

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MEMORANDUM CONTRA  
THE DAYTON POWER AND LIGHT COMPANY’S  
APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers’ Counsel (“OCC”), in accordance with Ohio Adm. Code 4901-1-35(B), files this Memorandum Contra The Dayton Power and Light Company’s (“DP&L” or “Utility”) Application for Rehearing. In its Application for Rehearing, DP&L seeks to defer more costs (that its customers will have to pay in the future) than the amount that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) authorized in its Finding and Order issued on December 19, 2012 (“December 19, 2012 Order”).

As further explained in this Memorandum Contra, the reasons alleged in DP&L’s Memorandum in Support of its Application for Rehearing provide no basis for DP&L’s contention that the December 19, 2012 Order is either unlawful or unreasonable. Therefore, the OCC urges the PUCO to deny DP&L’s Application for Rehearing, and instead modify its December 19, 2012 Order consistent with OCC’s Application for Rehearing filed on January 18, 2013.

## II. ARGUMENT

On August 10, 2012, DP&L filed its Application for approval to defer certain Operation and Maintenance (“O&M”) expenses it claims are associated with the storms that occurred between June 29, 2012 and July 1, 2012.<sup>1</sup> On October 19, 2012, DP&L amended its Application to request the deferral of the full costs instead of the difference between the costs incurred and the three-year average service restoration O&M expense associated with non-major events that the Utility originally requested.<sup>2</sup>

The PUCO approved DP&L’s request to defer O&M expenses associated with the June 2012 windstorm<sup>3</sup> but reduced those expenses by the three-year average of O&M expenses associated with major storms.<sup>4</sup> Such treatment is consistent with Commission precedent regarding deferrals of O&M costs associated with destructive storms. Specifically, in a recent 2009 case DP&L sought (and received approval)<sup>5</sup> to defer only those O&M expenses associated with restoring electric service after the Hurricane Ike wind storm that exceeded the three-year average service restoration O&M expenses associated with major storms.<sup>6</sup> Furthermore, in a 2008 AEP case, AEP received approval to defer only those O&M expenses associated with restoring electric service after the

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<sup>1</sup> *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 ¶2 (August 10, 2012).

<sup>2</sup> Amended Application at ¶3.

<sup>3</sup> December 19, 2012 Order at ¶ 6.

<sup>4</sup> Id at paragraph 8.

<sup>5</sup> *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 (January 14, 2009).

<sup>6</sup> *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 at paragraph 3 (December 26, 2008).

Hurricane Ike wind storm that exceeded the three-year average service restoration O&M expenses associated with major storms.<sup>7</sup>

DP&L argues that the PUCO's Order reducing the Utility's deferral request by the three-year average service restoration O&M expenses associated with major storms is unreasonable because there are no major storm costs included in DP&L's current rates.<sup>8</sup> However, DP&L's last distribution rate case was in 1991<sup>9</sup> and it was resolved by a "black box" settlement.<sup>10</sup> And DP&L acknowledges that by stating: "There is thus no way to review that Stipulation to determine how it treated major storm costs."<sup>11</sup>

Yet surprisingly DP&L attempts to persuade the PUCO that, around that time, it was the "Commission's practice to exclude from the test year costs associated with major storms."<sup>12</sup> But the three cases that DP&L uses to advance its position do not establish the precedent that DP&L alleges that they do. First, none of the three cases that DP&L relies on stands for the proposition that all O&M expenses for major storms were excluded from base rates. Second, DP&L's examples of PUCO "precedent around that time"<sup>13</sup> (circa 1991) were decided as much as 10-years before DP&L's last rate case. (One of the cases that DP&L relies on was decided in 1981 and the other two cases were decided in 1983.)<sup>14</sup>

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<sup>7</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Modify Their Accounting Procedure for Certain Storm-Related Service Restoration Costs*, Case No. 08-1301-EL-AAM, Finding and Order (December 19, 2008).

<sup>8</sup> DP&L Memorandum in Support (Application for Rehearing) at 2-4 (January 18, 2013).

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 3-4.

Finally, DP&L argues that the ESP Stipulation (in effect in 2012) permits recovery of storm expenses without reduction.<sup>15</sup> But DP&L is wrong again. That Stipulation merely reserves DP&L's right to seek emergency rate relief (pursuant to R.C. 4904.16) or to apply to the Commission for approval of separate rate riders to recover the cost of storm damage.<sup>16</sup> The Application that the PUCO approved in the December 19, 2012 Order, that DP&L now requests rehearing on, seeks neither emergency rate relief nor a rider to recover the cost of storm damage. Accordingly, the PUCO should reject the arguments raised in DP&L's Application (and Memorandum in Support) because they are without merit. The Commission should not grant rehearing on its decision to reduce the amount of O&M expenses associated with the June 2012 wind storm (that DP&L may defer) by the three-year average O&M expenses associated with major storms.

### **III. CONCLUSION**

For all the reasons discussed above, the OCC urges the PUCO to deny DP&L's Application for Rehearing and thereby protect consumers from further future increases in rates. Instead, the Commission should modify its December 19, 2012 Opinion and Order, consistent with the OCC's Application for Rehearing filed on January 18, 2013.

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<sup>15</sup> Id. at 4-5.

<sup>16</sup> Stipulation and Recommendation at ¶18, PUCO Case No. 08-1094-EL-SSO.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Memorandum Contra* was served via electronic mail to the persons listed below this 28th day of January, 2013.

/s/ Melissa R. Yost

Melissa R. Yost

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Summary: Memorandum Memorandum Contra the Dayton Power and Light Company's Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Gina L Brigner on behalf of Yost, Melissa Ms.