L service territory should have been done under DP&L's contract rates).

Serco: An invoice shows a 13% markup for food, hotels, and other expenses; however, the contract calls for a 12% markup. Therefore, Staff recommends an adjustment of $128 to account for the 1% difference. Another invoice showed charges for generator maintenance that would have been incurred absent any storms or should have been incorporated into its rates charged to the Company and Staff recommends an adjustment of $4,855.

(DP&L witness did not address this adjustment in Supplemental Testimony.)[84]

Nesco: Two invoices were for work done the week of 11/14/08, which was two months after Hurricane Ike occurred. Therefore, the total of two invoices, $1,280, should be adjusted.

(Per DP&L witness the extent of damage from Ike necessitated an inspection, two months after the storm, of 171 circuits.[85] The Utility made no identification of the type of wind-related damage that the inspection discovered, if any. Therefore, the PUCO Staff's adjustment was appropriate.)

Twenty First Century Communications: Invoices for June 2011and August 2011 include a monthly fee for the company's services. Staff believes these charges would have been incurred absent any storm and believes they are not incremental, resulting in a recommended adjustment of $12,716.

(Per DP&L witness, these costs were never included in DP&L's storm cost deferral request.[86] However, it is unclear how the invoice turned up in Staff's audit if the costs weren't included in the deferral request.)

IJUS, LLC: An invoice for work done in September 2012 says it was related to the June derecho. Staff believes that this should have been charged to regular O&M and recommends an adjustment of $4,301.

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[83] DP&L Ex. No.2 (Supplemental Testimony of Bryce Nickel) at 7 (January 17, 2014).

[84] DP&L Ex. No.2 (Supplemental Testimony of Bryce Nickel) at 6-8 (January 17, 2014).

[85] DP&L Ex. No.2 (Supplemental Testimony of Bryce Nickel) at 7 (January 17, 2014).

[86] Id.

(Per DP&L witness the derecho necessitated an inspection, months after the storm to determine if attached facilities have been removed from an old pole.[87] The Utility made no disclosure of what the inspection discovered, if any. Therefore, the PUCO Staff's adjustment was appropriate.)

Henkels & McCoy: The contract calls for employees to be paid overtime rates at time and a half; however, the Company paid double-time rates for many hours, resulting in a recommended adjustment of $16,441.

(Per DP&L witness the Utility is not contesting this adjustment.)[88]

The out-of-period and specific invoice adjustments made by the PUCO Staff in the Audit Report identified costs that were not prudently incurred and should not be charged to DP&L's customers. Consequently, miscellaneous adjustments that should not be collected from customers total $151,252.

f. OCC's mutual assistance adjustment recommended by witness Yankel should be made to prevent DP&L from an opportunity to experience double recovery of certain costs from customers.

DP&L participates in the Great Lakes Mutual Assistance ("GLMA") program and the Southeaster Electric Exchange ("SEE") mutual assistance program. The point of these programs is to provide additional resources following a major event that requires significant customer restoration efforts. Likewise if another utility within these organizations needs assistance and DP&L has the available resources, it offers crews to assist with service restoration in other service territories. For example, following the Hurricane Ike event, DP&L contacted GLMA group for additional resources.[89] Similarly, after the 2011 ice storm, DP&L mutual assistance crews from GLMA and SEE.[90] These

[87] DP&L Ex. No.2 (Supplemental Testimony of Bryce Nickel) at 7 (January 17, 2014).

[88] Tr. Vol. I at 27 (Nickel) (June 3, 2014).

[89] DP&L Ex. No. 1 (Direct Testimony of Bryce Nickel) at 6 (December 21, 2012).

[90] Id.

utilities that provide mutual assistance to DP&L will invoice the Utility for the costs of the assistance provided under the mutual assistance agreements. DP&L proposes to pass those costs on to customers in this case.

Alternatively, if a member-utility of a mutual assistance group needs restoration assistance, DP&L may be called upon. In fact, during 2011 and 2012, DP&L provided mutual assistance on six different occasions. Those occasions and DP&L's costs of providing assistance were invoiced as follows:

PPL (Pennsylvania)	Oct. 2011	Storm	$174,748.59
Met-Ed (Pennsylvania)	Nov. 2011	Storm	$165,493.95
Indianapolis P&L	Aug. 2012	Storm	$55,123.78
PSE&G New Jersey	Nov. 2012	Hurricane Sandy	$168,121.84
CEI	Nov. 2012	Hurricane Sandy	$424,506.97
Jersey Central P&L	Nov. 2012	Hurricane Sandy	$484,188.19.[91]

To prevent a double recovery for DP&L, OCC witness Yankel proposes an adjustment for mutual assistance costs billed by DP&L in 2011 and 2012 to other utilities that are also included in DP&L's base rates. Based on the supporting documentation for the invoiced amounts, Mr. Yankel recommended an adjustment to DP&L's collection of major storm restoration costs to prevent the double collection of costs from mutual assistance invoices, and costs that are also included in the DP&L base rates. Mr. Yankel included in his testimony the following questions and answers:

> ***Q22. DOES DP&L INCUR ADDITIONAL COSTS WHEN IT ASSISTS OTHER UTILITIES WITH STORM RESTORATION?***
> ***A22.*** Yes. DP&L does incur some incremental costs (not included in base rates) when it sends personnel and equipment to other utilities to help with storm restoration.[92] But while all of DP&L's charges to another utility for storm restoration are incremental to the requesting utility, only a portion of what is

[91] OCC Ex. No. 2.

[92] *See*, OCC Ex. No. 2; See also Tr. Vol. I at 51 (Nickel) (June 3, 2014).

invoiced and collected by DP&L is truly incremental to the DP&L. It is this non-incremental amount that DP&L charges other utilities that is recovered by DP&L through its base rates, and should be credited back to the customers in this case.

Q23. WHAT COSTS ARE NON-INCREMENTAL TO DP&L AND SHOULD BE CREDITED BACK TO THE CUSTOMERS IN THIS PROCEEDING?

A23. In its invoices to other utilities, DP&L charges for both union and management personnel.[93] For purposes of this case, it is reasonable to conclude that 100% of the management costs and 25% of the union costs was included in base rates. The assumption of 100% of management time is based upon the fact that management time is all salaried and thus fully incorporated in base rates. The assumption of 25% of union time is based upon the assumption that the first 40 hours on union time are included in base rates, but while working on storm restoration these individuals would be working 16 hours per day and 7 days a week for a total of 112 hours per week. Of this amount, 40 hours are at regular time and the other 72 hours (112-40) are at time and a half. Under these assumptions, the relative pay associated with union straight-time would be 27% of the pay.

In its invoices to other utilities, DP&L charges for transportation costs.[94] The entire cost category of transportation should be credited back to the customers. The cost of these vehicles and the cost of operation are paid for in base rates. If the vehicles were not being used to help some other utility, they would have been used on the DP&L system. Whether on its own system or supporting another utility, these vehicle costs are paid for by DP&L customers through base rates.

The next category of costs on these invoices to other utilities is called “travel expenses, meals, fuel, Misc.”[95] Meals and hotel costs would not be included in base rates. Fuel costs would be included in base rates, but there would be extra fuel costs associated with getting to the requesting utility. For simplicity, I have not included these costs (including any extra fuel) as an amount that should be credited back to the customers.

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[93] *See*, OCC Ex. No. 2.

[94] Id.

[95] Id.

The next category of costs on these invoices to other utilities is for "A&G Overheads."[96] The relationship between "A&G Overhead" and the combined cost of "Labor, Transportation, and Travel Expenses" appears to be relatively consistent within a given year. I propose that the relative percentage of A&G Overhead cost applied to the total costs of "Labor, Transportation, and Travel Expenses" be applied to the "Labor, Transportation and Travel Expenses" that are to be credited back to the customers in this case. For example, if the ratio of total "A&G Overhead" dollars to total "Labor, Transportation, and Travel Expenses" dollars is 10%, then this 10% ratio should be applied to the amount of "Labor, Transportation, and Travel Expenses" that is to be credited back to the customers.

The next category of costs on these invoices to other utilities is for "Employee Bonus."[97] The relationship between "Employee Bonus" and the cost of "Labor" appears to be relatively consistent within a given year. As with the "A&G Overhead" expenses, I propose that the relative percentages of total "Employee Bonus" cost to the total cost of "Labor" be used as the percentage to be applied to the "Labor" expenses that are to be credited back to the customers in this case in order to calculate the portion of "Employee Bonus" cost that should be credited back to the customers.

The next category of costs on these invoices to other utilities is for "Payroll Overhead."[98] The relationship between Payroll Overhead and the cost of "Labor" appears to be relatively consistent within a given year. As with the Employee Bonus expenses, I propose that the relative percentages of total "Payroll Overhead" cost to the total cost of "Labor" be used as the percentage to be applied to the "Labor" expenses that are to be credited back to the customers in this case in order to calculate the portion of "Payroll Overhead" cost that should be credited back to the customers.

The last category of costs on these invoices to other utilities is for "Supervision and Engineering" ("S&E").[99] The relationship between "S&E" and all other costs appears to be relatively consistent within a given year. As with the other expense categories, I propose that the relative percentages of total "S&E"

[96] Id.

[97] Id.

[98] Id.

[99] Id.

> cost to the total of all other costs be used as the percentage to be applied to the "S&E" expenses that are to be credited back to the customers in this case in order to calculate the portion of "S&E" cost that should be credited back to the customers.[100]

Based on Mr. Yankel's analysis, the recommended adjustment to 2011 major storm expenses should be a reduction of $138,280 and the adjustment to 2012 major storm expenses should be a reduction of $475,819.[101] These adjustments will prevent the collection of unjust and unreasonable major storm restoration charges from customers by preventing DP&L from collecting these costs twice – once from the utility that received the mutual assistance aid and once again from DP&L's customers in base rates. To allow such double-recovery would not be in the public interest.

C. The Stipulation Violates Ohio Law And The Regulatory Principle Established In Ohio Law That DP&L Can Collect Only Just And Reasonable, As Well As, Prudent Major Storm Costs From Customers.

The PUCO should reject the Stipulation providing for DP&L to collect $22.3 million from customers for storm costs because it violates Ohio law and important regulatory principles and practices. R.C. 4905.22 requires the PUCO to ensure that utility service in Ohio is adequate and that all charges for utility service are just and reasonable:

> Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in

[100] OCC Ex. No. 15A (Direct Testimony of Anthony Yankel) at 17-20 (January 31, 2014).

[101] Id. at 21.

> connection with, any service, or in excess of that allowed by law or by order of the commission.

Because the Stipulation is a "black box" it is impossible to determine what costs are included in the $22.3 million settlement figure. The Signatory Parties, therefore, cannot meet their burden of proof to establish that the $22.3 Settlement is just and reasonable and in accordance with prior PUCO orders. As such, the Stipulation violates important regulatory principles and practices and must be rejected.

1. The Utility's delay in requesting deferral authority violates regulatory practice and principles to the detriment of DP&L's customers.

In a 2003 Ohio American Water Company ("OAW") rate case, the Staff of the PUCO recognized the importance of timeliness for deferral requests when OAW sought deferral authority for post 9/11 security costs two years after the costs were incurred. The Staff Report criticized the utility for a lack of timeliness:

> The Staff and parties to the last base rate case (01-626-WW-AIR) accepted the Applicant's estimated security costs of $50,000 as an on-going level of expenditures. If the Applicant believed that the **level of security costs included in the last case were insufficient, were of material nature, and resulted in financial harm to the Applicant, the prudent action would have been for the Applicant to timely file with the Commission a request for cost deferral.** The Applicant has taken no such action for over two years and now has filed a request for retroactive authority to defer incremental security costs that the Applicant has accumulated since January 1, 2002.[102]

While OAW's rate case was settled (and OCC does not cite to the resulting decision there), the PUCO Staff's pre-settlement consideration of regulatory policy--that deferral requests should be done in a timely manner--is applicable in this case.

[102] *In the Matter of the Application of Ohio-American Water Company To Increase its Rates for Water and Sewer Service Provided to its Entire Service Area*, Case Nos. 03-2390-WS-AIR, et al., Staff Report at 20 (September 30, 2004) (Emphasis added.)

Furthermore, OCC witness Effron discussed a FirstEnergy case in which the timing of a deferral request was relevant to a PUCO decision not to authorize the deferral of certain costs requested. In Case No. 04-1931-EL-AAM, the FirstEnergy companies filed an application on December 30, 2004, seeking authority to defer incremental transmission and ancillary service-related charges related to membership in the Midwest Independent Transmission System Operator, Inc. The relevant costs had commenced in October 2003 and were expected to continue until January 1, 2006. The PUCO determined that:

> For those charges incurred prior to the filing of the application, the [PUCO] notes that FirstEnergy has been aware that it was incurring these charges since it joined MISO on October 1, 2003; however, FirstEnergy did not file its application to defer these charges until December 30, 2004. Therefore, FirstEnergy will not be granted authority to defer charges incurred prior to the filing of the application. FirstEnergy will be permitted to defer only those charges incurred on a going-forward basis after the filing of the application and ending January 1, 2006.[103]

DP&L claims that there were a number of storms that struck its service territory in 2011, the first of which took place on February 1, 2011, and the last on September 3, 2011.[104] DP&L had knowledge (not prior to the major storm events) but within weeks[105] that these various events were major storms. Rather than acting in a timely manner to seek the requisite PUCO authority to modify their accounting procedures as they have historically done,[106] however, DP&L waited nearly 15 months (at worst, 22 months) to seek

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[103] OCC Ex. No. 20, (David Effron Testimony in opposition to the Stipulation) at 6 (May 27, 2014) citing *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Modify Their Accounting Procedures*, Case No. 04-1931-EL-AAM, Finding and Order at 6 (May 18, 2005).

[104] DP&L Ex. No. 1 (Direct Testimony of Bryce Nickel) at 3 (December 21, 2012).

[105] Tr. Vol. I at 15 (Nickel) (June 3, 2014).

[106] Tr. Vol. II at 200 (Campbell) (June 4, 2014).

permission to defer the costs associated with those storms.[107] Despite having an opportunity to review its 2011 accounting records, and time to prepare and reflect upon its 2011 financial statements/financial performance, DP&L inexplicably waited almost another calendar year before filing its application seeking authority to defer the 2011 storm costs. Like the OAW case, DP&L has not timely filed a deferral request; therefore, the PUCO should reject the Stipulation that includes an implicit approval of DP&L's retroactive deferral request in this case.

2. Because of the lack of specificity surrounding the calculation of the $22.3 million that DP&L now seeks to charge its customers, the signatory parties cannot meet their burden of proof necessary to show that the settlement does not violate PUCO Orders or regulatory practice or principles.

a. Because of the lack of specificity surrounding the calculation of $22.3 million that DP&L now seeks to charge its customers, it is impossible to conclude that the settlement excludes all storm costs that do not exceed the three-year average of storm operation and maintenance costs for each storm year as required by the PUCO.

The Stipulation violates regulatory principles (including PUCO Orders) because the Signatory Parties failed to establish that the three-year average of storm O&M costs are not included in the $22.3 million. OCC witness Yankel identified adjustments to DP&L's Application that must be made in order to comply with certain PUCO orders. Anthony Yankel stated:

> In the PUCO's Order authorizing DP&L to defer its restoration costs associated with Hurricane Ike, the PUCO specifically ordered DP&L to defer such restoration costs less the three-year average cost of major storms (i.e., the three-year average). When DP&L deferred its 2008 restoration costs it reduced these costs by $2.3 million, which represented the average of major storm restoration

[107] OCC Ex. No. 16 (Anthony Yankel Testimony in Opposition to the Stipulation) at 14-15 (May 23, 2014).

> costs from 2005, 2006 and 2007. However, this adjustment has been challenged by both the PUCO Staff and OCC, based upon the Utility's own documents.[108]

Mr. Yankel determined that in order to ensure that these costs are not in the Stipulation, $554,503 of additional three-year average storm costs for 2008 must be removed from the original $29,695,078 request. But the "black box" nature of the Stipulation and Recommendation prevents any possibility of determining whether there is compliance with that specific PUCO directive. In fact, DP&L witness Dona Seger-Lawson consistently testified that:

> The stipulation, as you know, is a black-box settlement. So, therefore, it's not clear as to what it includes or does not include, and probably parties that signed the stipulation got to the number different ways. So it's unclear as to what's included in the [$]22.3 [million].[109]

Thus, the Signatory Parties failed to meet their burden of proof of establishing that this PUCO-ordered adjustment has been made. Therefore, the Settlement violates an important regulatory principle and practice (utilities must comply with PUCO orders), and the Stipulation should be rejected.

b. Because of the lack of specificity surrounding the calculation of $22.3 million that DP&L now seeks to charge its customers, it is impossible to conclude that the settlement excludes the 2008 non-Ike major storm restoration costs that DP&L was denied authority to defer for possible later collection from customers.

The Stipulation violates regulatory principles because the Signatory Parties failed to establish that the $22.3 million excludes O&M costs associated with the non-major storms of 2008. As set forth by OCC witness, Anthony Yankel:

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[108] Id. at 15 citing Case No. 12-2281-EL-AAM DP&L's 6th Supplemental response to OCC int. 2(e).

[109] Tr. Vol. III at 447 (Seger-Lawson) (June 5, 2014).

> When DP&L sought authority to defer major storm restoration costs in 2008, DP&L specifically sought authority to defer costs associated with Hurricane Ike, as well as numerous other smaller storms.[110] **However, when the PUCO issued its Order, DP&L was only granted authority to defer restoration costs associated with Hurricane Ike.**[111] DP&L did not seek rehearing on this issue, but deferred restoration costs associated with the smaller storms anyway. DP&L's actions in this regard are contrary to the PUCO's Order. The Settlement, however, makes it impossible to determine if the smaller storm restoration costs have been removed. It would be unjust and unreasonable for the PUCO to approve the proposed Stipulation to the extent the $22.3 million includes any restoration costs for these smaller storms that the PUCO specifically disallowed.[112]

Mr. Yankel concluded that in order to ensure that these costs are not in the Stipulation, $3,574,934 of 2008 small-storm costs must be removed from the original $29,695,078 request.[113]

DP&L deferred both Ike and non-Ike 2008 storm restoration costs less a three year average.[114] However, DP&L attempts to obfuscate the issue by revising its request for non-Ike storms. In its Application, DP&L asked for storm restoration costs for eight storms ($3.6 million).[115] The Utility, in Mr. Nickel's supplemental testimony, retroactively applied the 2.5 beta methodology for making a determination of major storms and reduced the non –Ike major storms in 2008 to three storms.[116] Likewise, that

[110] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedure for Certain Storm-Related Services Restoration Costs*, Case No. 08-1332-EL-AAM, Application at paragraph 3 (December 26, 2008).

[111] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedure for Certain Storm-Related Services Restoration Costs*, Case No. 08-1332-EL-AAM, Finding and Order at paragraph 4 (January 14, 2009). (Emphasis added).

[112] OCC Ex. No. 16 (Testimony of Anthony Yankel In Opposition to the Stipulation) at 14-15 (May 23, 2014).

[113] Id. at 15.

[114] Tr. Vol. I at 105 (Campbell) (June 3, 2014).

[115] Tr. Vol. I at 25 (Nickel) (June 3, 2014).

[116] Tr. Vol. I at 25 (Nickel) (June 3, 2014).

reduced the restoration costs that DP&L sought in its Application from $3.6 million to $2.3 million.[117] However, DP&L's analysis does not change the fact that DP&L was only authorized to defer the restoration costs associated with the outages resulting from Hurricane Ike specifically. DP&L received no authority to defer costs associated with any other storms in 2008. Therefore, the probability of future recovery should have precluded DP&L from deferring any 2008 storm restoration costs other than Ike-related storm restoration costs.

Because of the black box nature of the Stipulation, however, the PUCO is prevented from any possibility of determining whether there is compliance with its Order in Case no. 08-1332-EL-AAM. Even the Company witnesses conceded this point. Dona Seger-Lawson testified that "it's unclear as to what's included in the 22.3."[118] And Gregory Campbell testified that "[i]f the Company receives approval from the Commission to collect the $22.3 million . . . some would be related to the 2008 storms."[119] Thus, the Signatory Parties failed to meet their burden of proof of establishing that this adjustment has been made. Therefore, the Settlement violates an important regulatory principle and practice (utilities must comply with PUCO orders), and the Stipulation should be rejected.

[117] Tr. Vol. I at 25 (Nickel) (June 3, 2014).

[118] Tr. Vol. III at 447 (Seger-Lawson) (June 5, 2014); see also, Tr. Vol. III at 483 (Seger-Lawson) (stating "I can't tell you what was included in the 22.3").

[119] Tr. Vol. II at 192 (Campbell) (June 4. 2014).

c. Because of the lack of specificity surrounding the calculation of $22.3 million that DP&L now seeks to charge its customers, it is impossible to determine how the settlement treated the 2011 major storm restoration costs that DP&L has not received authority to defer for possible later collection from customers.

The Stipulation violates important regulatory principles because it allows DP&L to collect certain 2011 storm costs despite the Utility's failure to timely seek PUCO authority to defer those costs. OCC witness David Effron stated:

> DP&L sought to collect, through the Storm Cost Recovery Rider, O&M expenses that were incurred as a result of the following five storms in 2011:
>
> | Date | O&M Expense |
> |---|---|
> | 1/31/2011 | $ 6,383,876 |
> | 5/22/2011 | 1,147,344 |
> | 5/11/2011 | 1,941,825 |
> | 7/24/2011 | 283,667 |
> | 9/3/2011 | 278,585 |
> | Total | $ 10,035,297 [120] |

However, as part of its Application in the present case, which was filed in December 2012, DP&L for the first time sought accounting authority to defer these expenses (and also to recover them prospectively through its proposed Storm Cost Recovery Rider).[121]

DP&L did not seek deferral authority in 2011, but rather in December 2012, the Utility recorded a journal entry to retroactively defer, and record as a regulatory asset, $4,359,108 of 2011 storm expenses. Thus, it was not until December 2012 that DP&L deemed that amount of the 2011 expenses to be probable of inclusion in future revenues.

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[120] OCC Ex. No. 20 (Testimony of David Effron In Opposition to the Stipulation) at 4 (May 27, 2014).

[121] Id.

The effect of recognizing the deferral in 2012 was to reduce reported expenses on the 2012 financial statements and to increase reported income accordingly.[122]

The Utility has not cited any events or new information discovered in 2012 that would have implied that $4.4 million of O&M expenses associated with 2011 major storm restoration costs were more probable for recovery as of December 2012 than they were in 2011. As Mr. Effron stated:

> December 2012 was approximately 23 months after the bulk of the 2011 storm expenses were incurred and 15 months after the last of the 2011 storm expenses were incurred. Logically, the passage of time without any authority to defer expenses would make the probability of future recovery less probable, not more probable. For example, if DP&L applied in 2012 to defer expenses that were incurred in 2002 or 2003, I think that any forthcoming authorization to defer such expenses for future recovery would have to be a considered a long shot, at best.
>
> Applying for authority in December 2012 to defer expenses from 2011 does not substantively make such expenses more probable of future recovery. There was no action by regulators in December 2012, or immediately thereafter, that made any 2011 storm expenses probable of future recovery whereas they had previously not been. DP&L has not identified any criteria or reasons for recognizing this $4.4 million in O&M expenses as a regulatory asset in 2012 that were not also met in 2011.[123]

In prior cases, DP&L did not defer its 2008 or 2012 storm costs until the PUCO authorized the deferral request. On cross-examination, DP&L's accounting witness, Mr. Campbell, could not identify another example where DP&L had deferred costs without a PUCO Order.[124] In fact, the PUCO has still not given the Utility approval to defer the 2011 storm restoration costs.[125]

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[122] Id.

[123] Id. at 5.

[124] Tr. Vol. I at 122 (Campbell) (June 3, 2014).

[125] OCC Ex. No. 20 (Testimony of David Effron In Opposition to the Stipulation) at 6 (May 27, 2014).

OCC witness Effron was also concerned that the PUCO did not give any weight to DP&L's 2012 decision to deem 2011 expenses probable for recovery. Mr. Effron stated:

> That would turn the ratemaking process on its head. Rate actions determine the extent to which incurred expenses are probable of future recovery. A utility's unilateral decision to treat previously incurred expenses as being probable of future recovery does not determine the appropriate rate action.[126]

Albeit a black box settlement that does not explicitly describe what costs comprise the $22.3 million, mathematically, the Settlement must include some unknown amount for 2011 storm costs restoration. DP&L witness Gregory Campbell admitted that he could not rule out the possibility that the settlement did include some 2011 storm carrying costs explaining "we just know it's $22.3 million and don't know the math of the components that make it up."[127] In fact, Mr. Campbell also testified that if the Company receives approval to collect the $22.3 million, then "some would be related to the2011 storms."[128] Therefore, the Signatory Parties failed to establish that the Stipulation excludes 2011 storm restoration costs; therefore, violating an important regulatory principle and practice (the utility has acted without PUCO authorization).[129] For this reason, the Stipulation should be rejected.

[126] Id. at 8. See also Tr. Vol. I at 80 (Campbell) (June 3, 2014) ("* * * a lot of accounting for utilities is determined by ratemaking because ratemaking is the primary guide for accounting").

[127] Tr. Vol. II, at 245-246 (Campbell) (June 4, 2014).

[128] Tr. Vol. II at 192 (Campbell) (June 4, 2014).

[129] OCC Ex. No. 20 (Testimony of David Effron In Opposition to the Stipulation) at 8 (May 27, 2014).

d. OCC Yankel demonstrated that the required adjustments (reductions) identified above cannot be made within the confines of the $22.3 million that DP&L now seeks to collect from its customers.

Mr. Yankel, on Attachment AJY-2 demonstrated that the $22.3 million Settlement exceeded the O&M amount requested in DP&L's application less adjustments required by PUCO Orders. Mr. Yankel stated:

> Because of the nature of the Settlement, there is insufficient information regarding the specifics of what has been settled such that it is impossible to determine what is included in or excluded from the $22.3 million settlement. Therefore, the Stipulating Parties cannot meet their burden of proof that the settlement is just and reasonable and that it meets the PUCO's three-prong test.
>
> However, it can be shown that the $22.3 million settlement figure equates to a little more than the original requested figure of $29,695,078, less the four adjustments I listed above to reflect PUCO's Orders and important regulatory practices and principles. From Attachment AJY-2, it can be seen that the simple removal of the four items for which the PUCO has already ruled, bringing down the Application figure of $29,695,078 of O&M storm costs down to a starting figure of $17,889,658. Adding 24.67% for carrying charges (both historic and during recovery) to that amount ($17,889,658) results in a starting point of $22.3 million.
>
> However, this is a starting point where the Utility's filing should have been made, not a final settlement agreement. To make matters worse, the $22.3 million settlement figure does not reflect carrying charges during the recovery period, while the essentially same $22.3 million starting figure I have calculated includes both the historic as well as future carrying costs. In other words, the Settlement figure had to be higher than the appropriate starting figure because it would include fewer carrying charges.

It is unjust and unreasonable that a Settlement amount would be equal to, and in fact more than, what should have been the most that DP&L could have requested in its Application had DP&L just addressed the minimum requirements of recent PUCO rulings. Therefore, the Stipulation violates important regulatory principles and should be rejected.

V. OCC RECCOMENDATIONS TO THE PUCO

A. DP&L Should Be Allowed To Collect No More Than $1.26 Million For Major Storm Restoration Costs From Customers.

DP&L should not be permitted to collect any storm costs for years 2008 and 2011 because of (1) the level of DP&L's earnings in those years, and (2) the PUCO did not—and should not—authorize DP&L to defer any storm costs in 2011 and non-major storms in 2008. The PUCO should not approve a settlement that authorizes DP&L to collect any storm restoration costs for those two years.[130]

Additionally, it is unreasonable and unjust for DP&L to be permitted to collect eighteen (18) times the amount of money recommended in the PUCO Staff's Audit Report.[131] Based on the PUCO Staff's Audit Report, comments, and analysis, and OCC's testimony, comments, and analysis, **DP&L's customers should pay no more than $1.26 million ($1,259,942) for the storm restoration events requested in DP&L's Application**.[132]

B. In The Alternative, DP&L Should Be Allowed To Collect No More Than $11.3 Million For 2008, 2011, and 2012 Major Storm Restoration Costs From Customers.

As illustrated above, the Stipulation should be rejected. But if the PUCO permits DP&L to collect storm costs for years 2008 and 2011 -- which OCC strongly opposes -- then DP&L should only be permitted to collect prudently incurred costs. In that regard, in the alternative, customers should pay no more than $11.3 million as shown below:

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[130] OCC Ex. No. 23 (Testimony of Daniel Duann, Ph.D. In Opposition to the Stipulation) at 6 (May 23, 2014).

[131] Id. ("As I discussed earlier, in its Audit Report, the PUCO Staff recommended that customers pay DP&L a total of $1 million ($1,010,600) plus associated carrying costs of approximately $249,342 for DP&L's storm restoration efforts.")

[132] OCC Ex. No. 23 (Testimony of Daniel Duann, Ph.D. In Opposition to the Stipulation) at 6 (May 23, 2014). (Emphasis added).

1	DP&L Originally Filed O&M Cost	$29,695,078	
	Less Adjustments:		
2	2008 Three Year Average	$ 554,503	
3	2008 Non-Major Storms	$ 3,574,934	
4	2011 Total Major Storm O&M Costs	$10,035,297	
5	2012 Three-Year Average	$ 3,482,366	
6	Sub Total Adjustments	$ 7,611,803	(2+3+4+5)
7	Appropriate O&M Starting Point	$12,047,979	(1-6)
8	Carrying Charge % (historic + recovery period)	24.67%[133]	
9	Carrying Charge $ (historic + recovery period)	$ 2,972,236[134]	
10	Adjusted O&M plus Carrying Charge (historic + recovery period)	$15,020,215	(7+9)
11	Less Carrying Charges during recovery period:	$ 1,265,875[135]	
	Less Other Staff Adjustments:		
12	Union Straight Time Labor Adjustment:	$ 820,679	
13	Management Labor Adjustment:	$ 831,361	
14	Out of Period Labor Adjustment:	$ 84,926	
15	Specific Invoice Adjustments:	$ 66,326	
16	**Less OCC Mutual Assistance Adjustment:**	$ 614,099	
17	Subtotal Carrying Charge, Staff and OCC Adjustments:	$ 3,683,266	(11+12+13+14+15+16)
18	Recommended Adjusted Collection from Customers:	$11,336,948 =========	(10-17)

[133] OCC Ex. No. 16 (Testimony of Anthony Yankel In Opposition to the Stipulation) at 5 (May 23, 2014). The carrying charge percentage of 24.67% is based on DP&L's proposed total O&M expenses of $29,695,078 and associated carrying charges of $7,356,576.

[134] $12,047,979 x .2467 = $2,972,236.

[135] The carrying charge during the recovery period is based on the percentage (42.59%) of forecasted carrying cost of $3,120,239 (see page 1 of 1 $PC-3 of DP&L's Application) out of total carrying cost of $7,326,576. This estimated carrying charge during the recovery period should be disallowed, and it is calculated as following: $2,972,236 * 0.4259 = $1,265,875.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Post-Hearing Brief* by the Office of the Ohio Consumers' Counsel has been served upon those persons listed below via electronic mail this 24th day of July 2014.

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