

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-3062-EL-RDR
for 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.)

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

The Office of the Ohio Consumers' Counsel ("OCC") applies for rehearing of the October 23, 2013 Entry ("Entry") of the Public Utilities Commission of Ohio ("Commission" or "PUCO"), which, among other things, sets forth the procedural schedule in this action. Specifically, the PUCO's Entry established a procedural schedule that requires intervening parties to file responsive testimony only seven days after the Dayton Power and Light Company ("DP&L" or "Utility") files its testimony, and only sixteen days after the filing of the PUCO Staff Audit Report.¹

Through this filing, OCC seeks rehearing of the PUCO's Entry pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35. The October 23, 2013 Entry is unjust, unreasonable, and unlawful because:

¹ Entry at ¶16 (October 23, 2013).

1. The Entry does not provide adequate time for OCC to review and analyze the January 9, 2014 Company testimony, conduct depositions of Company witnesses in regard to their testimony, and prepare testimony in response to the Company's positions; and
2. The Entry does not provide adequate time for OCC to receive responses from the Company in regard to discovery requests relating to findings in the PUCO Staff Audit Report (due January 3, 2014), before OCC must file its expert testimony (due January 16, 2013).

The bases for this Application for Rehearing are set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and OCC's claims of error, the PUCO should modify the procedural schedule in its October 23, 2013 Entry.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Melissa R. Yost

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 21, 2012, DP&L filed this action seeking authority to charge customers for certain storm-related restoration costs and for accounting authority to defer 2011 storm Operations and Maintenance costs. Specifically, DP&L requested 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

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

On October 23, 2013, the PUCO issued an Entry, which rejected DP&L's requests for collect of any capital expenses related to storm costs from its customers in this proceeding.³ The Commission then ordered the PUCO Staff to conduct a full audit of the remaining storm expenses for which DP&L seeks to collect from customers.⁴ Finally, the PUCO established a procedural schedule that requires the PUCO Staff Audit Report to be filed by January 3, 2014, Company testimony to be filed by January 9, 2014, and intervenor testimony to be filed by January 16, 2014.⁵

OCC submits this Application for Rehearing for the PUCO's consideration. OCC respectfully requests that the PUCO modify its October 23, 2013 Entry to extend the deadline for intervenor testimony from January 16, 2014 to January 30, 2014. Additionally, OCC would agree to a two week extension of the hearing date if requested by the Company.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10 and Ohio Adm. Code 4901-1-35 and must be filed within thirty days after issuance of an order from the PUCO. “[A]ny 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.”⁶ Furthermore, the application for rehearing must be “in writing and shall set forth

³ Entry (October 23, 2013) at 7-8.

⁴ Id. at 8.

⁵ Id.

⁶ R.C. 4903.10.

specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.”⁷

In considering an application for rehearing, Ohio law provides that the PUCO “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear.”⁸ Furthermore, if the PUCO 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 ***.”⁹

OCC meets the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10 and the requirements of the PUCO’s rule on applications for rehearing. Accordingly, OCC respectfully requests that the PUCO grant rehearing on the matters specified below and modify the Entry as requested herein.

III. ARGUMENT

The PUCO erred when it established a procedural schedule that only allowed seven days between DP&L’s deadline for filing testimony and the intervenors’ deadline for filing testimony and sixteen days between the filing of the PUCO Staff Audit Report and intervenor testimony. As a result, the PUCO should grant OCC’s Application for Rehearing and modify the procedural schedule to give intervenors additional time (from the date the Company files its testimony) to file testimony.

⁷ R.C. 4903.10(B).

⁸ Id.

⁹ Id.

The Ohio Revised Code mandates that “[a]ll parties and intervenors shall be granted ample rights of discovery.”¹⁰ As the procedural schedule currently stands, however, DP&L must file testimony by January 9, 2014, and the intervening parties are only afforded seven days to file their responsive testimony on January 16, 2014.¹¹ This respective portion of the PUCO’s October 23, 2013 Entry is unreasonable because seven days is not an ample period of time for the intervening parties (including OCC) to analyze DP&L’s testimony, conduct discovery (depositions) in regard to that testimony and then formulate their own testimony.

Additionally, the procedural schedule also requires OCC (and other intervenors) to file testimony sixteen days after the filing of the PUCO Staff Audit Report (due January 3, 2014.) That is not much time to review and analyze the findings of a very important report. But more importantly, sixteen days is not ample time to do written discovery on the findings of the PUCO Staff Audit Report before the filing of intervenor testimony. Per the PUCO’s rules,¹² sixteen days is not enough time for intervening parties to receive discovery responses from the Company in regard to discovery related to findings in the PUCO Staff Audit Report, before filing their own testimony.

In order to ensure that the intervenors have ample discovery time after the filing of the PUCO Staff Audit Report and Company testimony, as guaranteed by R.C. 4903.082, the PUCO should modify its Entry to extend the deadline for intervenor testimony by fourteen days. Such a modification would move the deadline for intervenor testimony from January 16, 2014, to January 30, 2014.

¹⁰ R.C. 4903.082.

¹¹ Entry at 8.

¹² See Ohio Adm. Code 4901-1-19 and 4901-1-20.

IV. CONCLUSION

For the reasons stated above, the PUCO should grant OCC's Application for Rehearing and modify the procedural schedule in its October 23, 2013 Entry to extend the deadline for intervenor testimony by fourteen days such that intervenor testimony would be due on January 30, 2013.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Melissa R. Yost

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Application for Rehearing* was served electronically on the persons stated below this 22nd day of November, 2013.

/s/ Melissa R. Yost _____

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