

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

ENTRY

The Commission finds:

- (1) The Dayton Power and Light Company (DP&L) is a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On December 21, 2012, DP&L filed an application seeking authority to recover storm operation and maintenance (O&M) expenses for all major event storms in 2011 and 2012, as well as certain 2008 storm O&M expenses. DP&L also seeks recovery of the related capital revenue requirements for Hurricane Ike in 2008 and major storms in 2011 and 2012. Finally, DP&L requests authority to implement a storm cost recovery rider to recover all costs associated with major storms going forward and to defer O&M costs until they are recovered through the rider.
- (3) By entry issued on May 2, 2013, the attorney examiner set a procedural schedule in this case with deadlines for comments and reply comments. On June 17, 2013, the Ohio Consumers' Counsel (OCC), the Kroger Co. (Kroger), and Commission Staff (Staff) filed comments in this case. On July 1, 2013, DP&L, OCC, and Kroger filed reply comments in this case.

- (4) In its application, DP&L proposes to establish a charge to recover storm operation and maintenance (O&M) expenses for all major event storms in 2011 and 2012, as well as certain 2008 storm O&M expenses. DP&L indicates in its application that it is reasonable to assume that the cost of non-major event storms is recovered in current distribution rates, and that the cost associated with major event storms should be recoverable through a separate rider. However, DP&L notes in its reply comments that it believes whether a storm is a major event storm is irrelevant to whether DP&L may recover the costs of that storm because stipulations approved by the Commission have authorized DP&L to recover storm damage expenses with no reference to whether the storms are major event storms.

OCC asserts that DP&L failed to meet its burden of demonstrating that the storms for which it seeks authority to establish a charge meet the definition of major event storms. OCC's argument is that the storms were non-major event storms, the expenses of which are recovered in base distribution rates. Therefore, OCC contends that a storm cost recovery rider is not necessary.

OCC and Staff contend that DP&L should not be authorized to recover O&M expenses for major event storms in 2008, 2011, and 2012, as well as other storms in 2008 and 2011. Staff and OCC argue that the Commission should deny DP&L's request to recover O&M expenditures associated with the storms because DP&L's historic O&M expenditures have been too low, DP&L's historic earnings have been too high, and DP&L's return on equity (ROE) for 2011 was higher than its Commission-approved ROE.

DP&L first asserts that it should be authorized to recover storm damage expenses because the stipulation authorized by the Commission in DP&L's 1999 transition case, Case No. 99-1687-EL-ETP, contained an exception to DP&L's distribution rate freeze authorizing DP&L to seek an increase in distribution rates after December 31, 2003, for relief from storm damage expenses. DP&L contends that

the subsequent stipulations extended the distribution rate freeze, as well as the storm damage expense exception. *In re Dayton Power and Light Co.*, Case No. 02-2779-EL-ATA, Stipulation and Recommendation (May 28, 2003); *In re Dayton Power and Light Co.*, Case No. 05-276-EL-AIR, Stipulation and Recommendation (November 3, 2005); *In re Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, Stipulation and Recommendation (February 24, 2009). DP&L then contends that denying authorization to recover for storm expenses would be inconsistent with the Commission's traditional practice of normalizing extraordinary expenses in a rate case and then authorizing recovery for those extraordinary expenses at a later date. Finally, DP&L argues that intervenors' argument that DP&L should not be permitted to recover for storm costs because its earnings were too high would effectively apply a significantly excessive earnings test (SEET) to DP&L in 2013 related to earnings from 2008. DP&L further claims that denying recovery would be inconsistent with the Commission's authorization of a deferral and would create the wrong incentive for future storms. Finally, DP&L argues that if the Commission considers DP&L's historic distribution-related O&M expenses, it should also consider all of DP&L's distribution-related expenditures, including distribution investments and the depreciation expense associated with those investments.

- (5) OCC and Staff contend that DP&L should not be authorized to recover O&M costs for storms that it did not receive authority to defer, or receive authority to defer in a timely manner, as a regulatory asset. Staff and OCC assert that the Commission denied DP&L's request to defer expenses associated with other 2008 storms, and DP&L did not seek, in a timely manner, to recover storm expenses associated with 2011 storms.

DP&L asserts that deferral is not necessary to recover storm expenses because there is no requirement that a utility seek or receive a deferral before it seeks to recover those expenses. DP&L notes that, in its stipulations, there

is no requirement that it receives or seeks a deferral of the storm expenses before it seeks to recover them. Furthermore, DP&L contends that nothing in Section 4909.18, Revised Code, requires a utility to receive or seek a deferral before a new rate can be implemented. Finally, DP&L points out that denying recovery of expenses for other 2008 storms would be inconsistent with the use of a three-year average.

- (6) OCC and Staff argue that this is not the appropriate proceeding for the Commission to authorize DP&L to establish a charge to recover capital expenses related to storm restorations. OCC and Staff contend that capital expenses are typically recovered in distribution rate cases and that DP&L failed to seek to defer those capital expenses.

DP&L asserts in reply comments that all Ohio electric distribution utilities, with the exception of DP&L, recover distribution capital costs through stand-alone distribution investment riders, which are not set through distribution rate cases. DP&L contends that a storm cost recovery rider is a distribution investment rider and, therefore, DP&L should be authorized to recover distribution capital costs for storm expenses through the rider. DP&L further contends that failure to seek deferral of capital costs is not a basis to deny recovery of capital associated with restoring service after a major storm. DP&L notes that it did not seek to defer its capital expenditures because the effect of deferral is to convert expenses into capital and those expenditures were already capital.

- (7) OCC alleges that DP&L should not be authorized to recover straight-line labor costs or overtime pay to DP&L's salaried employees for storm restoration efforts. OCC contends that utilities are not permitted to charge customers for supplemental pay given to salaried employees involved in storm restoration efforts when those employees do not ordinarily receive overtime pay and the supplemental pay is given at the utility's discretion.

DP&L contends in its reply comments that hourly employees who work on storm restoration efforts during their normally-scheduled hours are not performing their normally scheduled work, which still needs to be done. Therefore, DP&L alleges that it is reasonable for it to be compensated for the straight-time hours dedicated to storm restoration. In regards to overtime pay, DP&L notes that it is contractually obligated to compensate its salaried employees for participation on a storm team. DP&L alleges that paying salaried workers for storm restoration efforts capitalizes on the expertise of DP&L employees and reduces the need for DP&L to hire expensive contractors for storm restoration efforts. Thus, DP&L alleges that unlike other Ohio utilities, DP&L's payment of overtime to salaried employees is not discretionary but mandatory. For this reason, DP&L believes it is entitled to recovery.

- (8) OCC argues that, if the Commission authorizes DP&L to establish a storm cost recovery rider, the annual baseline should be set at \$4 million. OCC alleges that DP&L's ten year average annual major storm expense is \$4 million, which makes it an appropriate baseline. However, Staff proposes that the Commission authorize DP&L to establish a storm cost recovery rider with an annual baseline of \$2.6 million. Staff's \$2.6 million baseline figure was arrived at by taking DP&L's ten-year average for major storm expenses, while excluding major storm expenses from the year 2008 as an outlier for extraordinarily high costs as a result of Hurricane Ike. Under Staff's proposal, DP&L would be permitted to apply for recovery if expenses exceeded \$2.6 million, whereas if expenses were less than \$2.6 million DP&L would record the difference as a regulatory liability to offset future expenditures or issue a refund to customers.

DP&L asserts that the Commission should authorize it to establish a storm cost recovery rider with an annual baseline of \$1.1 million. DP&L agrees with Staff that 2008 major storm expenses should be excluded from the average; however, DP&L believes that major storm

expenses in 2005 and 2011 should also be excluded from the average. Thus, DP&L arrives at its \$1.1 million baseline figure by taking the ten-year average and excluding major storm expenses from 2005, 2008, and 2011.

- (9) OCC avers that DP&L should not be authorized to recover transmission expenses related to storm restoration efforts. OCC states that the collection of transmission costs is inappropriate in a distribution rider case. OCC believes that DP&L should identify and remove all storm costs that are not related to distribution.

DP&L notes that its transmission employees are qualified to work on DP&L's distribution system, and do perform certain work on the distribution system in response to major storms. Furthermore, DP&L contends that DP&L's employees charge certain expenditures associated with transmission capital that is replaced in major storms to the charge numbers that DP&L establishes for the storms. However, DP&L managers subsequently review the amounts charged to those billing codes and remove transmission capital from the amounts that DP&L seeks to recover. DP&L then points out that its application seeks only to recover distribution-related capital and O&M expenses.

- (10) Staff, OCC, and Kroger recommend that any O&M costs approved for recovery in this proceeding be reduced by the three-year average of O&M expenses associated with major event storms.

DP&L contends in reply comments that, if the Commission reduces DP&L's recovery by the three-year average, then it should exclude years with unusual storms from the three-year average. Thus, DP&L asserts that its three-year average should not be the three-years preceding the storm, but the three preceding years without unusual major-event storms. DP&L's proposal would thus exclude years 2005, 2008, and 2011 from being included in any three-year average. Furthermore, DP&L disagrees with any proposal

that would subtract the three-year average from the recovery for one particular storm, arguing that it would be improper to compare DP&L's expenses associated with one particular storm to an average of all major storm expenses over a three-year period.

- (11) Kroger asserts that if a storm cost recovery rider is authorized, it should be redesigned as an equal percentage rider or should incorporate a demand charge component. Kroger also believes that Staff's recommendation that the storm cost recovery rider be allocated through a fixed rate per customer per month is reasonable. OCC believes that DP&L's proposed allocation methodology and rate design should be based upon kWh usage.

DP&L believes that a three-year recovery period is reasonable, and indicates that it does not oppose the rate designs proposed by Staff or Kroger. DP&L further suggests that if the Commission requires DP&L to file an application each year to commence a proceeding for the storm cost recovery rider, the procedural timing should be offset from AEP's storm cost recovery proceeding filings.

- (12) Staff comments that following the Commission Order in this case, Staff should be authorized to conduct a detailed audit of the storm repair expenditures incurred in the years in which DP&L requests recovery and has received Commission approval.
- (13) Pursuant to Section 4909.18, Revised Code, if it appears to the Commission that the proposals in the application may be unjust or unreasonable, the Commission should set the matter for hearing. Furthermore, on July 3, 2013, DP&L filed a motion to set a hearing date in this case. In accordance with Section 4909.18, Revised Code, and DP&L's motion, the Commission finds that this matter should be set for hearing.
- (14) The Commission agrees with OCC and Staff that this is not the appropriate proceeding for the Commission to

authorize DP&L to establish a charge to recover capital expenses related to storm restoration. The Commission notes that the cases DP&L uses to justify its request are not on point. Ohio Power, FirstEnergy, and Duke each established a distribution investment rider through an ESP subsequent to a distribution rate case. In this instance, there has been no distribution rate case. Further, Ohio Power, FirstEnergy, and Duke's distribution investment riders were not to recover capital costs related to storm restorations. Recovery of capital costs for storm damage and restoration is an issue appropriate for a distribution rate case. Therefore, the Commission finds that DP&L's request to recover capital expenditures from customers as a result of storm-restoration efforts should be denied. All other objections raised by OCC and Staff in comments are issues that are appropriately addressed in the evidentiary hearing scheduled in this proceeding.

- (15) The Commission further finds that Staff should conduct a full audit of the storm repair expenditures incurred in the years in which DP&L requests recovery before this case goes to hearing. Accordingly, Staff should file its audit in this docket by January 3, 2014.
- (16) Accordingly, the Commission finds that the following procedural schedule shall apply:
  - (a) Staff's audit report shall be filed by January 3, 2014.
  - (b) All testimony to be offered by DP&L shall be filed by January 9, 2014.
  - (c) All testimony to be offered by intervenors shall be filed by January 16, 2014.
  - (d) The evidentiary hearing shall commence on February 4, 2014, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-C, Columbus, Ohio 43215.



It is, therefore,

ORDERED, That the procedural schedule for this matter be adopted in accordance with finding (16). It is, further,

ORDERED, That Staff conduct an audit of DP&L's storm repair expenditures in accordance with finding (15). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

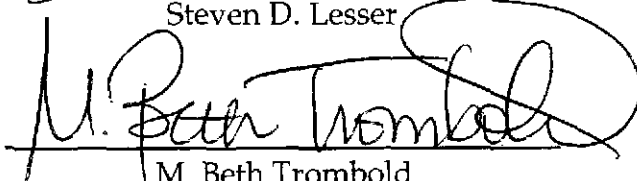
THE PUBLIC UTILITIES COMMISSION OF OHIO



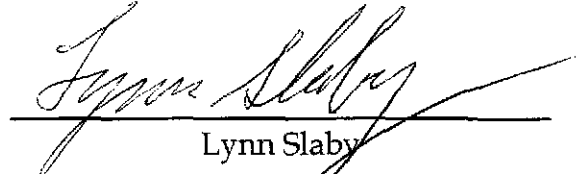
Todd A. Snitchler, Chairman



Steven D. Lesser



M. Beth Trombold



Lynn Slaby

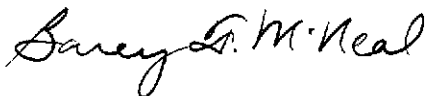


Asim Z. Haque

BAM/sc

Entered in the Journal

**OCT 23 2013**



Barcy F. McNeal  
Secretary