**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of The Dayton Power and Light Company for Authority to Recover Certain Storm-Related Service Restoration Costs. | : : : : | Case No. 12-3062-EL-RDR |

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| In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority | : : : : | Case No. 12-3266-EL-AAM |

**POST-HEARING BRIEF**

**OF THE STAFF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

# INTRODUCTION

This case arises out of an application filed by The Dayton Power and Light Company (“DP&L”) to recover costs incurred to repair damage to its system from storms that struck in 2008, 2011, and 2012. For 2011 and 2012, DP&L sought operation and maintenance (“O&M”) expenses for all major storms including related capital expenditures. For 2011 only, DP&L sought accounting authority to defer O&M expenses at its long-term debt rate. For 2008, it sought to recover O&M expenses for certain storms including related capital expenditures for Hurricane Ike. Finally, DP&L sought authority to establish a storm cost recovery rider to recover major-storm costs going forward. In total, DP&L sought recovery of $64,646,644.[[1]](#footnote-1)

By entry, the Commission explained that this was not the appropriate proceeding for DP&L to recover capital expenditures, which reduced the amount at issue to $37,021,654 (i.e., $64,646,644 - $27,624,990).[[2]](#footnote-2) Staff later responded to DP&L’s application with a Commission-ordered audit report.[[3]](#footnote-3) Staff’s report recommended that, if recovery is authorized for all storms identified in the application, DP&L should be permitted to recover $23,407,216.[[4]](#footnote-4)

During this litigation, the parties—DP&L, Staff, Kroger, and OCC— engaged in a series of settlement discussions aimed at resolving this case. These discussions led to a stipulation signed by DP&L, Staff, and Kroger that recommends recovery of $22.3M over one year, with no carrying charges accruing during recovery.[[5]](#footnote-5) The stipulation further recommends that DP&L may seek recovery of capital expenditures in a future distribution rate case.[[6]](#footnote-6) OCC opposes the stipulation. The question for the Commission is whether the stipula­tion is reasonable and should be adopted. For the reasons set forth below, Staff urges the Commission to adopt the stipulation.

# ARGUMENT

Ohio Adm. Code 4901-1-30(A) authorizes two or more parties to enter into a stipula­tion. Though not bound by a stipulation, the Commission should give it substan­tial weight.[[7]](#footnote-7) The Commission conducts a three-factor inquiry to assess whether a stipula­tion is reasonable and should be adopted.[[8]](#footnote-8) The three factors are:

1. Whether the stipulation is a product of serious bargaining among capable, knowledgeable parties;
2. Whether the stipulation, as a package, benefits ratepayers and the public inter­est; and
3. Whether the stipulation violates any important regulatory principal or prac­tice.

The Ohio Supreme Court has endorsed this inquiry.[[9]](#footnote-9) The three factors will now be addressed.

## A. The stipulation is a product of serious bargaining among capable, knowledgeable parties.

The settlement discussions were marked by an arm’s-length negotiation process. All parties were represented by able counsel and skilled technical advisers, and had ample opportunities to participate in the settlement process.[[10]](#footnote-10) During the pendency of the negotiations, parties circulated proposals to one another which they thought would best achieve their respective interests and objectives. In short, everyone had a seat at the bargaining table; no party was excluded.[[11]](#footnote-11) And even though OCC did not sign the stipulation, this does not mean the stipulation is per se unreasonable. “The Commission has repeatedly determined that [it] will not require any single party, including OCC, to agree to a stipulation, in order to meet the first prong of the three-prong test.”[[12]](#footnote-12)

## B. The stipulation, as a package, benefits ratepayers and the public interest.

Ratepayers and the public interest benefit from this stipulation. Initially, DP&L came in with a request to recover $64,646,644 in storm-related costs.[[13]](#footnote-13) The Commission then reduced this amount to $37,021,654 by denying DP&L’s request to recover capital expenditures.[[14]](#footnote-14) In its audit report, Staff then recommended that, if recovery is authorized for all storms identified in the application, DP&L should be permitted to recover $23,407,216, adjusted accordingly for carrying charges.[[15]](#footnote-15)

The amount of recovery recommended in the stipulation, $22.3M, is less than DP&L’s request and also less than Staff’s recommended amount.[[16]](#footnote-16) The stipulation also prohibits DP&L from accruing carrying charges on this amount during recovery, further mitigating bill impacts.[[17]](#footnote-17) The reduction to what DP&L asked for and what Staff recommended strongly demonstrates the benefits of this stipulation.[[18]](#footnote-18)

## C. The stipulation does not violate any important regulatory princi­pal or practice.

The stipulation does not violate any important regulatory principle or practice. The stipulation recommends recovery of DP&L’s prudently-incurred costs.[[19]](#footnote-19) Permitting recovery of prudently-incurred costs is a longstanding principle in the field of utility regulation, which the Commission recently followed in AEP’s storm-cost-recovery case.[[20]](#footnote-20) By providing for recovery of DP&L’s storm costs, the stipulation creates a reasonable expectation that DP&L will recover its storm costs in the future and provides a further incentive for it to “get the lights back on” as expeditiously as possible.[[21]](#footnote-21) This benefits DP&L and it benefits customers.

# CONCLUSION

For the foregoing reasons the stipulation should be adopted.

Respectfully submitted,

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# PROOF OF SERVICE

I certify that a copy of the **Post-Hearing Brief** was served by email upon the following Parties of Record on July 24, 2014.

*/s/ Ryan P. O’Rourke*

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1. OCC Ex. 1 at 4 (Staff’s Audit Report) [↑](#footnote-ref-1)
2. Entry at 7-8 (Oct. 23, 2012) [↑](#footnote-ref-2)
3. *Id.* at 8 [↑](#footnote-ref-3)
4. OCC Ex. 1 at 3 (Staff’s Audit Report) [↑](#footnote-ref-4)
5. Joint Ex. 1 at 2 (Stip. and Rec.) [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) [↑](#footnote-ref-7)
8. *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion at 8-9 (Apr. 2, 2014) [↑](#footnote-ref-8)
9. *Indus. Energy Consumers of Ohio Power v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994) [↑](#footnote-ref-9)
10. DP&L Ex. 7 at 6 (Test. of Seger-Lawson in Support of Stip. and Rec.) [↑](#footnote-ref-10)
11. *Id.* at 7 [↑](#footnote-ref-11)
12. *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion at 12 (Apr. 2, 2014) [↑](#footnote-ref-12)
13. OCC Ex. 1 at 4 (Staff’s Audit Report) [↑](#footnote-ref-13)
14. Entry at 7-8 (Oct. 23, 2012) [↑](#footnote-ref-14)
15. OCC Ex. 1 at 3 (Staff’s Audit Report) [↑](#footnote-ref-15)
16. Joint Ex. 1 at 2 (Stip. and Rec.) [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. *Id.* at 14 (substantial reduction to what Company asked for weighs in favor of adopting the stipulation) [↑](#footnote-ref-18)
19. DP&L Ex. 7 at 7-8 (Test. of Seger-Lawson in Support of Stip. and Rec.) [↑](#footnote-ref-19)
20. *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion at 31 (Apr. 2, 2014) [↑](#footnote-ref-20)
21. DP&L Ex. 7 at 7-8 (Test. of Seger-Lawson in Support of Stip. and Rec.) [↑](#footnote-ref-21)