

**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 for ) Case No. 12-3266-EL-AAM  
Approval of Certain Accounting Authority. )

**TESTIMONY  
OF  
DAVID J. EFFRON  
IN OPPOSITION TO THE STIPULATION AND RECOMMENDATION**

**On Behalf of the  
Office of the Ohio Consumers' Counsel**  
*10 West Broad St., Suite 1800  
Columbus, OH 43215*

**MAY 27, 2014**

## TABLE OF CONTENTS

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. PURPOSE OF TESTIMONY .....	3
III. 2011 STORM EXPENSES .....	4
IV. CONCLUSION.....	8

1    **I.        INTRODUCTION**

2

3    ***Q1.    PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.***

4    ***A1.***    My name is David J. Effron. My address is 12 Pond Path, North Hampton, New  
5           Hampshire, 03862.

6

7    ***Q2.    WHAT IS YOUR PRESENT OCCUPATION?***

8    ***A2.***    I am a consultant specializing in utility regulation.

9

10   ***Q3.    PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.***

11   ***A3.***    My professional career includes over thirty years as a regulatory consultant, two  
12           years as a supervisor of capital investment analysis and controls at Gulf & Western  
13           Industries and two years at Touche Ross & Co., as a consultant and staff auditor. I  
14           am a Certified Public Accountant and I have served as an instructor in the business  
15           program at Western Connecticut State College.

16

17   ***Q4.    WHAT EXPERIENCE DO YOU HAVE IN THE AREA OF UTILITY RATE***  
18   ***SETTING PROCEEDINGS AND OTHER UTILITY MATTERS?***

19   ***A4.***    I have analyzed numerous electric, gas, telephone, and water filings in different  
20           jurisdictions. In regard to those analyses, I have prepared testimony, assisted  
21           attorneys in case preparation, and provided assistance during settlement negotiations  
22           with various utility companies.

*Testimony of David J. Effron  
in Opposition to the Stipulation and Recommendation  
On Behalf of the Office of the Ohio Consumers' Counsel  
PUCO Case No. 12-3062-EL-RDR et al.*

1 I have testified in over three hundred cases before regulatory utility commissions in  
2 Alabama, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas,  
3 Kentucky, Maine, Maryland, Massachusetts, Missouri, Nevada, New Jersey, New  
4 York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas,  
5 Vermont, Virginia, and Washington.

6  
7 ***Q5. PLEASE DESCRIBE YOUR OTHER WORK EXPERIENCE.***

8 ***A5.*** As a supervisor of capital investment analysis at Gulf & Western Industries, I was  
9 responsible for reports and analyses concerning capital spending programs,  
10 including project analysis, formulation of capital budgets, establishment of  
11 accounting procedures, monitoring capital spending, and administration of the  
12 leasing program. At Touche Ross & Co., I was an associate consultant in  
13 management services for one year and a staff auditor for one year.

14  
15 ***Q6. HAVE YOU EARNED ANY DISTINCTIONS AS A CERTIFIED PUBLIC***  
16 ***ACCOUNTANT?***

17 ***A6.*** Yes. I received the Gold Charles Waldo Haskins Memorial Award for the highest  
18 scores in the May 1974 certified public accounting examination in New York State.

19  
20 ***Q7. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.***

21 ***A7.*** I have a Bachelor's degree in Economics (with distinction) from Dartmouth  
22 College and a Masters of Business Administration Degree from Columbia  
23 University.

1   **II.    PURPOSE OF TESTIMONY**

2

3   ***Q8.    ON WHOSE BEHALF ARE YOU TESTIFYING?***

4   **A8.**    I am testifying on behalf of the Office of the Ohio Consumers' Counsel ("OCC").

5

6   ***Q9.    WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

7   **A9.**    On December 21, 2012, Dayton Power and Light Company ("DP&L" or "the  
8           Utility") filed an Application with the Public Utilities Commission of Ohio  
9           ("PUCO") seeking authority to recover storm operation and maintenance  
10          ("O&M") expenses for storm events in 2008, 2011, and 2012, authority to  
11          implement a Storm Cost Recovery Rider, and authority to defer O&M costs until  
12          they are recovered through the requested rider. On April 30, 2014, DP&L, the  
13          PUCO Staff, and The Kroger Co. agreed to a Stipulation and Recommendation  
14          ("Stipulation") that included as one of its terms and conditions: "DP&L's recovery  
15          for storms in 2008, 2011 and 2012 as identified in its Application shall be \$22.3  
16          million." My testimony addresses the inclusion of deferred O&M expenses  
17          associated with the 2011 storms in the total storm costs of \$22.3 million subject to  
18          prospective recovery in the Stipulation.

19

20   ***Q10.  ARE THERE ANY EXHIBITS OR SCHEDULES ACCOMPANYING YOUR***  
21   ***TESTIMONY?***

22   **A10.**    No.

**III. 2011 STORM EXPENSES**

***Q11. PLEASE SUMMARIZE THE 2011 STORM EXPENSES THAT DP&L SOUGHT TO INCLUDE IN ITS STORM COST RECOVERY RIDER.***

***A11.*** DP&L sought to collect, through the Storm Cost Recovery Rider, O&M expenses that were incurred as a result of the following five storms in 2011:

<u>Date</u>	<u>O&amp;M Expense</u>
1/31/2011	\$ 6,383,876
5/22/2011	1,147,344
5/11/2011	1,941,825
7/24/2011	283,667
9/3/2011	<u>278,585</u>
Total	<u>\$ 10,035,297</u>

***Q12. DID THE UTILITY DEFER THESE EXPENSES AS THEY WERE INCURRED IN 2011?***

***A12.*** No. As part of its Application in the present case, which was filed in December 2012, DP&L for the first time sought accounting authority to defer these expenses (and also to recover them prospectively through its proposed Storm Cost Recovery Rider). In December 2012, the Utility also recorded a journal entry to retroactively defer, and record as a regulatory asset, \$4,359,108 of 2011 storm expenses. Thus, it was not until December 2012 that DP&L deemed that amount of the 2011 expenses to be probable of inclusion in future revenues. The effect of recognizing the deferral in 2012 was to reduce reported expenses on the 2012 financial statements and to increase reported income accordingly.

1 ***Q13. HAS THE UTILITY CITED ANY EVENTS OR NEW INFORMATION IN 2012***  
2 ***THAT WOULD IMPLY THAT APPROXIMATELY \$4.4 MILLION OF THE***  
3 ***OPERATION AND MAINTAINANCE EXPENSES ASSOCIATED WITH 2011***  
4 ***STORMS WERE MORE PROBABLE OF RECOVERY AS OF DECEMBER***  
5 ***2012 THAN THEY WERE IN 2011?***

6 ***A13.*** No. December 2012 was approximately 23 months after the bulk of the 2011  
7 storm expenses were incurred and 15 months after the last of the 2011 storm  
8 expenses were incurred. Logically, the passage of time without any authority to  
9 defer expenses would make the probability of future recovery less probable, not  
10 more probable. For example, if DP&L applied in 2012 to defer expenses that were  
11 incurred in 2002 or 2003, I think that any forthcoming authorization to defer such  
12 expenses for future recovery would have to be considered a long shot, at best.

13  
14 Applying for authority in December 2012 to defer expenses from 2011 does not  
15 substantively make such expenses more probable of future recovery. There was no  
16 action by regulators in December 2012, or immediately thereafter, that made any  
17 2011 storm expenses probable of future recovery whereas they had previously not  
18 been. DP&L has not identified any criteria or reasons for recognizing this \$4.4  
19 million in O&M expenses as a regulatory asset in 2012 that were not also met in  
20 2011.

1 ***Q14. HAS THE UTILITY RECEIVED PUCO APPROVAL TO DEFER THE 2011***  
2 ***STORM RESTORATION EXPENSES?***

3 ***A14.*** To my knowledge, it has not.  
4

5 ***Q15. IS THE TIMING OF DP&L'S DECISION TO DEFER THESE COSTS***  
6 ***RELEVANT TO CONSIDERATION OF THE EXTENT TO WHICH A***  
7 ***DEFERRAL SHOULD BE AUTHORIZED?***

8 ***A15.*** Yes, I believe that it is. In Case No. 04-1931-EL-AAM, the FirstEnergy  
9 companies filed an application on December 30, 2004, seeking authority to defer  
10 incremental transmission and ancillary service-related charges related to  
11 membership in the Midwest Independent Transmission System Operator, Inc. The  
12 relevant costs had commenced in October 2003 and were expected to continue  
13 until January 1, 2006. The PUCO determined that: "For those charges incurred  
14 prior to the filing of the application, the [PUCO] notes that FirstEnergy has been  
15 aware that it was incurring these charges since it joined MISO on October 1, 2003;  
16 however, FirstEnergy did not file its application to defer these charges until  
17 December 30, 2004. Therefore, FirstEnergy will not be granted authority to defer  
18 charges incurred prior to the filing of the application. FirstEnergy will be  
19 permitted to defer only those charges incurred on a going-forward basis after the  
20 filing of the application and ending January 1, 2006."<sup>1</sup>

---

<sup>1</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Modify Their Accounting Procedures*, Case No. 04-1931-EL-AAM, Finding and Order at 6 (May 18, 2005).



1 The PUCO found that FirstEnergy's delay in seeking authority to defer the costs in  
2 question was relevant to its determination of the extent to which the deferrals  
3 should be authorized. I believe that DP&L's delay in seeking authority to defer the  
4 2011 storm restoration costs is a similarly relevant consideration in the present  
5 case. Like FirstEnergy, DP&L was aware in 2011 of the storm damage expenses  
6 that had been incurred in that year. However, DP&L unreasonably delayed  
7 seeking authority to defer those 2011 expenses. Therefore, DP&L should not be  
8 given deferral authority for restoration expenses that were incurred prior to the  
9 Application – which in this case, would be all of 2011 major storm restoration  
10 expenses.

11  
12 ***Q16. WAS THE UTILITY'S INCOME IN 2012 LOWER THAN ITS INCOME IN***  
13 ***2011?***

14 ***A16.*** Yes, the Utility's reported net income in 2011 was \$193.2 million, which dropped  
15 to \$91.1 million in 2012.

16  
17 ***Q17. WAS THE UTILITY'S LOWER INCOME IN 2012 GROUNDS FOR***  
18 ***RECORDING A DEFERRAL OF COSTS THAT HAD BEEN CHARGED TO***  
19 ***EXPENSE IN A PREVIOUS PERIOD?***

20 ***A17.*** No. The Utility's net income in 2012 was affected by an impairment charge of  
21 \$80.8 million, which would reduce after-tax income by approximately \$52.5  
22 million. Nevertheless, the 2012 net income was significantly below the 2011 net  
23 income, irrespective of the impairment charge's effect. However, the lower

1 income in 2012 is irrelevant to the probability of future recovery of expenses that  
2 had been incurred in 2011.

3  
4 ***Q18. SHOULD ANY WEIGHT BE GIVEN TO THE UTILITY'S 2012 DECISION***  
5 ***TO DEEM THE 2011 STORM EXPENSES PROBABLE OF FUTURE***  
6 ***RECOVERY IN DETERMINING WHETHER TO AUTHORIZE***  
7 ***PROSPECTIVE RECOVERY OF THE 2011 STORM EXPENSES?***

8 ***A18.*** No. That would turn the ratemaking process on its head. Rate actions determine  
9 the extent to which incurred expenses are probable of future recovery. A utility's  
10 unilateral decision to treat previously incurred expenses as being probable of future  
11 recovery does not determine the appropriate rate action.

12  
13 **IV. CONCLUSION**

14  
15 ***Q19. WOULD ANY REGULATORY PRINCIPLES BE VIOLATED BY***  
16 ***AUTHORIZATION OF PROSPECTIVE RECOVERY OF THE 2011 STORM***  
17 ***COSTS BASED ON THE UTILITY'S DECISION TO RECORD A***  
18 ***REGULATORY ASSET RELATED TO THOSE STORM COSTS?***

19 ***A19.*** Yes. In effect, that would allow the Utility to increase rates to recover a regulatory  
20 asset that it had no clear authority to record in the first place. Again, it is rate actions  
21 that should determine the probability of recovery, not a utility's own estimate of the  
22 probability of recovery that should determine the appropriate rate action. If there is  
23 a reasonable expectation of future recovery, a regulated public utility can book a

*Testimony of David J. Effron  
in Opposition to the Stipulation and Recommendation  
On Behalf of the Office of the Ohio Consumers' Counsel  
PUCO Case No. 12-3062-EL-RDR et al.*

1 regulatory asset; however, the mere act of recording of a regulatory asset cannot  
2 spontaneously create a reasonable expectation of future recovery.

3  
4 ***Q20. HOW DOES THIS RELATE TO THE DETERMINATION OF WHETHER TO***  
5 ***APPROVE THE STIPULATION?***

6 ***A20.*** It is my understanding that one of the elements of the three-prong test relied on by  
7 the PUCO in evaluating whether to approve a stipulation is whether the terms of the  
8 stipulation violate any important regulatory principle or practice. To the extent that  
9 the \$22.3 million recovery agreed to in the Stipulation includes the 2011 storm costs  
10 based on the Utility's act of recording of a regulatory asset for those costs, approval  
11 of the Stipulation would violate the regulatory principle that a utility's own internal  
12 accounting decision cannot by itself establish a right to prospective recovery of  
13 expenses deferred on its books of account.

14  
15 ***Q21. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?***

16 ***A21.*** Yes.

## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Testimony of David J. Effron on Behalf of the Office of the Ohio Consumers' Counsel* was served on the persons state below via electronic transmission this 27th day of May, 2014.

/s/ Melissa R. Yost

Melissa R. Yost

Deputy Consumers' Counsel

## **SERVICE LIST**

Ryan O'Rourke  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 East Broad St., 6<sup>th</sup> Fl.  
Columbus, Ohio 43215  
Ryan.orourke@puc.state.oh.us

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

Mark S. Yurick  
Zachary D. Kraits  
Taft Stettinius & Hollister LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215  
myurick@taftlaw.com  
zkravitz@taftlaw.com

Charles J. Faruki  
Jeffrey S. Sharkey  
Faruki Ireland & Cox PLL  
500 Courthouse Plazas, S.W.  
10 North Ludlow Street  
Dayton, Ohio 45402  
cfaruki@ficlaw.com  
jsharkey@ficlaw.com

AEs: Bryce.mckenney@puc.state.oh.us  
Gregory.price@puc.state.oh.us

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/27/2014 4:17:30 PM**

**in**

**Case No(s). 12-3062-EL-RDR, 12-3266-EL-AAM**

Summary: Testimony Testimony of David J. Effron in Opposition to the Stipulation and Recommendation on Behalf of the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Yost, Melissa Ms.