

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 12-2281-EL-AAM
Authority to Modify Its Accounting)	
Procedure for Certain Storm-Related)	
Service Restoration Costs.)	

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

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

Melissa R. Yost, Counsel of Record
Larry Sauer
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-1291 (Yost Telephone)
(614) 466-1312 (Sauer Telephone)
yost@occ.state.oh.us
sauer@occ.state.oh.us

January 18, 2013

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 12-2281-EL-AAM
Authority to Modify Its Accounting)	
Procedure for Certain Storm-Related)	
Service Restoration Costs.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") applies for rehearing of the December 19, 2012, Finding and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO"), to protect the residential customers of Dayton Power and Light Company ("DP&L" or "Utility") from being charged unjust and unreasonable rates. This case involves DP&L's request to defer Operation and Maintenance ("O&M") expenses it claims are associated with the storms that occurred between June 29, 2012 and July 1, 2012.

Through this filing, OCC seeks rehearing of the Commission's Order pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35. The December 12, 2012 Order was unjust, unreasonable, and unlawful because:

- A. The Commission erred when it did not specify the process for amending a carrying cost rate when a new cost of long-term debt is approved.
- B. The Commission erred when it failed to order that the accrual of carrying costs on any unamortized deferral balance should be limited to twelve (12) months.

An explanation of the basis for this Application for Rehearing is set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and OCC's claims of error, the PUCO should modify its Order.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ *Melissa R. Yost*

Melissa R. Yost, Counsel of Record

Larry Sauer

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-1291 (Yost - Telephone)

(614) 466-1312 (Sauer - Telephone)

yost@occ.state.oh.us

sauer@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 12-2281-EL-AAM
Authority to Modify Its Accounting)
Procedure for Certain Storm-Related)
Service Restoration Costs.)

MEMORANDUM IN SUPPORT

I. INTRODUCTION

In the last case where DP&L sought to defer storm costs, the Utility requested (and the Commission authorized) a carrying charge based on the Utility’s actual cost of debt indicated in its then-pending Electric Security Plan (“ESP”) application.

Specifically, in PUCO Case No. 08-1332-EL-AAM, the Utility sought authorization to apply a carrying charge, “based on its actual cost of debt of 5.86% as filed” in the Utility’s ESP proceeding, on any “unrecovered deferral balance and defer such carrying charge for future recovery.”¹

In that case, OCC argued that since the Commission had yet to rule on the disposition of the Utility’s ESP proceeding, it seemed premature and unreasonable to authorize a carrying charge rate based on the Utility’s ESP-proposed actual cost of debt.² OCC cautioned the Commission not to approve the proposed rate above of 5.86%, stating that “[t]he rate being proposed by the Company in this Application is not an

¹ *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 ¶3 (December 26, 2008).

² *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, OCC’s Comments at page 8 (January 13, 2009).

interest rate “authorized” by the Commission as an established “actual cost of debt.”

Such rate should not be allowed until the Commission has conducted a thorough review of the Company’s actual cost of debt.”³ The PUCO rejected OCC’s concerns without any discussions and approved the deferral as requested, with a carrying charge of 5.86% that reflected the Utility’s actual cost of debt in its then-pending ESP application.⁴

In this case, rather than asking for the actual cost of debt, as filed in its pending ESP, the Utility switched positions and asked for a carrying cost “based on its cost of debt of 5.86% as approved in DP&L’s last Electric Security Plan (“ESP”), Case No. 08-1094-EL-SSO, et al.”⁵ However, as illustrated in its pending ESP application, DP&L’s current cost of debt, as of June 30, 2012, was 4.94%.⁶ Based on the precedent set in Case No. 08-1332-EL-AAM, which authorized a carrying charge equal to a Utility’s actual cost of debt, DP&L’s carrying charge would be its actual cost of debt of 4.94% -- found in its pending ESP application -- instead of the requested 5.86%.

Nevertheless, on December 19, 2012, the Commission found that the precedent in Case No. 08-1332-EL-AAM was “not sound regulatory policy” and “not consistent with general ratemaking principles.”⁷ Instead, the PUCO issued an order consistent with OCC’s earlier position in Case No. 08-1332-EL-AAM⁸ and approved carrying charges

³ Id, at page 9.

⁴ *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 page 1 (January 14, 2009).

⁵ *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, Application at ¶3 (August 10, 2012).

⁶ See Testimony of Craig L. Jackson (October 10, 2012), page 11 of 14, PUCO Case No. 12-0426-EL-SSO et al.

⁷ Order at page 3.

⁸ OCC’s Comments in PUCO Case No. 08-1332-EL-AAM at page 8.

equal to the “most recently approved cost of long-term carry.”⁹ But the Commission also specified that “When a new cost of long-term debt is approved, the carrying costs should then be amended to reflect the newly approved rate.”¹⁰

II. STANDARD OF REVIEW

Applications for Rehearing are governed by R.C. 4903.10 and Ohio Adm. Code 4901-1-35. This statute provides that, within thirty (30) days after issuance of an order from the Commission, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.”¹¹ Furthermore, the application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.”¹²

In considering an application for rehearing, Ohio law provides that the Commission “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.”¹³ Furthermore, if the Commission grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same * * *.”¹⁴

OCC meets both the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10 and the requirements of the Commission’s rule on applications

⁹ Order at page 3.

¹⁰ *Id.*.

¹¹ R.C. 4903.10.

¹² R.C. 4903.10(B).

¹³ *Id.*

¹⁴ *Id.*

for rehearing.¹⁵ Accordingly, OCC respectfully requests that the Commission grant rehearing on the matters specified below.

III. LAW AND ARGUMENT

A. The Commission Erred When It Did Not Specify the Process for Amending a Carrying Cost Rate When a New Cost of Long-Term Debt is Approved.

OCC seeks rehearing of the Commission's December 19, 2012 Finding and Order ("Order") that addresses the carrying cost rate for deferred O&M expenses. DP&L's claims are associated with service restoration activities resulting from storms that occurred between June 29, 2012 and July 1, 2012. Specifically, the Commission included a provision that "[s]ound regulatory policy directs that the carrying cost rate should be set equal to the most recently approved cost of long-term debt."¹⁶ Then the Commission held that "When a new cost of long-term debt is approved, the carrying costs should then be amended to reflect the newly approved rate."¹⁷ As explained further below, the Commission should specifically address the process for amending the carrying cost rate in order to reflect the most recently approved cost of long-term debt.

In its pending ESP, DP&L's cost of long-term debt is 4.94%.¹⁸ When the ESP is approved, the most recently approved cost of long-term debt will likely change from 5.86% to 4.94%. However, the Commission's Order fails to explain how this change in the carrying charge rate should occur. Accordingly, the Commission should establish a

¹⁵ See Ohio Adm.Code 4901-1-35.

¹⁶ *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 page 3 (December 19, 2012) ("Order").

¹⁷ *Id.*

¹⁸ See Testimony of Craig L. Jackson (October 10, 2012), page 11 of 14, PUCO Case No. 12-0426-EL-SSO et al.

procedure through which the carrying charge will be amended to reflect the most recently approved new cost of long-term debt. Furthermore, the Commission should also establish a framework through which the Commission and interested parties will be made aware of changes to the approved carrying cost rate.

B. The Commission Erred When it Failed to Order That the Accrual of Carrying Costs on Any Unamortized Deferral Balance Should be Limited to Twelve (12) Months.

OCC seeks rehearing of the Commission's decision that failed to limit the Utility's accrual of carrying costs on the unamortized deferral balance to twelve (12) months. The Commission's decision (not to limit the period of time that carrying charges can accrue before recovery of those charges) allows the Utility to accrue carrying costs for years—unnecessarily increasing the cost for consumers—before it seeks recovery of those costs.

For example, in Case No. 08-1332-EL-AAM, DP&L was authorized to defer the amount by which "Hurricane Ike-related service restoration expenses and other 2008 storms experienced in 2008 exceeds the three-year average service restoration O&M expenses associated with major storms."¹⁹ Almost four years after the Commission approved DP&L's deferral of Hurricane Ike-related expenses -- and without any explanation for the delay -- DP&L filed an application to recover the deferred expenses.²⁰

¹⁹ Finding and Order in PUCO Case No. 08-1332-EL-AAM at ¶2.

²⁰ *In the Matter of the Application for Authority to Recover Certain Storm-Related Restoration Costs*, Case No. 12-3062-EL-RDR, Application at page 2 (December 21, 2012).

As of August 2012, the amount of the costs deferred (plus carrying charges) total \$18,648,901 (\$14,995,060 deferrals + \$3,653,841 carrying costs).²¹

Limiting the amount of time that an electric distribution utility can accrue a carrying charge on unamortized deferred balances is a sound regulatory policy and will help reduce the total amount of costs that customers will be asked to pay in future rates. It is indeed consistent with the state policy as indicated in Ohio Revised Code § 4928.02(A) to ensure the availability to consumers of reasonably priced retail electric service.

In the case of Hurricane Ike-related storm costs, DP&L's customers may have to pay almost \$4 million dollars in carrying costs because of DP&L's delay in seeking recovery of costs. In other words, almost 20% of the total cost to consumers results from carrying charges.²²

Consumers should not bear the burden of ever increasing carrying charges for the years the Utility chooses not to seek recovery.²³ The Commission should impose a time limit during which carrying charges can be accrued in this case. Since the Commission authorized a carrying charge here, the carrying charge should not apply to any unamortized balance for more than twelve (12) months. The Commission should act now to preempt the accrual of avoidable carrying costs in this and future cases.

²¹ *In the matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedures For Certain Storm-Related Service Restoration Costs*, Case No. 12-2281-EL-AAM, OCC's Comments, at Attachment B (December 11, 2012).

²² $\$3,653,841 / \$18,648,901 = .196$

²³ The Commission denied a utility's request to delay commencement of an amortization period because of the increase in carrying charges. *See* Opinion and Order in PUCO Case No. 11-346-EL_SSO (August 8, 2012).

IV. CONCLUSION

For all the reasons discussed above, the Commission should grant rehearing and modify its Order of December 19, 2012.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ *Melissa R. Yost*

Melissa R. Yost, Counsel of Record
Larry Sauer
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-1291 (Yost - Telephone)
(614) 466-1312 (Sauer - Telephone)
yost@occ.state.oh.us
sauer@occ.state.oh.us

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Application for Rehearing, was served via electronic mail to the persons listed below this 18th day of January, 2013.

/s/ Melissa R. Yost

Melissa R. Yost

Assistant Consumers' Counsel

SERVICE LIST

William Wright
Attorney General's Office
Chief, Public Utilities
180 East Board St., 6th Fl.
Columbus, OH 43215-3793
William.wright@puc.oh.state.oh.us

Judi L. Sobecki
Randall V. Griffin
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Judi.sobecki@dplinc.com
Randall.griffin@dplinc.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/18/2013 4:52:52 PM

in

Case No(s). 12-2281-EL-AAM

Summary: Application Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Yost, Melissa Ms.