

**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 :

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**POST-HEARING BRIEF  
OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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## INTRODUCTION

This case arises out of an application filed by The Dayton Power and Light Company (“DP&L”) to recover costs incurred to repair damage to its system from storms that struck in 2008, 2011, and 2012. For 2011 and 2012, DP&L sought operation and maintenance (“O&M”) expenses for all major storms including related capital expenditures. For 2011 only, DP&L sought accounting authority to defer O&M expenses at its long-term debt rate. For 2008, it sought to recover O&M expenses for certain storms including related capital expenditures for Hurricane Ike. Finally, DP&L sought authority to establish a storm cost recovery rider to recover major-storm costs going forward. In total, DP&L sought recovery of \$64,646,644.<sup>1</sup>

By entry, the Commission explained that this was not the appropriate proceeding for DP&L to recover capital expenditures, which reduced the amount at issue to \$37,021,654 (i.e., \$64,646,644 - \$27,624,990).<sup>2</sup> Staff later responded to DP&L’s application with a Commission-ordered audit report.<sup>3</sup> Staff’s report recommended that, if recovery is authorized for all storms identified in the application, DP&L should be permitted to recover \$23,407,216.<sup>4</sup>

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<sup>1</sup> OCC Ex. 1 at 4 (Staff’s Audit Report)

<sup>2</sup> Entry at 7-8 (Oct. 23, 2012)

<sup>3</sup> *Id.* at 8

<sup>4</sup> OCC Ex. 1 at 3 (Staff’s Audit Report)

During this litigation, the parties—DP&L, Staff, Kroger, and OCC—engaged in a series of settlement discussions aimed at resolving this case. These discussions led to a stipulation signed by DP&L, Staff, and Kroger that recommends recovery of \$22.3M over one year, with no carrying charges accruing during recovery.<sup>5</sup> The stipulation further recommends that DP&L may seek recovery of capital expenditures in a future distribution rate case.<sup>6</sup> OCC opposes the stipulation. The question for the Commission is whether the stipulation is reasonable and should be adopted. For the reasons set forth below, Staff urges the Commission to adopt the stipulation.

## ARGUMENT

Ohio Adm. Code 4901-1-30(A) authorizes two or more parties to enter into a stipulation. Though not bound by a stipulation, the Commission should give it substantial weight.<sup>7</sup> The Commission conducts a three-factor inquiry to assess whether a stipulation is reasonable and should be adopted.<sup>8</sup> The three factors are:

1. Whether the stipulation is a product of serious bargaining among capable, knowledgeable parties;

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<sup>5</sup> Joint Ex. 1 at 2 (Stip. and Rec.)

<sup>6</sup> *Id.*

<sup>7</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992)

<sup>8</sup> *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion at 8-9 (Apr. 2, 2014)

2. Whether the stipulation, as a package, benefits ratepayers and the public interest; and
3. Whether the stipulation violates any important regulatory principal or practice.

The Ohio Supreme Court has endorsed this inquiry.<sup>9</sup> The three factors will now be addressed.

**A. The stipulation is a product of serious bargaining among capable, knowledgeable parties.**

The settlement discussions were marked by an arm's-length negotiation process. All parties were represented by able counsel and skilled technical advisers, and had ample opportunities to participate in the settlement process.<sup>10</sup> During the pendency of the negotiations, parties circulated proposals to one another which they thought would best achieve their respective interests and objectives. In short, everyone had a seat at the bargaining table; no party was excluded.<sup>11</sup> And even though OCC did not sign the stipulation, this does not mean the stipulation is per se unreasonable. "The Commission

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<sup>9</sup> *Indus. Energy Consumers of Ohio Power v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994)

<sup>10</sup> DP&L Ex. 7 at 6 (Test. of Seger-Lawson in Support of Stip. and Rec.)

<sup>11</sup> *Id.* at 7

has repeatedly determined that [it] will not require any single party, including OCC, to agree to a stipulation, in order to meet the first prong of the three-prong test.”<sup>12</sup>

**B. The stipulation, as a package, benefits ratepayers and the public interest.**

Ratepayers and the public interest benefit from this stipulation. Initially, DP&L came in with a request to recover \$64,646,644 in storm-related costs.<sup>13</sup> The Commission then reduced this amount to \$37,021,654 by denying DP&L’s request to recover capital expenditures.<sup>14</sup> In its audit report, Staff then recommended that, if recovery is authorized for all storms identified in the application, DP&L should be permitted to recover \$23,407,216, adjusted accordingly for carrying charges.<sup>15</sup>

The amount of recovery recommended in the stipulation, \$22.3M, is less than DP&L’s request and also less than Staff’s recommended amount.<sup>16</sup> The stipulation also prohibits DP&L from accruing carrying charges on this amount during recovery, further

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<sup>12</sup> *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion at 12 (Apr. 2, 2014)

<sup>13</sup> OCC Ex. 1 at 4 (Staff’s Audit Report)

<sup>14</sup> Entry at 7-8 (Oct. 23, 2012)

<sup>15</sup> OCC Ex. 1 at 3 (Staff’s Audit Report)

<sup>16</sup> Joint Ex. 1 at 2 (Stip. and Rec.)

mitigating bill impacts.<sup>17</sup> The reduction to what DP&L asked for and what Staff recommended strongly demonstrates the benefits of this stipulation.<sup>18</sup>

**C. The stipulation does not violate any important regulatory principle or practice.**

The stipulation does not violate any important regulatory principle or practice. The stipulation recommends recovery of DP&L's prudently-incurred costs.<sup>19</sup> Permitting recovery of prudently-incurred costs is a longstanding principle in the field of utility regulation, which the Commission recently followed in AEP's storm-cost-recovery case.<sup>20</sup> By providing for recovery of DP&L's storm costs, the stipulation creates a reasonable expectation that DP&L will recover its storm costs in the future and provides a further incentive for it to "get the lights back on" as expeditiously as possible.<sup>21</sup> This benefits DP&L and it benefits customers.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 14 (substantial reduction to what Company asked for weighs in favor of adopting the stipulation)

<sup>19</sup> DP&L Ex. 7 at 7-8 (Test. of Seger-Lawson in Support of Stip. and Rec.)

<sup>20</sup> *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion at 31 (Apr. 2, 2014)

<sup>21</sup> DP&L Ex. 7 at 7-8 (Test. of Seger-Lawson in Support of Stip. and Rec.)

## CONCLUSION

For the foregoing reasons the stipulation should be adopted.

Respectfully submitted,

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*/s/ Ryan P. O'Rourke*

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## PROOF OF SERVICE

I certify that a copy of the **Post-Hearing Brief** was served by email upon the following Parties of Record on July 24, 2014.

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Summary: Brief Post-Hearing Brief submitted by Assistant Attorney General Ryan O'Rourke on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio