

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Dayton)
Power and Light Company for Approval) Case No. 14-2043-EL-UNC
of a Revised Bill Format for Electric)
Service.)

In the Matter of the Application of the) Case No. 14-2042-EL-AAM
Dayton Power and Light Company for)
Approval of Certain Accounting)
Authority.)

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

This case is important to the 450,000 residential electric customers of Dayton Power and Light (“DP&L” or “the Utility”) because the Utility is requesting authority to defer bill format expenses, a prelude to collecting such expenses from customers. OCC files these Comments, asking the Public Utilities Commission of Ohio (“PUCO”) to deny the Utility’s request to defer (for later collection from customers) \$577,990.

On November 21, 2014, the Utility filed an Application requesting the PUCO approve its bill format changes. DP&L also sought permission to defer the bill formatting expenses of approximately \$500,000.¹ The PUCO initially granted DP&L’s Application for deferral authority, allowing DP&L to defer bill formatting costs plus carrying charges, not to exceed \$500,000.²

¹ Notably, DP&L did not seek carrying charges on its deferrals.

² Opinion and Order at 3 (April 8, 2015).

DP&L then filed an Application for Rehearing, requesting that the PUCO “remove any reference to a cap on the authorized amount.”³ DP&L alleged that the initial \$500,000 estimate was no longer appropriate because it has a “current estimate” that “slightly exceeds the \$500,000.”⁴ OCC filed a Memorandum Contra DP&L’s Application for Rehearing noting that there was no supporting documentation, workpapers, spreadsheets, testimony, or descriptions of the alleged costs that make up the “current estimate.”

On June 3, 2015, in an Entry on Rehearing, the PUCO found that DP&L failed to provide support for how it arrived at its current estimate. The PUCO then ordered the Utility to file a supplemental application supporting the updated deferral amount.⁵

DP&L filed a Supplemental Application on August 25, 2015. However, again, the Utility provided no documentation in the form of workpapers, spreadsheets, testimony, or descriptions of the costs that now total \$577,990. Two days later, on August 27, 2015, the PUCO Staff filed its review and recommendation. In its scant one page review, the Staff indicated that it “believes that the supplemental application filed by DP&L is reasonable and should be approved.”

II. ARGUMENT

A. DP&L failed to support its deferred costs estimate that it will seek to collect from customers in a future proceeding.

In its Rehearing Entry, the PUCO recognized that DP&L initially failed to provide evidence showing how it arrived at its estimate and ordered the Utility to file a

³ DP&L App. for Rehearing at 5 (May 8, 2015).

⁴ Id.

⁵ Entry on Rehearing at 3 (June 3, 2015).

supplemental application that supports an updated estimate of costs.⁶ But, for a second time, DP&L fails to provide support for how it arrived at its new estimate of bill formatting expenses. And the Utility now seeks to collect carrying charges on the deferred expenses -- something that it did not request in its earlier Application.

Instead of heeding the PUCO's directive and providing sufficient documentation to support its claims, the Utility submitted a small table showing three line items totaling \$512,542 plus carrying costs of \$65,448:

Contractor Services	\$512,542
Billing System Support/System Changes	\$397,042
Bill Print and Mailing Services	\$94,500
Electronic Bill Presentment Vendor	\$21,000
Carrying Costs	<u>\$65,448</u>
Total O&M Estimate	\$577,990⁷

This table is the entirety of what DP&L submitted in response to the PUCO's directive that it "file a supplemental application that supports an updated estimate of the cost to make the required bill format changes."

Unfortunately, the information provided by the Utility raises more questions than it answers. There are still no definitions or descriptions of what "Billing System Support/System Changes"; "Bill Print and Mailing Services"; and "Electronic Bill Presentment Vendor Services" are. There is no explanation of the number of billing system hours of labor that the estimate purports to represent. There is also nothing in the filing that details the alleged labor costs. There is no explanation of whether there are any software programming changes or how the programming change costs are calculated. There is no explanation of what is involved in the mailing estimate. There is no

⁶ Entry on Rehearing at 3 (June 3, 2015).

⁷ DP&L's Supplemental Application 2 (Aug. 25, 2015).

documentation of whether the Utility needs to purchase any new equipment, or incur additional or incremental labor expenses. And, DP&L fails to explain how the carrying costs were calculated -- there is no rate identified. Nor is there a period over which the carrying charges are accrued. Finally, and most importantly, there is no explanation of how any of these estimated charges differ from what the Utility already recovers in its distribution base rates.

In other words, DP&L fails to show that the alleged costs of bill formatting are not already being collected in distribution rates. In the past, the PUCO has stated that “[a]lthough the granting of such deferral authority is within the discretion of the Commission, we believe that to approve such a measure requires that we find there to be both exigent circumstances and good reason demonstrated before such amounts should be treated differently from ordinary utility expenses.”⁸ DP&L has made no showing that demonstrates that these billings costs constitute exigent circumstances. Nor has the Utility claimed that these amounts are any different from ordinary utility expenses that are already being collected in distribution rates.

The Staff’s Review and Recommendation appears to merely accept the Utility’s representation of estimated billing expenses. The Staff provided no independent analysis regarding the appropriate amount of the deferral and recommended approval.⁹ The Staff provides no explanation or rationale for its recommendation. The Staff does not appear to have reviewed DP&L’s request for carrying charges. And the Staff does not appear to have reviewed whether the costs of bill formatting are already being collected in

⁸ *In the Matter of the Joint application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Generation Charge Adjustment Rider*, Case No. 05-704-EL-ATA, Opinion and Order at 9 (Jan. 4, 2006).

⁹ Staff’s Review and Recommendation at 2 (August 27, 2015).

distribution rates. The Staff's recommendation, thus, cannot be relied upon as a basis to support the Utility's application. The PUCO must deny DP&L's deferral request for lack of support.

B. The PUCO has no basis to determine that DP&L's deferral request is just and reasonable.

In this case, the record contains nothing but DP&L's minimal estimate of costs plus carrying charges. There are no workpapers, spreadsheets, testimony, or descriptions of these alleged costs. None were provided in the Utility's Application, or the Supplemental Application despite the fact that the PUCO ordered the Utility to file such support. No details can be found in the Staff Review and Recommendation to support Staff's recommendation of the appropriate deferral amount.

The PUCO is a creature of statute and can exercise only the authority conferred upon it by the Legislature.¹⁰ As provided in R.C. 4903.09:

In all contested cases heard by the public utilities commission, a complete record of all the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, finding of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

The Ohio Supreme Court has consistently held that the PUCO's orders must provide "in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion."¹¹ In the *Tongren* case, the PUCO order referred to a number of recommendations made by PUCO staff and in one

¹⁰ *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87 (1999).

¹¹ *Tongren v. Pub. Util. Comm.*, 85 Ohio St.ed (1999), *Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 209 (1994), *Commercial Motor Freight, Inc. v. Pub. Util. Comm.*, 156 Ohio St. 360, 363-364 (1951).

finding the order stated that a staff recommendation resulted from a discussion between the Staff and the Utility.

Inasmuch as the Staff Review and Recommendation contains virtually no independent analysis, explanation or rationale for its recommendation, to the extent that the Staff is relying on information provided by the Utility that is not in the record, such action violates *Tongren*. There is nothing in the record that shows the decision-maker -- the PUCO what is actually being requested or approved. Aside from the vague description of categories where alleged costs **may be** incurred and the estimated amount, no workpapers, spreadsheets, or testimony provide any detail or support for the \$577,990 deferral request.

The U.S. Supreme Court has stated that in order to allow for an adequate appellate review “the record must exhibit in some way the facts relied upon by the court to repeal unimpeached evidence submitted for the company. If that were not so, a complainant would be helpless, for the inference would always be possible that the court and the Commission had drawn upon undisclosed sources of information unavailable to others. A hearing is not judicial, at least in any adequate sense, unless the evidence can be known.”¹²

There is no record evidence that was produced by the Utility to support its request to defer \$577,990 of bill formatting expenses. The PUCO should find that the Utility failed to bear its burden of proving its application is just and reasonable. The application should be denied.

¹² *Ohio Bell Tel. Co. v. Pub. Util. Comm. of Ohio*, 301 U.S. 292 (1937).

III. CONCLUSION

Customers should not be put at risk to pay unsupported bill formatting expenses. Yet that is exactly what the Utility is asking for. OCC requests that the PUCO deny the Utility's request for deferral authority.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Memorandum Contra* were served on the persons stated below via electronic transmission this 16th day of September 2015.

/s/ Joseph P. Serio

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Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Serio, Joseph P.