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-Related Service Restoration Costs	:	Case No. 12-3062-EL-RDR
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority	:	Case No. 12-3266-EL-AAM

INITIAL POST-HEARING BRIEF OF THE DAYTON POWER AND LIGHT COMPANY

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I. INTRODUCTION AND SUMMARY

In 2008, 2011 and 2012, DP&L experienced three of the worst storms in its history. Stipulations that the Commission has approved and well-established precedent allow DP&L to recover prudently-incurred expenses that it incurs to respond to unusual and non-recurring storms, and there is no dispute that those storms were unusual and non-recurring.

The Stipulation and Recommendation in this case, which was signed by Staff, Kroger and DP&L, is a reasonable resolution in this case. That Stipulation authorizes DP&L to recover $22.3 million, which is $12 million less than the amount that DP&L sought to recover (i.e., approximately a one-third reduction).

OCC is the only party to contest the Stipulation. As demonstrated below, the Commission should reject OCC's arguments and should approve the Stipulation.

II. DP&L'S EXPENSES WERE PRUDENTLY INCURRED TO RESPOND TO UNUSUAL AND NON-RECURRING STORMS

2008 Hurricane Ike, the 2011 ice storm and the 2012 Derecho were the three largest storms that DP&L has experienced in terms of numbers of customers impacted; and three of the four largest in terms of costs. DP&L Ex. 1, p. 4 (Nickel); DP&L Exs. 44-47 (photographs of the storm damage). Specifically:

2008 Hurricane Ike: Hurricane Ike hit DP&L's service territory on September 14, 2008. DP&L Ex. 1, p. 2. The storm included sustained winds in excess of 80 mph for over 10 hours; over 300,000 customers were without power. Id. at 2-3. DP&L customers also experienced 13 other storms in 2008. Id. at 3. DP&L incurred $13.6 million in O&M expenses in response to Hurricane Ike, and another $3.6 million in O&M expenses in response to the 13 other storms. Schedule C-1.

2011 Ice Storm: On February 1, 2011, a major ice storm hit DP&L's service territory, and over 156,000 customers lost power. DP&L Ex. 1, p. 3. DP&L customers experienced four other major storms in 2011 that caused between 21,332 and 93,979 customers to lose power. Id. DP&L incurred $10.0 million in O&M expenses in response to the 2011 major storms. Schedule C-1.

2012 Derecho: On June 28, 2012, a Derecho struck DP&L's service territory; the Derecho had sustained winds of 58 mph, gusting to 82 mph; over 185,000 customers lost power. DP&L Ex. 1, p. 3. An additional storm hit DP&L's service territory on July 1, 2012, affecting 40,000 additional customers. Id. at 4. DP&L incurred $4.8 million in O&M expenses in response to the 2012 Derecho. Schedule C-1.

OCC's witnesses did not dispute that the storms at issue in this case were unusual and non-recurring. Tr. 276-77 (Yankel); Tr. 396 (Effron); Tr. 514-15 (Duann).

The evidence submitted by DP&L shows that the expenses that it incurred to respond to those storms were prudently incurred. DP&L Ex. 1, pp. 4-11 (Nickel). Staff identified relatively few costs that it believed were not prudently incurred. Staff Audit Report ("Staff Report"), p. 4. OCC witness Yankel traveled to DP&L to inspect invoices, and he did not identify any costs that he thought were imprudent. Tr. 277 (Yankel).

III. STORM RIDERS ARE APPROPRIATE TO ALLOW UTILITIES TO RECOVER ALL OF THEIR PRUDENTLY-INCURRED COSTS

It has long been the Commission's practice to "normalize" a utility's expenses in a distribution rate case.[1] Under that practice, if there are unusual or non-recurring storms that occur in a test year, then expenses associated with those storms will be excluded from test year expenses, and will not be recoverable through base rates.[2]

Of course, a utility will sometimes incur expenses associated with unusual or non-recurring storms. Without a mechanism to recover its unusual and non-recurring storm expenses, a utility would not be able to recover all of its prudently-incurred expenses. The Commission has therefore authorized utilities to recover their prudently-incurred costs associated with unusual and non-recurring storms,[3] and the Supreme Court of Ohio has affirmed Commission Orders allowing recovery of those expenses.[4]

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[1] In re the Application of Ohio Edison Co. to Increase Certain of Its Filed Schedules, Pub. Util. Comm. No. 82-1025-EL-AIR, 1983 Ohio PUC LEXIS 40, at *89 (Sept. 14, 1983) ("Test year operating income should be reflective of the results of normal operations for the company. The impact of unusual or nonrecurring events should be excluded from the determination of expenses if they are not reflective of what the company is reasonably expected to experience.") (available at DP&L Ex. 26, p. 26).

[2] In re the Application of The Dayton Power &Light Co. for Auth. to Modify & Increase Its Rates, Pub. Util. Comm. No. 82-517-EL-AIR, 1983 Ohio PUC LEXIS 70, at *69 (Apr. 27, 1983) (Commission approved Staff proposal "to reduce test year operating expenses by $1,224,032 to account for abnormally high level of storm damage expense included by the company") (available at DP&L Ex. 27, p. 24); In re the Application of the Ohio-Am. Water Co. to Increase Rates for Water Serv. Provided to Its Entire Serv. Area, Pub. Util. Comm. No. 79-1343-WW-AIR, 1981 Ohio PUC LEXIS 3, at *19 (Jan. 14, 1981) ("The record in this case indicates that the severe storm occurred in 1977 that generated the expense at issue and there have not been recurring storms of such a nature every year. Thus, the Commission can only conclude that this was an unusual and non-recurring expense and should be excluded from the cost of service of the applicant.") (available at DP&L Ex. 28, p. 7). OCC's witnesses conceded those points. Tr. 397-98 (Effron); Tr. 510-11 (Duann).

[3] E.g., July 12, 2006 Finding and Order, p. 5 (Case No. 05-1090-EL-ATA); In re the Application of Duke Energy Ohio, Inc. to Establish & Adjust the Initial Level of Its Distrib. Reliability Rider, Pub. Util. Comm. No. 09-1946-EL-RDR (Jan. 11, 2011 Opinion and Order).

[4] In re Application of Duke Energy Ohio, Inc. to Establish &Adjust the Initial Level of Its Distrib. Reliability Rider, 131 Ohio St. 3d 487, 2012-Ohio-1509, 967 N.E.2d 201, ¶ 34 (2012) (affirming Commission order authorizing Duke to recover certain costs associated with Hurricane Ike).

In addition, the Commission has approved a series of Stipulations that authorize DP&L to recover the storm costs at issue in this case. DP&L Ex. 9, p. 3 (creating distribution rate freeze for DP&L through December 31, 2006[5] and permitting the distribution rates to be adjusted after December 31, 2003 to recover storm damage expenses); DP&L Ex. 10 ¶ IX.C. (creating rate stabilization period from January 1, 2006 through December 31, 2008, and providing that DP&L's distribution rates would remain frozen during that period, subject to the adjustments permitted in the ETP Stipulation, DP&L Ex. 9); DP&L Ex. 12, ¶ 18 (DP&L distribution rates frozen through December 31, 2012, with exception that DP&L can apply to recover costs of storm damage).

IV. STAFF, KROGER AND DP&L SIGNED THE STIPULATION

The Commission repeatedly has declared that "it is sound regulatory policy to encourage parties to [Commission] proceedings to resolve issues through negotiated settlements."[6] The Supreme Court of Ohio has held that the terms of a stipulation "'are properly accorded substantial weight'" by the Commission when it determines a just and reasonable resolution of a case.[7]

In evaluating a Stipulation, the Commission uses the following three-factor test, which the Supreme Court of Ohio has approved:

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[5] The storms at issue in this case did not occur during this period. This Stipulation is relevant because the next Stipulation in the text includes 2008 and references the storm damage recovery provided in this Stipulation.

[6] In re the Restatement of the Accounts & Records (Zimmer Plant), Pub. Util. Comm. No. 84-1187-EL-UNC, 1985 Ohio PUC LEXIS 9, at *19 (Nov. 26, 1985). Accord: In re the Application of The Dayton Power &Light Co. for Auth. to Amend Its Filed Tariffs, Pub. Util. Comm. No. 91-414-EL-AIR, 1992 Ohio PUC LEXIS 57, at *23-26 (Jan. 22, 1992).

[7] Office of Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123, 125, 592 N.E.2d 1370 (1992) (per curiam) (quoting City of Akron v. Pub. Util. Comm., 55 Ohio St. 2d 155, 157, 378 N.E.2d 480 (1978) (per curiam)).

"'1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

2. Does the settlement, as a package, benefit ratepayers and the public interest?

3. Does the settlement package violate any important regulatory principle or practice?'"

Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm., 68 Ohio St. 3d 559, 561, 629 N.E.2d 423 (1994) (per curiam) (quoting Office of Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123, 126, 592 N.E.2d 1370 (1992) (per curiam)).

Here, Staff, Kroger and DP&L have signed a Stipulation that authorizes DP&L to recover $22.3 million in operation and maintenance expenses associated with storms in 2008, 2011 and 2012. Joint Ex. 1, p. 2. Testimony by DP&L witness Seger-Lawson demonstrates that the Stipulation satisfies the Commission's three-part test. DP&L Ex. 7, pp. 6-8.

That Stipulation includes two significant customer benefits. First, as a result of the Stipulation, DP&L will recover over $12 million less than the amount of the expenses that it sought to recover in this case. DP&L Ex. 7, p. 7. That is a reduction of more than 33% from DP&L's request. Id. Second, DP&L agreed to forego recovery in this case of its capital expenditures to respond to the storms at issue. Joint Ex. 1, p. 2. There is Commission precedent allowing utilities to recover storm capital expenditures through a storm rider.[8]

The Commission should thus approve the Stipulation because it satisfies the Commission's three-part test.

[8] In response to ice storms that DP&L experienced in December 2004 and January 2005, DP&L sought to recover both O&M expenses and capital expenditures. Feb. 22, 2006 Supplement to Application, Schedule 1 & Schedule 2 (Case No. 05-1090-EL-ATA). The Commission approved that request. July 12, 2006 Finding and Order, p. 6 (Case No. 05-1090-EL-ATA).

V. THE COMMISSION SHOULD REJECT OCC'S ARGUMENTS

OCC makes three principal arguments regarding whether the Stipulation in this matter should be approved: (a) OCC witness Yankel sponsors calculations that purport to show that DP&L's recovery should be less than the $22.3 million amount in the Stipulation; (b) OCC witnesses Duann and Yankel assert that DP&L should not be entitled to recover its 2008 and 2011 storm expenses due to DP&L's earnings in those years; and (c) OCC witnesses Effron, Duann and Yankel assert that DP&L should not be permitted to recover its 2011 storm expenses because DP&L delayed seeking a deferral of those expenses. As demonstrated below, the Commission should reject each of those arguments.

A. THE CALCULATIONS BY OCC WITNESS YANKEL DO NOT SHOW THAT THE $22.3 MILLION STIPULATION AMOUNT IS UNREASONABLE

OCC witness Yankel performs a calculation that he claims shows that the $22.3 million Stipulation amount is unreasonable. OCC Ex. 16, AJY-2. Specifically, Mr. Yankel starts with DP&L's request to recover $29.7 million in storm expenses (excluding carrying charges), makes certain adjustments to that request, and adds carrying costs to arrive at $22.3 million, which he calls the "Appropriate O&M plus Carrying Charge $ Starting Point." OCC Ex. 16, AJY-2. Mr. Yankel's "starting point" of $22.3 million is the same amount as the $22.3 million figure in the Stipulation (by coincidence, apparently).

To determine the amount that DP&L should be permitted to recover, Mr. Yankel claims that an additional $2.4 million should be deducted from his "starting point." Tr. 281-84. That $2.4 million in additional deductions is associated with Staff adjustments from its Audit Report that were not reflected in AJY-2, as well as a credit for amounts paid to DP&L by other utilities for mutual assistance that DP&L provided to other utilities. Id.

The following subsections of this Brief demonstrate the following four points relating to Mr. Yankel's calculations. First, if a three-year average methodology is to be employed (Mr. Yankel uses one), then extraordinary storm expenses that occur during the three prior years should be excluded from the three-year average.

Second, the adjustments that Mr. Yankel makes on lines 2-5 of AJY-2 (OCC Ex. 16) are unreasonable and should be rejected and/or reduced substantially. The amount of the corrections to three of Mr. Yankel's four adjustments equals or exceeds the $2.4 million in additional adjustments to AJY-2 that Mr. Yankel said were necessary (Tr. 281-84), meaning that each of those corrections – on their own – to Mr. Yankel's adjustments on its own would establish that the $22.3 million Stipulation amount was reasonable.

Third, at least two of the components to Mr. Yankel's $2.4 million of additional deductions are unreasonable, and should be rejected.

Fourth, after all of the corrections to Mr. Yankel's adjustments discussed above are made, the evidence shows that DP&L should have been permitted to recover $30.8 million in this case. The Stipulation authorizes DP&L to recover only $22.3 million, and is thus very conservative, appropriate and should be approved.

1. Calculation of the Three-Year Average

DP&L's litigation position in this case was that its base distribution rates do not recover any costs associated with "major event" storms (as defined by Ohio Admin. Code § 4901:1-10-01(T)), and that no three-year average methodology should be employed.[9] In light

[9] Although all parties agree that DP&L's base distribution rates would not recover costs associated with unusual and non-recurring storms, there is nevertheless a dispute about the level of storm expenses that are recovered through
(footnote cont'd…)

of the Stipulation in this case, DP&L assumes (without conceding) that a three-year average methodology should be used. The purpose of this section is to demonstrate that if a three-year average methodology is to be employed, then the average should exclude years that include extraordinary storms.

The following example is based upon a hypothetical 8-year period, during which the utility experienced unusual and non-recurring storms in years five and seven.

Year	Ordinary Storm Expenses	Unusual and Non-Recurring Storm Expenses
1	$1 million	
2	$1 million	
3	$1 million	
4	$1 million	
5	$1 million	$20 million

(...cont'd)
DP&L's base distribution rates. Specifically, in 2010, the Commission implemented rules that define the term "major event" storms. Ohio Admin. Code § 4901:1-10-01(T). DP&L had previously used its own definition of "major event" storms (for reliability reporting), and fewer storms would qualify as major storms under the new Commission definition. Tr. 53 (Nickel).

The current Commission definition of "major event" storms did not exist, of course, when DP&L's distribution rates were last set in 1991 (Case No. 91-414-EL-AIR). DP&L believes that the current definition of "major event" storms is nevertheless a reasonable proxy for storms that would qualify as "unusual and non-recurring." Indeed, the very purpose of enacting that definition was to identify unusually strong storms that should not be included in a utility's reliability statistics. DP&L thus believes that it should be entitled to recover all costs that it incurs to respond to major storms.

The disagreement between the parties thus relates to which storms constitute unusual and non-recurring storms. OCC has advocated for the use of a three-year average to calculate the storm rider – under that methodology, the utility would recover its major event storm expenses in a given year, minus a three-year average of major storms. OCC Ex. 15, p. 26 (Yankel). The effect of the three-year average methodology is that the utility would not recover major event storm expenses, unless there was a truly extraordinary storm or an unusual number of major storms.

For purposes of this brief, DP&L assumes that the three-year average should be employed and demonstrates the appropriate application of the three-year average for this purpose.

Year	Ordinary Storm Expenses	Unusual and Non-Recurring Storm Expenses
6	$1 million	
7	$1 million	$20 million
8	$1 million	

This example assumes that the utility incurs $1 million in expenses to respond to ordinary storms every year. Of course, in reality, that figure would vary year-to-year. (As shown in Ex. B to the Supplemental Testimony of Dona R. Seger-Lawson (DP&L Ex. 6), if the years in which DP&L experienced unusual and non-recurring storms (2005, 2008, 2011 and 2012) are excluded from the average, then DP&L's major storm expenses averaged $1.1 million and ranged from $302,919 (in 2010) to $1,717,105 (in 2004). For ease of making calculations in the example, we have assumed that the expenses that the utility incurred to respond to ordinary storms were $1 million per year.)

Let's further assume that there was a "black box" settlement in a prior period, and that we cannot refer to specific cost calculations to determine the level of storm expenses that are recovered through base distribution rates.[10] The reasonable conclusion in the above example is that the utility is recovering $1 million per year for storms in base rates, since that amount is consistent with the ordinary storm expenses that the utility incurs each year. (The $20 million expense figures in years five and seven are for unusual and non-recurring storms. It is thus reasonable to conclude that they are not recovered in the utility's base distribution rates.)

[10] As the Commission knows, that is the case here. DP&L Ex. 5, p. 3 (Seger-Lawson).

In year 5 of this example, the utility incurred $20 million of unusual and non-recurring storm expenses and should be permitted to recover that amount. Under the three-year average methodology, the calculation would be (year 5 total storm expenses of $21 million) minus (the average expenses for years 2 through 4, of $1 million), which equals $20 million. The utility would thus recover its full $20 million of unusual and non-recurring storm expenses.

In year 7, the utility again incurred $20 million in unusual and non-recurring storm expenses, and again, should be permitted to recover that amount. The unusual and non-recurring storm in year 5 should be excluded from the three-year average – otherwise the utility would not be able to recover all of its unusual and non-recurring storm expenses from year 7. The calculation thus should be (year 7 total storm expenses of $21 million) minus (the average expenses for years 4 through 6, excluding the unusual and non-recurring storm in year 5, which average is $1 million), for a total of $20 million. (Alternatively, year 5 could be excluded from the average entirely.)

However, if the unusual and non-recurring storm expenses in year 5 were included in the three-year average to determine the utility's recovery in year 7, then the utility would not be able to recover all of its storm expenses. Specifically, in year 7, the storm rider would recover only $13.3 million, calculated as (year 7 total storm expenses of $21 million) minus (the average of years 4 through 6, of $7.7 million), which equals $13.3 million. The utility thus would not have an opportunity to recover all of its unusual and non-recurring storm expenses.

Therefore, as DP&L's witnesses explained, <u>if</u> a three-year average methodology is to be employed, <u>then</u> the Commission should exclude either any unusual and non-recurring storm expenses that occurred during the three years, or the years in which such storms occurred. DP&L Ex. 6, pp. 15-19 (Seger-Lawson); Tr. 133 (Campbell).

Indeed, the Commission previously held that unusual and non-recurring storms should be excluded from the average. Specifically, in AEP's recent ESP case (Case No. 11-346-EL-SSO), the utilities incurred an average of $8.9 million per year of major storm expenses over 2005-2009. DP&L Ex. 15, p. 2 (Aug. 4, 2011 Testimony of J. Hecker). Staff nevertheless recommended using an average of $5 million, which excluded 2009 because that year "had an unusually high level of expenses." Id.

An OCC witness asserted that the average should include the utility's storm expenses in 2009. DP&L Ex. 16, p. 21 (May 4, 2012 Testimony of B. Hixon). The Commission rejected OCC's argument, and used the $5 million average recommended by Staff. DP&L Ex. 17, p. 68 (Aug. 8, 2012 Opinion and Order). Commission precedent thus establishes that years in which there are unusual and non-recurring storms should be excluded from the average. Otherwise, the utility would not be made whole, and would not be permitted to recover the actual costs it incurred in its restoration efforts when faced with a major storm event or events. Such a result is bad policy.

At the hearing in this case, counsel for OCC argued that the Commission's decision in that AEP case was distinguishable, because the Commission was establishing a forward-looking methodology. Tr. 304-05. The Commission should reject that argument because the amount the utility should recover in a given year should be the same whether a forward-looking or backward-looking methodology is employed. Referring back to the example, it would make no sense for the utility to recover the full $20 million of expenses that it incurred in year 7 if a forward-looking methodology was established in year 6 to be applied to year 7, but for the utility to recover only $13.3 million if a backward-looking methodology was employed in year 8 to be applied to year 7. The amount of recovery should be the same, whether the methodology is forward-looking or backward-looking.

2. Mr. Yankel's Three-Year Average for 2008 Includes an Extraordinary Storm

On line 2 of AJY-2, Mr. Yankel makes a $554,503 adjustment for the three-year average for 2008. OCC Ex. 16, AJY-2. Page 4 of the Staff Report reflects that DP&L made a deduction of $2,339,446 for a three-year average for 2008,[11] and that Staff was using a figure of $2,893,949 for the average. Staff thus proposed a deduction of $554,503 to DP&L's request, the same figure used by Mr. Yankel in AJY-2, line 2.

However, page 5 of the Staff Report shows that the three-year average that Staff used to calculate the $2,893,949 figure included $6,094,093 in storm expenses from 2005. That amount is a clear outlier. Indeed, the Commission has previously allowed DP&L to recover costs associated with an ice storm in 2005, demonstrating that the 2005 costs were the result of unusual and non-recurring storms. July 12, 2006 Finding and Order, p. 6 (Case No. 05-1090).

[11] As explained at the hearing, DP&L applied a three-year average in its Application to its 2008 major storm costs, but not to its 2011 and 2012 major storm costs. Tr. 488-89 (Seger-Lawson). The reason for the different treatment is that the definition of "major storms" changed in 2010, so that it became more restrictive. Tr. 53 (Nickel). DP&L believes that its 2008 storm expenses at issue include ordinary storm expenses that would be recovered in distribution rates; it therefore applied a three-year average to remove those costs. Tr. 488-89 (Seger-Lawson). However, after 2010, the definition of major storms became more restrictive; DP&L believes that the major storms for which it incurred expenses after 2010 would include only unusual and non-recurring storms, and DP&L should thus be permitted to recover the full amount of its major storm expenses incurred after 2010. Id. DP&L thus employed in its Application a three-year average for its 2008 storm expenses, but not for its 2011 and 2012 storm expenses. Id. As discussed in the text, DP&L assumes for purposes of this Brief that a three-year average should be employed for 2008, 2011 and 2012.

Therefore, as demonstrated above, amounts associated with unusual and non-recurring storms from 2005 should be excluded from the three-year average.

The Commission should thus conclude that the $554,503 deduction shown on AJY-2, line 2 was improper.

3. Major Storm Expenses for 2008 Should be Recoverable

In AJY-2, line 3, Mr. Yankel deducted $3,574,934 associated with "2008 Non-major Storms." OCC Ex. 16. The Staff Report, p. 4, made an identical adjustment. Staff explained that the reason for the adjustment was that DP&L included non-major storms in its request to recover 2008 storm expenses. OCC Ex. 1, pp. 6-7.

However, DP&L witness Nickel explained that if the current definition of major storm was applied to 2008, then $2,289,756 of that $3,574,934 was for major storms. DP&L Ex. 2, p. 8. Mr. Yankel conceded that he had no basis to dispute Mr. Nickel's calculation. Tr. 290.

Mr. Yankel further conceded that the formula for the three-year average should be "average annual major storm costs for the three previous years is subtracted from the major storm costs of the year in question." OCC Ex. 15, p. 26; Tr. 290. Mr. Yankel conceded that if Mr. Nickel was correct that $2,289,756 of DP&L's 2008 storm costs was associated with major storms, then that amount should be added back to his calculations on AJY-2, line 3. Tr. 291-92.

Further, DP&L would have been entitled to recover carrying costs on that $2,289,756 figure, which Mr. Yankel conceded would increase the figure to approximately $2.8 million. Tr. 293-94.

As discussed above, Mr. Yankel's conclusion was that a recovery of $22.3 million was the "starting point" (OCC Ex. 16, AJY-2, line 10), and that an additional $2.4 million should be deducted for other adjustments (Tr. 281-84), for a total recovery of $19.9 million. However, if that $2.8 million figure from just this one adjustment was added back to DP&L's recovery amount, then DP&L should have recovered $22.7 million. The Stipulation permitted recovery of only $22.3 million, and is therefore conservative, appropriate and should be approved.

4. Mr. Yankel's Three-Year Average for 2011 Includes Unusual and Non-Recurring Storms

On AJY-2, line 4, Mr. Yankel proposes to reduce DP&L's recoverable O&M expenses by $4,193,617 for "2011 Three-Year Average." OCC Ex. 16. However, as Mr. Yankel conceded, that three-year average for 2011 included 2008 storm expenses associated with Hurricane Ike. Tr. 295-96. Again, as demonstrated above, if a three-year average methodology is to be employed, then unusual and non-recurring storms (or, alternatively, years in which such storms occurred) should be excluded from the average.

DP&L witness Seger-Lawson demonstrated that DP&L's major storm costs for 2002-2011 averaged $1,099,459, if years in which DP&L had unusual and non-recurring storms were excluded from the average. DP&L Ex. 6, DRSL-Ex. B.[12] That figure means that if an averaging methodology was used, then only $1,099,459 should be subtracted from DP&L's recovery (not the $4,193,617 figure used on line 4 of AJY-2).

[12] Ms. Seger-Lawson's calculation was a ten-year average, which excluded 2005, 2008 and 2011. Id. If a three-year average was applied to 2011, but 2008 major storms were excluded, then the three-year average for 2011 would have been $936,995, which is the average for years 2007, 2009 and 2010. In other words, for 2011, employing Ms. Seger-Lawson's ten-year average would result in a slightly higher deduction (and slightly smaller recovery) for 2011 than a three-year average. DP&L uses Ms. Seger-Lawson's ten-year average in the text.

That means that approximately $3.1 million (the difference between Mr. Yankel's three-year average and Ms. Seger-Lawson's average) would need to be added back to the $22.3 million "starting point" that Mr. Yankel calculated in line 10 of AJY-2; Tr. 310 (Yankel). Mr. Yankel claims that an additional $2.4 million should be deducted from his $22.3 million "starting point" (Tr. 281-84), but after that $2.4 million is deducted, and $3.1 million from this adjustment alone is added back, DP&L's recovery would be $23.0 million. The Stipulation provided for a recovery of only $22.3 million, and is thus conservative, appropriate and should be approved.

5. Mr. Yankel's Three-Year Average for 2012 Includes Unusual and Non-Recurring Storms

The analysis for AJY-2, line 5 is essentially identical to the analysis for line 4. Specifically, on line 5, Mr. Yankel asserts that $3,482,366 should be deducted from DP&L's recovery associated with "2012 Three-Year Average." OCC Ex. 16. That average included unusual and non-recurring storms in 2011. Tr. 297 (Yankel).

The three-year average should not include unusual and non-recurring storms (as demonstrated above), and Ms. Seger-Lawson's testimony shows that the correct figure to use for the average is $1,099,459 (DP&L Ex. 6, DRSL Ex. B). That means that approximately $2.4 million (the difference between Mr. Yankel's three-year average and Ms. Seger-Lawson's average) would need to be added back to AJY-2. Tr. 310-11 (Yankel). That amount equals the $2.4 million in additional adjustments (Tr. 281-84) to the $22.3 million "starting point" that Mr. Yankel calculated in AJY-2, line 10. In other words, if this correction alone was made to Mr. Yankel's adjustments, then the ultimate recovery would still be $22.3 million. That evidence further demonstrates the reasonableness of the $22.3 million settlement figure.

6. **Mutual Assistance**

Mr. Yankel asserts that the Commission should reduce DP&L's recovery of its storm expenses by $614,099 that other utilities paid to DP&L when DP&L provided mutual assistance to those other utilities. OCC Ex. 15, p. 21. He claims that the $614,099 amount is compensation for fixed labor amounts that are already recovered through DP&L rates. Id. The Commission should reject that argument because, as DP&L witness Nickel explained, DP&L incurs incremental labor expenses that it would not normally incur when DP&L provides mutual assistance to other utilities. Tr. 47-48, 58-60. Those costs thus would not be included in DP&L's base distribution rates, and therefore should not reduce DP&L's recovery in this case. The $614,099 associated with mutual assistance was included in Mr. Yankel's $2.4 million deduction discussed above (Tr. 281-84), and should be removed from that $2.4 million.

7. **Management Labor**

OCC witness Yankel asserts that DP&L should not be permitted to recover costs associated with management labor. OCC Ex. 15, pp. 23-24. However, as DP&L witness Nickel explained, $494,124 of its management labor costs were associated with DP&L's storm team incentive plan. DP&L Ex. 2, p. 5; Tr. 27-28. That plan imposes contractual obligations upon DP&L to pay management for hours they work on storm duty. DP&L Ex. 2, pp. 2-5; DP&L Ex. 23; Tr. 28-29 (Nickel); Tr. 333 (Yankel). Using DP&L's management employees – which are already familiar with DP&L's system, do not need to be compensated to travel to DP&L's service territory, and do not need a hotel room to assist in responding to major storms – is the most efficient and economical way to restore service after major storms. Tr. 29-30 (Nickel). Indeed, the Commission recently authorized AEP to recover substantially similar expenses. April 2, 2014 Opinion and Order, pp. 24-26 (Case No. 12-3255-EL-RDR). Accord: Tr. 341

(Yankel) (conceding that the utility should be able to recover incentive payments paid to management that benefit customers due to reduced repair time). That $494,124 figure was included in Mr. Yankel's $2.4 million deduction,[13] and should be removed from that $2.4 million.[14]

8. Summary of Adjustments

In summary, the corrections to Mr. Yankel's adjustments show that DP&L should have been authorized to recover a total of $30.8 million in this case:

Category	Amount/Adjustment	Source
Mr. Yankel's "starting point" (including carrying charges)	$ 22.3 million	OCC Ex. 16, AJY-2, line 10
Additional adjustments sponsored by Mr. Yankel	($ 2.4 million)	Tr. 281-84 (Yankel)
Adjustment to AJY-2, line 2 for 2008 three-year average	$ 0.7 million	Calculated as $0.6 million from Supra § V.A.2, plus carrying costs of 24.67% from AJY-2, line 8.
Adjustment to AJY-2, line 3 for 2008 three-year average	$ 2.8 million	Calculated as $2.3 million from Supra § V.A.3, plus carrying costs of 24.67% from AJY-2, line 8.
Adjustment to AJY-2, line 4 for 2011 three-year average	$ 3.1 million	See Supra § V.A.4. DP&L never accrued carrying costs on its 2011 storm expenses.
Adjustment to AJY-2, line 5 for 2012 three-year average	$ 3.0 million	Calculated as $2.4 million from Supra § V.A.5, plus carrying costs of 24.67% from AJY-2, line 8.

[13] Mr. Yankel's $2.4 million deduction included adjustments from the Staff Report. Tr. 281-84. The Staff Report made an adjustment for management labor that included $494,124 of expenses associated with DP&L's storm team. Staff Report, p. 4; DP&L Ex. 2, p. 5 (Nickel).

[14] DP&L disputes additional adjustments made in the Staff Report (and included in Mr. Yankel's $2.4 million) as well. DP&L Ex. 2, pp 5-9 (Nickel).

Category	Amount/Adjustment	Source
Adjustment to Mr. Yankel's $2.4 million adjustment for mutual assistance	$ 0.7 million	Calculated as $0.6 million from Supra § V.A.6, plus carrying costs of 24.67% from AJY-2, line 8, on the 2012 portion ($0.5 million).
Adjustment to Mr. Yankel's $2.4 million adjustment for management labor	$ 0.6 million	Calculated as $0.5 million from Supra § V.A.7, plus carrying costs of 24.67% from AJY-2, line 8.
Total Recovery	**$30.8 million**	

Thus, even assuming that a three-year average should be employed (a contested point), DP&L should have been permitted to recover a total of $30.8 million in this case. The Stipulation authorized DP&L to recover only $22.3 million, and is thus very conservative, appropriate and should be approved.

B. DP&L'S 2008 AND 2011 RETURNS ON EQUITY ARE IRRELEVANT

OCC's witnesses Duann and Yankel assert that the Commission should deny DP&L's requests to recover its 2008 and 2011 storm expenses because they claim that DP&L's return on equity was too high in those years. OCC Ex. 23, pp. 12-15, 18 (Duann); OCC Ex. 15, pp. 8, 11 (Yankel). The Commission should reject that argument for five separate and independent reasons:

1. **Utility Earnings Cannot be a Basis for Denying Recovery of Expenses:** It has long been settled that a utility's historic earnings cannot serve as a basis for the denial of the recovery of prudently-incurred expenses. City of Cincinnati v. Pub. Util. Comm, 113 Ohio St. 259, 281-82, 148 N.E. 817 (1925) ("'The claim that past profits justify a present rate that is not reasonable is no more tenable than the converse contention that if a public service corporation has operated at a loss in prior years, it is therefore entitled to more than a reasonable

present rate of return in order to make up for past deficits.'") (quoting City of Minneapolis v. Rand, 285 F. 818, 823 (8th Cir. 1923)); City of Marietta v. Pub. Utils. Comm., 148 Ohio St. 173, 184-85, 74 N.E.2d 74 (1947) ("The just compensation safeguarded to the utility by the Fourteenth Amendment is a reasonable return on the value of the property used at the time that it is being used for the public service. . . . And the law does not require the company to give up for the benefit of future subscribers any part of its accumulations from past operations.") (emphasis omitted) (internal quotation marks and citations omitted); Edison Light & Power Co. v. Driscoll, 25 F. Supp. 192, 196 (E.D. Pa. 1938) ("The commission disallowed this expense on the ground, in part, at least, that the company in the past received excessive rates, but this position is untenable . . . ."), rev'd on other grounds, 307 U.S. 104, 59 S. Ct. 715, 83 L. Ed. 1134 (1939); Monroe Gaslight & Fuel Co. v. Mich. Pub. Util. Comm., 292 F.139, 147 (D. Mich. 1923) (per curiam) ("Past high profits, under a contract or under public supervision, form no obstacle to enjoining a later noncompensatory rate . . . ."); Chicago Rys. Co. v. Ill. Commerce Comm., 277 F. 970, 980 (N.D. Ill. 1922) ("To require the companies . . . to run at a loss, and say that all of the earnings of the companies during the entire contract period of operation should be equalized, is like trying to turn the mill wheel with water that has already run by."); Miss. Pub. Serv. Comm. v. Home Tel. Co., 110 So. 2d 618, 623 (Miss. 1959) ("It is generally held that neither losses sustained nor profits gained by a public utility in the past may be taken into account in fixing rates to be charged in the future.").

Indeed, OCC's witnesses admitted that they were not aware of any precedent supporting their request that DP&L should be denied recovery of its prudently-incurred expenses due to its historic earnings. Tr. 312 (Yankel); Tr. 501-03 (Duann).

2. **OCC Signed Stipulations That Authorized DP&L to Recover Its Storm Expenses:** OCC signed a series of Stipulations that authorized DP&L to recover its storm expenses for the 2008, 2011 and 2012 storms. DP&L Ex. 9, p. 3 (creating distribution rate freeze for DP&L through December 31, 2006[15] and permitting the distribution rates to be adjusted after December 31, 2003 to recover storm damage expenses); DP&L Ex. 10 ¶ IX.C. (creating rate stabilization period from January 1, 2006 through December 31, 2008, and providing that DP&L's distribution rates would remain frozen during that period, subject to the adjustments permitted in the ETP Stipulation, DP&L Ex. 9); DP&L Ex. 12, ¶ 18 (DP&L distribution rates frozen through December 31, 2012, with exception that DP&L can apply to recover costs of storm damage).

OCC witness Yankel admitted that an earnings test on DP&L's ability to recover storm damage expenses was not implied by the language contained in those Stipulations. Tr. 318-19. Indeed, the Stipulation in DP&L's first ESP case provided that the significantly excessive earnings test "could first be applied to DP&L in 2013 for 2012" (DP&L Ex. 12, ¶ 20); OCC's witnesses do not claim that DP&L's earnings were excessive in 2012. OCC Ex. 23, pp. 12-21 (Duann) (asserting that DP&L's earnings were excessive in 2008 and 2011, but making no such assertion as to 2012). Those Stipulations – all of which OCC signed and the Commission approved – demonstrate that DP&L should be permitted to recover its storm damage expenses, and that no earnings test should be applied.

[15] The storms at issue in this case did not occur during this period. This Stipulation is relevant because the next Stipulation cited in the text includes 2008, and incorporates the storm damage provision from this Stipulation.

3. **Investor Reliance:** It is undisputed that a utility can defer expenses only if the expenses are "probable" for recovery in a future period. DP&L Ex. 24, p. 50 (Duann); DP&L Ex. 25, p. 1; DP&L Ex. 8, pp. 6-7 (Barrett, adopted by Campbell). The Commission approved DP&L's request to defer 2008 storm expenses. Jan. 14, 2009 Finding and Order, p. 2 (Case No. 08-1332). Further, while the Commission has not yet authorized DP&L to defer its 2011 storm expenses, DP&L deferred those expenses based upon the Commission's precedent of allowing the recovery of unusual and non-recurring storm expenses. DP&L Ex. 4, pp. 3-4 (Campbell); Tr. 240-41 (Campbell).[16]

As explained in the testimony of Michael Barrett (adopted by Greg Campbell), investors rely upon – i.e., invest their money based upon – Commission precedent permitting the recovery of storm expenses. DP&L Ex. 8, p. 7. OCC's witnesses conceded that investors should be able to rely on Commission's Orders to conclude that recovery was probable (or, at least, that such reliance was not unreasonable). Tr. 323 (Yankel); Tr. 515-16 (Duann).

The Commission thus should not deny DP&L recovery of its 2008 and 2011 storm expenses based upon DP&L's historic earnings because doing so would be a departure from Commission precedent (and as to 2008, would be inconsistent with the Commission's own Order permitting the deferral), and would thus be unfair to investors.

4. **Cost of Capital:** Not only would OCC's request be unfair to DP&L's investors (on a backward-looking basis), but also, OCC's request would lead to a higher cost of capital (on a forward-looking basis). A decision denying DP&L's request to recover its 2008 and

[16] There is no requirement that a utility have a deferral order to defer expenses. DP&L Ex. 4, pp. 3-4 (Campbell); Tr. 240 (Campbell); Tr. 329 (Yankel); Tr. 398-99 (Effron).

2011 storm expenses based upon DP&L's historic earnings would lead to a higher cost of capital because such a decision would create significant additional uncertainty and risk for investors, and they would demand a higher return to be compensated for that risk. DP&L Ex. 8, pp. 10-11 (Barrett, adopted by Campbell). Indeed, OCC's witness conceded that utilities acquire capital from investors, that utility investors are risk adverse, that a lower cost of capital was good for customers, and that investors will be less willing to invest in a utility if it could not recover its prudently-incurred expenses. Tr. 323-24 (Yankel); Tr. 516-20 (Duann).

The Commission should thus reject OCC's argument, because a decision denying DP&L's request to recover its prudently-incurred expenses based upon its historic earnings would create substantial uncertainty and risk (for both DP&L and other Ohio utilities), which would lead to a higher cost of capital.

5. **Future Storm Recovery:** As the Commission knows, utilities will incur substantial expenses to respond to unusual and non-recurring storms. DP&L frequently incurs (and did incur for the storms at issue here) substantial costs to respond to unusual storms, including costs associated with employee overtime, contractors, and mutual assistance from other utilities. DP&L Ex. 1, pp. 5-7 (Nickel). This performance by the utility should be encouraged.

Indeed, OCC witness Yankel admitted that it was in the best interests of customers that DP&L restore service as quickly and safely as possible, that a utility has discretion whether to incur expenses for things like employee overtime and mutual assistance, and that it would be reasonable for a utility to consider whether it is likely to recover those expenses before it incurs them. Tr. 325-27. OCC's proposal here runs contrary to this goal.

C. <u>DP&L'S DELAY IN SEEKING A DEFERRAL OF 2011 STORMS IS IRRELEVANT</u>

OCC witnesses Yankel, Duann and Effron assert that DP&L should be denied recovery of its 2011 storm expenses because DP&L waited until December 2012 to ask for Commission approval to defer those expenses. OCC Ex. 15, p. 9 (Yankel); OCC Ex. 23, pp. 9-11 (Duann); OCC Ex. 20, pp. 4-8 (Effron). The Commission should reject that argument for the following separate and independent reasons:

1. **<u>There is no requirement that a utility seek a Commission Order approving a deferral</u>:** As an initial matter, there is no requirement (statute, rule, or Commission precedent) that a utility must seek a Commission order approving a deferral before the utility defers or recovers those expenses (<u>i.e.</u>, the utility needs a Commission order to recover its expenses, but it does not need a prior deferral order to recover them). DP&L Ex. 4, pp. 3-4 (Campbell); Tr. 240 (Campbell); Tr. 526 (Duann). Indeed, in other jurisdictions, there is no procedure for a utility to ask the governing utility commission to approve a deferral – the utilities in those jurisdictions record a deferral if they determine that recovery is probable. Tr. 206 (Campbell).

Since there is no requirement that a utility seek a deferral order before it defers or recovers expenses, DP&L's delay in seeking a deferral order as to its 2011 storm expenses cannot serve as a basis for denial of recovery of those expenses. In other words, DP&L should not be penalized for a delay in doing something that it was not required to do in the first place.

2. **<u>There is no deadline to seek a deferral</u>:** Just as there is no requirement that a utility seek a Commission order authorizing a deferral, there is no deadline for a utility to seek a Commission Order authorizing the utility to ask for Commission approval of a deferral.

Tr. 240 (Campbell). OCC's witnesses admitted that they were not aware of any deadline for a utility to seek a deferral. Tr. 328 (Yankel); Tr. 398 (Effron); Tr. 527-28 (Duann). Since there is no deadline for a utility to seek Commission approval of a deferral, DP&L's delay in seeking Commission approval to defer its 2011 storm expenses cannot serve as a basis to deny recovery of those expenses.

3. **<u>No harm to customers</u>:** OCC's witnesses admitted that they were not aware of any harm to customers as a result of DP&L's delay in seeking a deferral of its 2011 storm expenses. Tr. 328 (Yankel); Tr. 400-01 (Effron); Tr. 528 (Duann).

4. **<u>Customers likely saved carrying costs due to the delay</u>:** In past cases, DP&L has sought a deferral entry shortly after the storms at issue, and the Commission has promptly authorized DP&L to defer the expenses and to recover carrying costs. <u>E.g.</u>, Jan. 14, 2009 Finding and Order, p. 2 (Case No. 08-1332). If DP&L would have done so here (and assuming the request would have been approved), then DP&L would have begun to accrue carrying costs for the 2011 storms in late 2011 or early 2012.

However, DP&L has never accrued carrying costs on its 2011 storm expenses. Tr. 102 (Campbell). Customers thus have saved substantial carrying costs due to DP&L's delay. DP&L Ex. 4, p. 5 (Campbell Rebuttal). OCC witness Yankel conceded this point. Tr. 328.

5. **<u>No benefit to DP&L</u>:** There was no financial benefit to DP&L due to its delay in seeking a deferral of its 2011 storm expenses. DP&L Ex. 4, pp. 5-6 (Campbell). OCC witnesses conceded that point as well. Tr. 399 (Effron); Tr. 531 (Duann).

6. **The FirstEnergy case is not on point:** OCC witness Effron cites to a Commission decision in a FirstEnergy case as precedent. OCC Ex. 20, p. 6. That decision is not on point. Specifically, in that case, FirstEnergy sought to defer certain service-related costs that were being charged to it by the MISO RTO. May 18, 2005 Finding and Order, p. 1 (Case No. 04-1931). The Commission explained that FirstEnergy had been aware that it was incurring those charges since it joined MISO on October 1, 2003, but that it waited until December 30, 2004 to file an application to defer those expenses. Id. at 6. The Commission held that FirstEnergy could defer the expenses that it incurred after it filed its application, but that FirstEnergy could not defer the expenses that it incurred before its application. Id.

As an initial matter, the Commission should conclude that that decision is inapplicable here for the reasons discussed above – there is no requirement to seek Commission approval of a deferral, there is no deadline to seek Commission approval of a deferral, customers were not injured by the delay, customers saved carrying costs due to the delay, and DP&L did not benefit from the delay.

In any event, the Commission's decision in the FirstEnergy case is not on point because FirstEnergy knew that it was going to be incurring those costs long before it incurred them, and FirstEnergy could have sought a deferral order before it incurred those costs. Id. Here, as OCC witness Effron conceded, DP&L did not know that it was going to incur the expenses at issue before the storms occurred, and did not have an opportunity to seek a deferral order before it incurred those storm expenses. Tr. 408.

In short, DP&L's delay in seeking a deferral of its 2011 storm expenses is totally irrelevant in this case.

VI. CONCLUSION

The record in this case demonstrates that the Stipulation signed by Staff, Kroger and DP&L in this case is the product of serious bargaining among capable, knowledgeable parties, benefits customers, and does not violate any important regulatory principle or practice. It is reasonable and should be approved without modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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