

**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-)	Case No. 12-3062-EL-RDR
Related Service Restoration Costs)	

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

**MOTION TO DISMISS
THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY
REQUESTING APPROVAL OF CERTAIN ACCOUNTING AUTHORITY
TO DEFER 2011 STORM COSTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to protect consumers from inappropriate charges by dismissing Dayton Power and Light Company's ("DP&L" or "Utility") application to defer certain costs associated with its 2011 storm restoration activities.¹ Alternatively, the OCC moves the Commission to deny DP&L's request for an expedited decision (by February 8, 2013) on its request to defer the 2011 major event storm Operations and Maintenance ("O&M") expenses (with carrying costs). OCC is filing on behalf of DP&L's 455,000 residential customers in the State of Ohio. The reasons the Commission should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ Ohio Adm. Code 4901-1-12.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 21, 2012, DP&L filed an application (as captioned above in two cases) seeking authority to charge customers for certain storm-related restoration costs and for certain accounting to defer 2011 storm Operations and Maintenance costs. In its application, DP&L is requesting that the PUCO grant it the authority to: (1) charge customers Operations and Maintenance (“O&M”) expenses for all major event storms in 2011 and 2012, and for certain 2008 storm O&M expenses; (2) charge customers for related capital revenue requirements for Hurricane Ike (2008) and major storms in 2011 and 2012; (3) implement a Storm Cost Recovery Rider to permit it to charge customers for all costs associated with major storms going forward and implement accounting authority to defer O&M costs until the costs are recovered from customers; and (4) defer all 2011 major storm event O&M costs with carrying costs equal to the Utility's cost of debt.² DP&L is also requesting that the Commission issue a ruling by February 8, 2013, on the Utility’s request to defer the O&M costs associated with the 2011 major storms.

² DP&L Application for Authority to Recover Certain Storm-Related Restoration Costs, at 2.

The Commission should dismiss DP&L's request seeking retroactive deferral authority for the 2011 storm costs because the Utility's request is not timely. Moreover, DP&L has not alleged, nor can it demonstrate, a financial need for deferral because, in 2011, the Utility's return on equity (ROE) exceeded what the PUCO had previously authorized. Alternatively, the PUCO should deny DP&L's request for an expedited ruling (by February 8, 2013) on its request to defer O&M costs and carrying costs associated with 2011 major storm events.

II. LAW AND ARGUMENT

A. The Commission Should Dismiss DP&L's Request To Defer Costs Associated With The 2011 Storms.

DP&L's request to defer the costs that are allegedly associated with the 2011 storms should be dismissed because the Utility failed to timely file its request. DP&L stated 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 of which took place on September 3, 2011.³ At best, DP&L waited nearly 15 months (at worst, 22 months) to seek permission to defer the costs associated with those storms. Despite having an opportunity to review its 2011 accounting records, and time to prepare and reflect upon their 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.

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

³ Id. at 4-5.

application “for approval of accounting authority to defer as a regulatory asset the portion of its Operations and Maintenance expenses associated with restoring electric service” 103 days later on December 26, 2008.⁴ 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, 2012.⁵ 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.

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, 2002.⁶

⁴ Id. at 3.

⁵ Id. at 5.

⁶ *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.)

While OAW's rate case was settled (and OCC does not cite to the resulting decision there), the Staff's pre-settlement consideration of regulatory policy--that deferral requests should be done in a timely manner--is applicable in this case. In a similar manner, DP&L has not timely filed a deferral request and the Commission should dismiss DP&L's retroactive deferral request in this case.

DP&L's request for accounting deferral must also be dismissed because the Utility failed to demonstrate financial need for the requested deferral. Where the Commission has approved deferred accounting in the past, it has generally done so to avoid the possibility of significant financial harm to the applicant utility.⁷ In the instant case, DP&L does not even hint that its financial condition in 2011 necessitates the granting of deferral accounting. The application is completely silent as to any financial need supporting the requested accounting order. To the contrary, in 2011, when the major storm O&M costs were expensed by the Utility, DP&L earned a return on equity of

⁷ See, e.g. *In the Matter of the Commission's Investigation into the Financial Impact of FASB Statement No. 106, "Employer's Accounting for Postretirement Benefits Other than Pensions,"* Case No. 92-1751-AU-COI, Finding and Order, at 19 (Feb. 25, 1993); *Cincinnati Gas & Electric Company*, Case No. 92-946-EL-AAM, Entry, at 1-2 (Oct. 1, 1992); *Ohio Edison Company*, Case No. 88-144-EL-AAM, Entry, at 1-2 (Feb. 2, 1988); *Cleveland Electric Illuminating Company*, Case No. 87-109-EL-AAM et al., Entry, at 2 (Feb. 2, 1988); *Ohio Edison Company*, Case No. 87-995-EL-AAM et al., Entry, at 2 (Oct. 20, 1987).

14.05%,⁸ well above its “most recently approved return” of 11.30% authorized by the PUCO.⁹

Deferral requests have become all too commonplace. And, in a recent Opinion and Order, the PUCO stated a general opposition to the creation of deferrals absent extraordinary circumstances. Specifically, the Commission stated:

Further, **although this Commission is generally opposed to the creation of deferrals**, the extraordinary circumstances presented before us, which allow for AEP-Ohio to fully participate in the market in two years and nine months as opposed to five years, necessitate that we remain flexible and utilize a deferral to ensure we reach our finish line of a fully-established competitive electric market.¹⁰

After nearly two years of silence, DP&L now seeks to defer and charge customers in the future for 2011 expenses allegedly incurred, irrespective of the fact that the Utility earned

⁸ DP&L Annual Report 2011 filed 4/17/12 in Case No. 12-0001-EL-RPT.

2011 Net Income Before Preferred Dividends	Pg 117	\$	193,214,970	
Less: Preferred Dividends	Pg 118	\$	866,781	
2011 Net Income After Preferred Dividends		\$	192,348,189	
			12/31/11	12/31/10
Total Proprietary Capital	Pg 112	\$	1,380,734,977	\$ 1,402,333,872
Less: Total Preferred Stock	Pg 112	\$	22,850,800	\$ 22,850,800
Total Common Equity		\$	1,357,884,177	\$ 1,379,483,072
Average Total Common Equity		\$	1,368,683,625	
Return on Equity:				
(2011 Net Income/Average Common Equity)			14.05%	

⁹ 12/21/12 Direct Testimony of DP&L Witness Campbell at 8 and Application, Schedule D-1, line 4.

¹⁰ *In the Matter of the Application of Columbus Southern Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al., Opinion and Order at 36 (August 8, 2012) (Emphasis added).

a return on equity in 2011 that well exceeded its authorized return. In addition, DP&L seeks to charge customers for carrying costs that, at a minimum, would be greatly increased as a direct result of DP&L's decision to delay. Because the Utility has not supported its deferral request with an explanation of extraordinary circumstances that would now warrant PUCO authorization, the deferral request should, therefore, be dismissed.

B. Alternatively, In The Event The Commission Does Not Grant OCC's Motion To Dismiss, The Commission Should Issue A Procedural Schedule That Would Give The Commission And All Parties Sufficient Time To Address The Costs Associated With DP&L's 2011 Storm Costs Deferral Request.

If the Commission is not prepared to dismiss DP&L's deferral request at this time, then, in the alternative, the PUCO should deny DP&L's request to issue an expedited ruling by February 8, 2013. Furthermore, the Commission should issue a procedural schedule that provides ample time for discovery and analysis, under R.C. 4903.082 and Ohio Adm. Code 4901-1-16. After failing to diligently pursue a deferral request of the 2011 storm costs, DP&L seeks an expedited ruling by February 8, 2013, only 49 days after filing its application. The 49-day schedule requested by DP&L, however, does not permit enough time for parties to conduct discovery. The discovery rules allow 20 days to respond to discovery requests,¹¹ which leave little or no time for follow-up discovery.

The expedited treatment that is proposed by DP&L does not afford parties, or the Commission, ample time to fully consider issues, which include but are not limited to: [1] whether the 2011 storm costs have already been recovered through DP&L's authorized base rates and rate of return; [2] whether the financial circumstances warrant the PUCO

¹¹ OAC 4901-1-19(A); OAC 4901-1-20(B).

authorizing the deferral request nearly two years after the expenditures were made; and [3] whether the reduction of the deferral amount by the three-year average of O&M expenses associated with major storms – an adjustment that this Commission has consistently applied to DP&L’s requests to defer O&M costs associated with major storms is applicable in this case.¹² Moreover, it cannot go without mention that DP&L filed this application, requesting such a quick turnaround time, during the holiday season that included three federal holidays (Christmas, New Year’s Day, and Martin Luther King Jr. Day).

The parties should not be denied their opportunity to gather and adduce evidence for the PUCO’s required use of a record to resolve the cases under R.C. 4903.09. DP&L’s proposed timeline, by design or effect, would result in a truncated timetable that effectively removes any ability to conduct discovery or meaningful review of the Utility’s request. Nor should the Commission be rushed to a decision on deferral of \$10,035,297 in Operations and Maintenance expenses¹³ because of DP&L’s decision to wait until late 2012 to file this Application. For these reasons (and if the PUCO does not grant OCC’s motion to dismiss), the PUCO should deny DP&L’s request for an expedited ruling and issue a procedural schedule that permits the parties ample opportunity to conduct discovery and time to effectively analyze DP&L’s request for deferral.

¹² *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-AM, 2012 OHIO PUC LEXIS, Finding and Order, p. 3 (Dec. 19, 2012) (holding “DP&L’s deferred O&M expenses should be reduced by the three-year average of O&M expense associated with major storms”); *In the Matter of the Application of The Dayton Power & 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).

¹³ DP&L Application for Authority to Recover Certain Storm-Related Restoration Costs, Schedule C-1, line 7.

III. CONCLUSION

For the aforementioned reasons, this Commission should grant the OCC's Motion to Dismiss DP&L's request for authority to defer 2011 storm costs. If the PUCO does not dismiss DP&L's application, the PUCO should, in the alternative, deny DP&L's request for an expedited ruling on the issue (before February 8, 2013). This alternative proposal would, at least, permit all parties and the PUCO Staff the opportunity to conduct discovery, properly review DP&L's application and provide recommendations to the PUCO for its decision-making under Ohio law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Dismiss* was served on the persons stated below via electronic transmission this 30th day of January 2013.

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Summary: Motion Motion to Dismiss the Application of the Dayton Power and Light Company Requesting Approval of Certain Accounting Authority to Defer 2011 Storm Costs by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Yost, Melissa Ms.