

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company to) Case No. 18-1605-EL-RDR
Update its Distribution Decoupling Rider.)

**COMMENTS ON THE DAYTON POWER AND LIGHT COMPANY’S
PROPOSED CHARGES TO CONSUMERS FOR LOST REVENUES AND
DECOUPLING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Dayton Power and Light Company (“DP&L”) proposes charging customers \$11.3 million through a decoupling rider (the “Decoupling Rider”),¹ but instead, customers should receive a *refund* of at least \$10.6 million. The Public Utilities Commission of Ohio (“PUCO”) should deny DP&L’s Application and suspend charges² to customers under this rider for two reasons.

First, the Application violates the terms of the approved settlement from DP&L’s most recent base rate case (signed by DP&L and OCC), which prohibits DP&L from collecting any lost revenues once its new base rates are in effect (which they now are).³ Second, from November 2017 through September 2018, DP&L customers paid over \$14.3 million for unreasonable and unlawful so-called “lost revenues.”

¹ Application of the Dayton Power and Light Company to Update its Distribution Decoupling Rider (Oct. 31, 2018) (the “Application”).

² *In re Application of the Dayton Power & Light Co. for an Increase in its Electric Distribution Rates*, Case No. 15-1830-EL-AIR, Opinion & Order at 28-29 (Sept. 26, 2018) (the “Rate Case Order”) (PUCO may suspend charges to customers under the Decoupling Rider).

³ *In re Application of the Dayton Power & Light Co. for an Increase in its Electric Distribution Rates*, Case No. 15-1830-EL-AIR, Stipulation & Recommendation (June 18, 2018) (the “Rate Case Settlement”).

I. BACKGROUND

“Lost revenues” refers to losses that a utility allegedly incurs as a result of offering energy efficiency programs to its customers. For years, the Office of the Ohio Consumers Counsel (“OCC”) has advocated against excessive charges to customers for DP&L’s lost revenues. In 2013, the PUCO approved a settlement—signed by OCC, DP&L, and others—which capped at \$72 million the amount of lost revenues that customers could pay to DP&L under DP&L’s second energy efficiency portfolio plan.⁴ Despite this approved settlement, DP&L subsequently asked the PUCO to allow it to charge customers in excess of this \$72 million amount.

First, DP&L filed an application (Case No. 16-329-EL-RDR) to update its energy efficiency rider in which it included lost revenues in excess of the \$72 million cap. OCC opposed this application, objecting to DP&L’s lost revenues charges to consumers.⁵ The PUCO has not ruled on this application.

Second, DP&L proposed, through a settlement, (i) an additional \$20 million in lost revenues charges under its second energy efficiency portfolio plan for 2016, plus (ii) untold millions in lost revenues charges under its second energy efficiency portfolio plan for 2017.⁶ OCC objected to these lost revenues on the grounds that (i) the lost revenues charges to residential consumers were substantially more than the entire cost of DP&L’s residential

⁴ *In re Application of the Dayton Power & Light Co. for Approval of its Energy Efficiency & Peak Demand Reduction Program Portfolio Plan for 2013 through 2015*, Case No. 13-833-EL-POR, Opinion & Order (Dec. 4, 2013).

⁵ *In re Application of the Dayton Power & Light Co. to Update its Energy Efficiency Rider*, Case No. 16-329-EL-RDR, Comments on the PUCO Staff’s Review and Recommendation Regarding Dayton Power & Light’s Energy Efficiency Rider Charges to Customers by the Office of the Ohio Consumers’ Counsel (Feb. 17, 2017).

⁶ *In re Application of the Dayton Power & Light Co. for Approval of its Energy Efficiency Portfolio Plan*, Case No. 16-649-EL-POR, Stipulation and Recommendation (Dec. 13, 2016).

energy efficiency programs, (ii) the lost revenues for 2016 and 2017 violated Ohio Senate Bill 310, and (iii) the PUCO was prohibited from charging customers for 2016 lost revenues under Ohio Supreme Court precedent regarding retroactive ratemaking.⁷

Over OCC's objection, the PUCO approved these charges and allowed DP&L to continue charging customers for lost revenues.⁸ OCC applied for rehearing in October 2017 (14 months ago) on the grounds that DP&L's lost revenues charges were unlawful and that the PUCO should not allow DP&L to charge customers any lost revenues for 2016 or 2017.⁹ The PUCO granted OCC's application for rehearing for the limited purpose of giving itself more time to consider it,¹⁰ but to date, there has been no substantive ruling. Thus, OCC's challenge to DP&L's lost revenues for 2016 and beyond remains pending before the PUCO.

At the same time, DP&L has been slowly moving toward the use of decoupling instead of lost revenues. In its electric security plan ("ESP") case, DP&L signed a settlement in early 2017 with various parties (but not OCC) to create the Decoupling Rider.¹¹ Under the approved ESP settlement, DP&L was initially to include "the lost revenues currently recovered through the Energy Efficiency Rider as agreed to in the Stipulation in case No. 16-

⁷ *In re Application of the Dayton Power & Light Co. for Approval of its Energy Efficiency Portfolio Plan*, Case No. 16-649-EL-POR, Post-Hearing Brief by the Office of the Ohio Consumers' Counsel (Mar. 10, 2017).

⁸ *In re Application of the Dayton Power & Light Co. for Approval of its Energy Efficiency Portfolio Plan*, Case No. 16-649-EL-POR, Opinion & Order (Sept. 27, 2017).

⁹ *In re Application of the Dayton Power & Light Co. for Approval of its Energy Efficiency & Peak Demand Reduction Program Portfolio Plan for 2017 through 2019*, Case No. 16-649-EL-POR, Application for Rehearing by the Office of the Ohio Consumers' Counsel (Oct. 27, 2017).

¹⁰ *In re Application of the Dayton Power & Light Co. for Approval of its Energy Efficiency & Peak Demand Reduction Program Portfolio Plan for 2017 through 2019*, Case No. 16-649-EL-POR, Entry on Rehearing (Nov. 21, 2017).

¹¹ *In re Application of the Dayton Power & Light Co. for Approval of its Electric Security Plan*, Case No. 16-395-EL-SSO, Amended Stipulation & Recommendation (Mar. 13, 2017).

649-EL-POR.”¹² The ESP settlement, however, did not address cost allocation, term, or rate design for the Decoupling Rider.¹³ Instead, those details were part of the Rate Case Settlement.

In this case, DP&L seeks to charge customers about \$11.3 million for lost revenues and decoupling based on the following calculations. First, from November 2017 through September 2018, DP&L already charged customers over \$14.3 million in lost revenues.¹⁴ According to DP&L, however, actual lost revenues during that period were about \$21.4 million.¹⁵ Thus, DP&L seeks to charge customers an additional \$7 million for lost revenues from that period, plus carrying costs, for a total deferral balance of \$7.3 million.¹⁶ In addition, DP&L seeks to charge customers an additional \$3.7 million in decoupling charges for 2019, plus an additional \$258,895 in carrying costs.¹⁷

As discussed below, OCC recommends that (i) DP&L not be permitted to charge customers the additional \$7.3 million in lost revenues and carrying costs on those lost revenues, and (ii) customers receive a refund for the \$14.3 million they were charged in lost revenues from November 2017 through September 2018. Thus, customers should get a refund of about \$10.6 million (\$3.7 million in charges for decoupling minus the \$14.3 million refund).

¹² *Id.* at 14.

¹³ *Id.* at 14 (“All other matters relating to the Decoupling Rider, including but not limited to cost allocation, term and rate design, shall be addressed in the pending distribution case, Case No. 15-1830-EL-RDR or in DP&L’s next Energy Efficiency Portfolio case.”).

¹⁴ Application at Exhibit WPA-1.

¹⁵ *Id.*

¹⁶ Application at Schedule A-1 (\$7,299,341 deferral balance); Exhibit WPA-1 (same amount shown as “End of Month Balance” for December 2018).

¹⁷ Application at Schedule A-1; Exhibit WPA-1.

II. RECOMMENDATIONS

A. DP&L's proposed lost revenues charges from November 2017 through September 2018 violate the terms of the approved Rate Case Settlement.

The PUCO should not allow DP&L to charge customers for lost revenues from November 2017 through September 2018 because the plain language of the approved Rate Case Settlement excludes those charges.

Under the Rate Case Settlement, the Decoupling Rider was to be set to zero upon the effectiveness of new base rates.¹⁸ The Rate Case Settlement then provides:

Beginning on January 1, 2019, the Decoupling Rider will be effective with a rate (or credit) calculated by taking the difference between the Stipulated Revenue Requirement applicable to tariff classes D17, D18, and D19 and the Allowed Revenue Requirement. The Allowed Revenue Requirement will be calculated by multiplying the number of customers as of September 30, 2018, by the RPC shown in Exhibit 4.¹⁹

But DP&L's Application in this case does not comply with these terms for two reasons. First, while DP&L did reset the Decoupling Rider to zero when it filed compliance tariffs in the Rate Case on September 28, 2018, the Application (filed just a month after rates were reset to zero) includes charges to customers from before that date.²⁰ It would defeat the purpose of resetting the rate to zero if DP&L could subsequently file a rider application seeking to charge customers for amounts that accrued prior to the date on which the rider was set to zero.

¹⁸ Rate Case Order at 28 (“The Decoupling Rider will be set to zero with the implementation of this distribution rate case.”).

¹⁹ Rate Case Order at 28.

²⁰ Application at Exhibit WPA-1 (showing charges to customers from November 2017 through September 2018).

Second, beginning January 1, 2019, the plain language of the approved Rate Case Settlement allows DP&L to charge customers through the Decoupling Rider *only* for decoupling charges calculated using the revenue per customer approach. It says that the revenue requirement for the Decoupling Rider “*will be calculated* by multiplying the number of customers as of September 30, 2018, by the RPC shown in Exhibit 4.”²¹ DP&L performed this calculation and arrived at a revenue requirement of \$3,740,590 using the revenue per customer methodology.²² OCC does not dispute this calculation.

But then DP&L added another \$7.3 million to the revenue requirement based on lost revenues that it is seeking to charge customers from November 2017 through September 2018.²³ This violates the Rate Case Settlement. If DP&L were permitted to charge customers for these past lost revenues, then the Rate Case Settlement would need to say that the Decoupling Rider revenue requirement “will be calculated by multiplying the number of customers as of September 30, 2018, by the RPC shown in Exhibit 4, ***plus any prior lost revenues not already collected through the Decoupling Rider.***” But the bolded language appears nowhere in the Rate Case Settlement. Instead, the plain language of the Rate Case Settlement provides that the Decoupling Rider revenue requirement shall consist *only* of charges calculated using the revenue per customer methodology beginning January 2019.²⁴

The PUCO must follow the plain language of the approved Rate Case Settlement, which DP&L signed. By signing the Rate Case Settlement, DP&L waived the right to collect any additional lost revenues from customers as of the effectiveness of its new base rates. The

²¹ Rate Case Order at 28 (emphasis added).

²² Application at Schedule A-1.

²³ Application at Schedule A-1, Exhibit WPA-1.

²⁴ Rate Case Order at 28.

PUCO should deny DP&L's request to charge customers \$7,299,341 for lost revenues and associated carrying costs.

- B. The PUCO should grant OCC's application for rehearing in Case No. 16-649-EL-POR, which would then require the PUCO to deny DP&L's request to charge customers for lost revenues from November 2017 through September 2018 and provide a refund of lost revenues charges already collected.**

OCC's pending application for rehearing in DP&L's portfolio case (Case No. 16-649-EL-POR) asserts that DP&L should not be allowed to charge customers any lost revenues for 2016 and thereafter.²⁵ The PUCO has not yet ruled on OCC's application for rehearing.²⁶ If the PUCO grants OCC's application for rehearing, as it should, then DP&L would not be permitted to charge customers for lost revenues in 2016, 2017, or 2018. The amounts found in the "Net Amount" column on Exhibit WPA-1 to the Application should be disallowed, as should the carrying costs associated with those amounts. This would reduce the charges to customers under the Application by at least \$7,299,341 million.²⁷ Further, customers should receive a refund for the lost revenues they have already paid through the Decoupling Rider totaling \$14,369,773.²⁸

The only lawful charges to customers under the Decoupling Rider, then, would be \$3,740,590 for 2019, as found on Exhibit WPA-1 to the Application. But after DP&L's other proposed charges are disallowed and customers are afforded a refund for lost revenues paid

²⁵ See *supra* § I.

²⁶ *Id.*

²⁷ Application at Exhibit WPA-1 (\$7,299,341 in net lost revenues charges for 2017-2018 plus carrying costs). The Application also proposes continued accrual of carrying costs on this \$7,299,341 amount from January 2019 through December 2019. These amounts are not quantified specifically because they are embedded in other costs, but they should be disallowed as well.

²⁸ Application at Exhibit WPA-1.

from November 2017 to September 2018, the total refund to customers under the Decoupling Rider should be \$10.6 million, plus carrying costs.²⁹

III. CONCLUSION

DP&L's Application violates the Rate Case Settlement, which DP&L and OCC signed, and which the PUCO approved. Customers deserve the benefit of the bargain that was struck in that case—and that bargain did not include millions of dollars in lost revenues charges predating DP&L's new base rates. Further, the PUCO should grant OCC's pending application for rehearing from DP&L's energy efficiency portfolio case and require DP&L to provide a refund of unlawful lost revenues already charged to customers.

DP&L should be allowed to charge customers a maximum of \$3,740,590 for decoupling, as permitted under the Rate Case Settlement. Once OCC's proposed refund is applied, these charges would be fully offset, and customers should receive a credit under the Decoupling Rider in 2019.

²⁹ This is calculated by subtracting \$14,369,773 (the amount of unlawful lost revenues already charged to customers under the Decoupling Rider from November 2017 through September 2018) from the permissible decoupling charges of \$3,740,590 for January 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 21st day of December 2018.

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Summary: Comments Comments on the Dayton Power and Light Company's Proposed Charges to Consumers for Lost Revenues and Decoupling by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.