BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval to Defer Distribution Decoupling Costs.	))))	Case No. 20-0140-EL-AAM

POST HEARING BRIEF OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. INTRODUCTION

On January 23, 2020, the Dayton Power and Light Company, d/b/a AES Ohio (DP&L or the Company) filed an Application with the Public Utilities Commission of Ohio (Commission), requesting accounting authority to defer costs for future recovery from customers plus interest. Not only does DP&L want the Commission to allow it to defer on its books purported costs that it did not incur and is not entitled to recover from customers, but it wants to charge customers interest on that amount. DP&L is asking this Commission for authority to defer "distribution decoupling costs" from December 19, 2019 forward as a regulatory asset or liability,[1] although the Company "did not list any" specific costs out[2] in either its testimony or Application. DP&L is also asking to recover carrying costs on the deferred balance pursuant to DP&L's most recently approved cost of long-term debt established in its distribution rate case in Case No. 15-1830-EL-AIR, et al. (2015

---

[1] The Dayton Power and Light Company's Application for Approval to Defer Distribution Decoupling Costs (Application) at ¶¶ 1, 6 (January 23, 2020).

[2] Tr. at 46 (Cross Examination of Nyhuis).

Rate Case).[3] But the Commission has already held that DP&L cannot continue its Distribution Decoupling Rider (Decoupling Rider) and cannot collect decoupling revenues from customers as that rider was created in its third Electric Security Plan (ESP III),[4] which DP&L voluntarily withdrew.[5] DP&L asks the Commission to ignore the fact that DP&L chose to withdraw (based on its analysis of "what was best for the company…at the time"[6]) the very thing (ESP III) that gave it authority to collect the decoupling revenues from customers, and now seeks to defer these same revenues for future recovery. DP&L wants to have its cake and eat it too. DP&L's request is an unlawful attempt to defer, for future recovery from customers, decoupling revenues that it is no longer authorized to recover because of DP&L's voluntary decision to withdraw its ESP III. Given that DP&L has no legal authority or basis to collect or defer the decoupling revenues, the Ohio Manufacturers' Association Energy Group (OMAEG) respectfully requests that the Commission deny the Application in its entirety.

II. FACTUAL BACKGROUND

The Commission originally authorized DP&L's implementation of revenue decoupling upon approval of two prior settlements: the ESP III Stipulation and the 2015 Rate Case Stipulation.[7]

---

[3] *Id.* at ¶ 12 (referencing *In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution*, Case Nos. 15-1830-EL-AIR, et al. (2015 Rate Case), Stipulation and Recommendation (June 18, 2018) (Rate Case Stipulation) approved by Opinion and Order (Sept. 26, 2018) (2015 Rate Case Order)).

[4] *See id.* at 3-4 (citing *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 16-395-EL-SSO, et al. (ESP III Case), Opinion and Order (October 20, 2017) (ESP III Order).

[5] *See In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, Second Finding and Order at ¶ 36 (Dec. 18, 2019).

[6] *See* Tr. at 90 (Cross Examination of Teuscher).

[7] AES Ohio Exhibit 19 (ESP III Case, Amended Stipulation and Recommendation (ESP III Stipulation)); Kroger Exhibit 3 (2015 Rate Case, Stipulation and Recommendation (June 18, 2018) (Rate Case Stipulation)).

On October 20, 2017, the Commission approved a settlement agreement,[8] which established DP&L's ESP III and authorized the Company to implement revenue decoupling through the non-bypassable Decoupling Rider.[9] The ESP III Stipulation was an overarching settlement agreement between the parties, representing an effort to resolve a variety of issues in the ESP III Case.[10] As part of the ESP III Stipulation, the signatory parties agreed to create the Decoupling Rider.[11] The terms of the ESP III Stipulation stated, in the relevant part:

> DP&L will implement the Decoupling Rider to include the lost revenues currently recovered through the Energy Efficiency Rider as agreed to in the Stipulation filed in Case No. 16-649-EL-POR on December 13, 2016. 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. This Rider will be charged on a non-bypassable basis.[12]

The agreement in the ESP III Stipulation to allow DP&L to implement the Decoupling Rider to collect lost revenues was part of the bargaining that lead to the settlement of the ESP III Case.[13] Upon approving the ESP III settlement agreement, the Commission determined that DP&L made several commitments that were beneficial to ratepayers and the public interest.[14] On June 18, 2018, several parties also filed the Rate Case Stipulation.[15] Many of the signatory parties to the previous ESP III Stipulation also joined as signatories to the subsequent Rate Case Stipulation.[16] Moreover, like the prior ESP III Stipulation, the Rate Case Stipulation represented

---

[8] *See* AES Ohio Exhibit 19 (ESP III Case, Amended Stipulation and Recommendation (ESP III Stipulation)).

[9] ESP III Order at ¶¶ 14, 130.

[10] *See* Tr. at 82 (Cross Examination of Tyler Teuscher).

[11] Tr. at 82 (Cross Examination of Tyler Teuscher).

[12] AES Ohio Exhibit 19, ESP III Stipulation at ¶ VI.1.b.

[13] Tr. at 32 (Cross Examination of Nyhuis).

[14] ESP III Order at ¶ 79.

[15] *See* Kroger Exhibit 3 (Rate Case Stipulation).

[16] Tr. at 85 (Cross Examination of Teuscher).

a comprehensive settlement that covered multiple issues.[17] As part of the Rate Case Stipulation, the signatory parties agreed to a methodology for the existing Decoupling Rider.

The Rate Case Stipulation implemented a "revenue per customer" model, calculated based on the agreed-upon revenue for select tariff classes during the 2015 Rate Case test year.[18] When referring to the annual true-up or reconciliation of the Decoupling Rider, the Rate Case Stipulation allowed for the "Decoupling Rider deferral balance (whether over or under) [to] include carrying costs at DP&L's Stipulated Cost of Debt"[19] on a limited basis, but nowhere did the Rate Case Stipulation authorize an on-going deferral of decoupling revenues after the Decoupling Rider was terminated. Similarly, the Commission's Order adopting the Rate Case Stipulation did not give DP&L any further authority to defer decoupling revenues.[20]

The Rate Case Stipulation's provision allowing DP&L to recover lost revenues associated with decoupling was expressly tied to the existing Decoupling Rider, and was based on the existence of the previous settlement in the ESP III Case.[21] While the signatory parties to the ESP III Stipulation agreed to implement the Decoupling Rider to allow DP&L to capture decoupling revenues, they also agreed to consider all other matters, including rate design and the decoupling

---

[17] *Id.*

[18] Rate Case Stipulation at ¶ 3.a ("Revenue Decoupling shall employ a revenue per customer ("RPC") methodology and is applicable to tariff classes D17, D18, and D19 only. The calculation of the allowed RPC allocates the Stipulated Revenue Requirement to each tariff class based on the revenue allocations in the Staff Report and divides the result by the test year number of customers as filed in DP&L's Application. The resulting RPC is shown and calculated on Exhibit 4.").

[19] Kroger Exhibit 3 at ¶ 3.e (Rate Case Stipulation) ("The Decoupling Rider deferral balance (whether over or under) will include carrying costs at DP&L's Stipulated Cost of Debt;"); *see also* Tr. at 94-95 (Cross Examination of Teuscher) (When asked if any other parts of the Rate Case Stipulation authorized deferral, the witness replied "I'm not quite sure.").

[20] *See* 2015 Rate Case Order at 27-29.

[21] *See* Tr. at 87 (Cross Examination of Teuscher) ("Yes. It was based on the stipulation and approval of the stipulation in believe it was Case 16-395 that directed DP&L to file a new methodology in the rate case.").

methodology, in the 2015 Rate Case.[22] Accordingly, the decoupling provisions in the Rate Case Stipulation specified that they relied upon the decoupling provisions in the ESP III Stipulation:

> The Signatory Parties agree, that pursuant to the October 20, 2017 Opinion and Order in Case No. 16-395-EL-SSO, DP&L shall be permitted to implement Revenue Decoupling through its *existing* Decoupling Rider, as follows:[23]

At the time, while testifying in support of the Rate Case Stipulation, DP&L witness Tyler Teuscher noted that "in the ESP [III] Stipulation, the parties agreed that all other matters relating to the Distribution Decoupling Rider, including methodology, cost allocation, term, and rate design would be addressed in [the 2015 Rate Case]."[24]

On September 26, 2018, the Commission adopted the Rate Case Stipulation.[25] The Order did not modify the Rate Case Stipulation provision regarding the decoupling methodology.[26] However, the Commission noted that the Rate Case Stipulation permitted "DP&L to implement revenue decoupling through the Distribution Decoupling Rider."[27]

In November 2019, in light of a decision by the Supreme Court of Ohio, the Commission terminated one of the charges that DP&L had implemented as part of ESP III, the Distribution Modernization Rider (DMR).[28] The Commission found that the DMR was unlawful and violated important regulatory principles and practices, and modified the ESP III Stipulation to remove the DMR from ESP III.[29] Within a week of the Commission's Supplemental Order, DP&L voluntarily

---

[22] Tr. at 83 (Cross Examination of Teuscher).

[23] *See* Kroger Exhibit 3 at ¶ III.3 (Rate Case Stipulation).

[24] *See* 2015 Rate Case, Supplemental Testimony of Tyler Teuscher at 2 (Apr. 11, 2018).

[25] *See* 2015 Rate Case, Opinion and Order at ¶ 1 (Sept. 26, 2018).

[26] *See id.* at ¶ 54.III.3.

[27] *Id.* at ¶ 66.

[28] *See* OCC Exhibit 13 at 4 (Direct Testimony of Wm. Ross Willis (Mar. 12, 2021)).

[29] ESP III Case, Supplemental Opinion and Order at ¶ 110 (Nov. 21, 2019) (ESP III Supplemental Order).

withdrew its ESP III,[30] requesting to revert to the terms of its previously approved first Electric Security Plan (ESP I).[31]

Notwithstanding its request, DP&L did not attempt to revert to ESP I as it previously existed and was approved by the Commission. Instead, DP&L attempted to retain some of the benefits it had extracted from customers in reaching the ESP III Stipulation, while avoiding any unfavorable provisions in light of the removal of the DMR. ESP I as approved did not include the Decoupling Rider.[32] Nevertheless, DP&L attempted to include the Decoupling Rider in its application to revert to a modified version of ESP I, arguing that the Commission had previously authorized DP&L to collect "lost revenue."[33] As explained on cross-examination at the hearing in this case,[34] the Commission allowed DP&L to revert to a version of ESP I, but rejected DP&L's request to continue collecting decoupling revenues through the Decoupling Rider.[35]

DP&L is attempting to collect the same decoupling costs, but instead of filing an application for rehearing,[36] DP&L now seeks to circumvent the Commission's Second Finding and Order in Case No. 08-1094-EL-SSO by requesting the Commission grant DP&L authority to defer the decoupling revenues for collection at some future point in time in this proceeding.

---

[30] ESP III Case, The Dayton Power and Light Company's Notice of Withdrawal of Its Application in Case No. 16-395-EL-SSO Pursuant to R.C. 4928.143(C)(2)(a) (Nov. 26, 2019); *see also* Tr. at 90 (Cross Examination of Teuscher).

[31] *Id.* at 3.

[32] *See* Tr. at 56 (Cross Examination of Nyhuis) ("The decoupling rider was not included in ESP I, correct."); Tr. at 91-92 (Cross Examination of Teuscher) ("I don't believe that DP&L filed for a distribution decoupling rider or got one approved originally with ESP I.").

[33] *See In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, Second Finding and Order at ¶ 24 (Dec. 18, 2019).

[34] Tr. at 92 (Cross Examination of Teuscher); Tr. at 188 (Cross Examination of Willis).

[35] *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, Second Finding and Order at ¶ 36 (Dec. 18, 2019).

[36] *See* Tr. at 92 (Cross Examination of Teuscher).

III. PROCEDURAL HISTORY

DP&L filed its Application in this case on January 23, 2020, requesting "the accounting authority to defer as a regulatory asset/liability the Company's distribution decoupling costs."[37] Several parties subsequently intervened in this case, opposing DP&L's Application, including OMAEG.[38]

On April 29, 2020, Commission Staff filed its Review and Recommendation (Staff Report), which recommended that the Commission deny DP&L's Application.[39] The Staff Report explained that the so-called 'decoupling costs' that DP&L is requesting to defer "are revenues and not costs," and, therefore, are not eligible for recovery.[40] Staff noted that DP&L's most recent 10-K, filed with the Securities and Exchange Commission on February 28, 2020, stated that DP&L sought "authority to record a regulatory asset to accrue revenue that would have otherwise been collected under the [ESP III] through the [Distribution] Decoupling Rider."[41]

Staff also explained that the Financial Accounting Standards Board (FASB) maintains a regulatory accounting standard for deferring revenues, Accounting Standards Codification (ASC) 980-605. However, according to Staff, the Application did not satisfy the criteria of ASC 980-605 necessary to recognize as a regulatory asset and defer revenues:

> Staff considers the decoupling revenue to be this type of alternative revenue program. The purpose of the program is to make the company whole from a revenue perspective by entitling the utility to incremental billings intended to compensate it for lost sales volume resulting from its pursuit of energy efficiency goals or driven by weather volatility.

---

[37] Application at ¶ 1.

[38] Motion to Intervene and Memorandum in Support of the Ohio Manufacturer's Association Energy Group (May 22, 2020).

[39] Staff Review and Recommendation at 4 (Staff Report) (April 29, 2020) (Please note that the Staff Report does not include page numbers. Thus, for purposes of this filing, we have manually numbered the page numbers, beginning with the page containing the title "Summary." The cover page is excluded from the numbering.).

[40] *Id.* at 3.

[41] *Id.* at 3, fn.4.

Per ASC 980-605, the regulated utility shall recognize the additional revenues if all of the following conditions are met:

- The program is established by an order from the utility's regulatory commission that allows for automatic adjustment of future rates. Verification of the adjustment to future rates by the regulator would not preclude the adjustment from being considered automatic.
- The amount of additional revenues for the period is objectively determinable and is probable of recovery.
- The additional revenues will be collected within 24 months following the end of the annual period in which they are recognized

Staff concluded that DP&L's Application failed to address these conditions; as such, the Staff Report recommended that the Commission deny DP&L's deferral request.[42]

An evidentiary hearing was held in this case on May 4, 2021. Following the hearing, the Administrative Law Judge directed participating parties to submit post-hearing briefs by June 18, 2021 and reply briefs by July 9, 2021. Pursuant to that directive, OMAEG respectfully submits the following arguments for the Commission's consideration.

IV. LAW & ARGUMENT

A. DP&L has no existing legal authorization to collect or defer decoupling revenues.

DP&L cannot identify any current authority that would allow it to collect or defer the decoupling revenues requested in this proceeding. Any authority that DP&L did have to collect decoupling revenues (and defer for reconciliation purposes for a limited period of time) was eliminated when it chose to withdraw its ESP III. Without such authority, DP&L cannot designate these revenues as a regulatory asset pursuant to Ohio law, nor can it defer them pursuant to FASB Accounting Standards.

Under Ohio law, DP&L has no decoupling-related regulatory assets to defer. The Ohio Revised Code defines a regulatory asset as "regulatory assets that are capitalized or deferred on

[42] Staff Report at 3-4.

the regulatory books of the electric utility, *pursuant to an order or practice of the public utilities commission* or pursuant to generally accepted accounting principles *as a result of a prior commission rate-making decision*, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent commission action.[43]

Additionally, DP&L's current deferral request is not compliant with generally accepted accounting principles, as the decoupling revenues are lost revenues, not costs. As Commission Staff noted in its report, the applicable FASB regulatory accounting standard for deferring revenues, ASC 980-605, requires that the program is established by an order from the Commission.[44] Once again, DP&L has not demonstrated that any Commission order authorizes it to recover or collect these revenues in the first place.

DP&L's current request does not relate to any order of the Commission. In fact, in its most recent order on the issue, the Commission specifically held that DP&L was not entitled to collect these revenues. When it sought to revert to a modified version of ESP I, DP&L argued that it had independent authority to recover decoupling revenues absent the ESP III Stipulation.[45] The Commission rejected this argument.[46]

DP&L's witness admits that the Commission has not issued an order authorizing DP&L to recognize decoupling revenues as a regulatory asset.[47] DP&L and its witnesses, however, seem to

---

[43] R.C. 4928.01(A)(26) (emphasis added).

[44] *See* Staff Report at 3.

[45] *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, Second Finding and Order at ¶ 24 (Dec. 18, 2019) ("DP&L claims that the Stipulation is this case authorized DP&L to collect 'lost revenue' and that the decoupling revenues collected by the decoupling rider are a form of 'lost revenue.'").

[46] *Id.* at ¶ 36.

[47] Tr. at 48 (Cross Examination of Nyhuis) ("At this point in time we do not have an order; that's the request.").

argue that while it has no mechanism in which to collect the decoupling revenues, it still has the authority to do so.[48] Nonetheless, DP&L has failed to produce any evidence to demonstrate that the Commission has granted DP&L the right to defer for future recovery these revenues.

The Rate Case Stipulation does provide DP&L with blanket authority to defer or recover decoupling revenues. Instead, the Rate Case Stipulation established a revenue recovery methodology for DP&L's "existing" Decoupling Rider.[49] This Decoupling Rider no longer exists.[50] Additionally, the agreement allowed DP&L to recover pursuant to the established methodology and through the established mechanism for the duration of the bargained-for agreement; it did not allow DP&L to defer[51] the decoupling revenues for future recovery, and it certainly did not authorize DP&L to defer indefinitely the decoupling revenues.[52] Moreover, when the Commission adopted the Rate Case Stipulation, it did not grant DP&L blanket authority to defer for future recovery. The Commission simply stated that the Rate Case Stipulation authorized "DP&L to implement revenue decoupling through the Distribution Decoupling Rider."[53]

The Commission has already rejected DP&L's request to continue the Decoupling Rider absent the ESP III Stipulation and recover the decoupling revenues from customers, and DP&L

---

[48] *See e.g.*, Application at ¶ 8 (claiming that the Application is premised on "DP&L's right to defer its distribution decoupling costs"); Tr. at 56 (Cross Examination of Nyhuis) ("It is my testimony that DP&L no longer has the recovery mechanisms to—and to recover these through a decoupling rider. That's different than the authority. I think that…is not tied to the recovery mechanism.").

[49] Kroger Exhibit 3 at ¶ III.3 (Rate Case Stipulation).

[50] *See* Tr. at 20 (Cross Examination of Nyhuis) ("There's no longer a decoupling rider, that's correct."); Tr. at 90, 92 (Cross Examination of Teuscher) ("I believe the decoupling rider was eliminated with the withdrawal of the ESP III.").

[51] Except, as explained above, to the degree that DP&L would defer amounts that it over-recovered or under-recovered between periodic adjustments of the Distribution Decoupling Rider.

[52] *See* Kroger Exhibit 3 at ¶ III.3.g (Rate Case Stipulation) ("The Decoupling Rider will be charged based on the percentage of base distribution revenue for each applicable tariff class individually"); *see also* Tr. at 25 (Cross Examination of Nyhuis).

[53] 2015 Rate Case, Opinion and Order at ¶ 66 (Sept. 26, 2018).

has failed to identify any Commission order authorizing DP&L to defer them. As such, DP&L admits that it is seeking such authority through this proceeding.[54] Based on the evidence of record, DP&L has failed to satisfy the requisite burden of proof for authorizing deferrals, and has failed to explain why the Commission should depart from its practice of not authorizing the deferral of revenues.

B. DP&L's request to defer revenues should be rejected.

As Staff's witness, David Lipthratt noted, "decoupling is intended to recover the difference between actual and approved revenues."[55] Therefore, the so-called "amounts"[56] that DP&L seeks to defer are actually revenues, not costs.[57] As explained by Staff, the Commission typically does not allow revenue deferral. Furthermore, DP&L's deferral request fails to satisfy the Staff's test for evaluating deferral requests.

Despite originally describing the decoupling revenues as costs in its Application,[58] DP&L did not actually identify any specific costs associated with its deferral request at any point in the proceeding. For example, DP&L witness Nyhuis admits that she "did not list any [costs] out in [her] testimony," and that DP&L did not list any costs out in its application.[59] DP&L cannot point to any costs associated with the decoupling revenues because decoupling recovers lost revenues, not costs. Additionally, any purported energy efficiency costs for 2021 and going forward do not

---

[54] *See* Tr. at 48 (Cross Examination of Nyhuis) ("At this point in time we do not have an order; that's the request.").

[55] Staff Exhibit 1 at 2 (Prefiled Testimony of David M. Lipthratt (Mar. 19, 2021)).

[56] *See, e.g.*, AES Ohio Exhibit 2 at 2 (Direct Testimony of Tyler A. Teuscher (Mar. 5, 2021)).

[57] Staff Exhibit 1 at 2 (Prefiled Testimony of David M. Lipthratt (Mar. 19, 2021)).

[58] *See* Application at ¶ 1 (Jan. 23, 2020) ("DP&L respectfully requests the accounting authority to defer as a regulatory asset/liability the Company's distribution decoupling costs").

[59] *See* Tr. at 46 (Cross Examination of Nyhuis).

exist as DP&L no longer has any Commission-approved energy efficiency programs.[60] Although DP&L attempts to disassociate its decoupling mechanism from the terminated energy efficiency programs, when approving the Rate Case Stipulation, the Commission tied DP&L's Decoupling Rider to energy efficiency programs, noting that allowing DP&L to implement revenue decoupling through the existing Decoupling Rider would "promote energy efficiency efforts."[61]

DP&L has inconsistently identified the decoupling revenues as costs, revenues, or both, which appears to be purposeful, depending on the proceeding. Whether the so-called decoupling amounts constitute revenues or costs in DP&L's eyes seems to depend on which terminology benefits DP&L the most at the time. For example, after terminating the ESP III Stipulation when it voluntarily withdrew its ESP III, DP&L attempted to continue collecting decoupling revenues when it reinstated ESP I. In that case, DP&L argued that "the ESP I Stipulation authorize[d] DP&L to recover 'lost revenue'….[decoupling] revenues are a form of lost revenue."[62] On the other hand, in the present case, DP&L first attempted to identify the decoupling revenues as decoupling costs,[63] presumably recognizing the Commission precedent and Accounting Standards that costs are deferred, not revenues. But following the Staff Report, which plainly stated that DP&L was actually requesting to defer *revenues*, not costs,[64] and that DP&L should not be allowed to defer revenues,[65] DP&L began referring to the decoupling revenues as "decoupling amounts."[66]

---

[60] *See* Tr. at 46-47 (Cross Examination of Nyhuis); Tr. at 99 (Cross Examination of Teuscher) ("The mandated programs ended December 31, 2020.").

[61] *See* 2015 Rate Case, Opinion and Order at ¶ 66 (Sept. 26, 2018).

[62] *See* Case Nos. 08-1094-EL-SSO, et al., the Dayton Power and Light Company's Memorandum in Opposition to Motion to Reject DP&L's Tariffs at 19 (Dec. 10, 2019).

[63] *See* Application at ¶ 1.

[64] Staff Report at 3.

[65] *Id.* at 4.

[66] *See, e.g.*, AES Ohio Exhibit 2 at 2 (Direct Testimony of Tyler A. Teuscher (Mar. 5, 2021)).

In the direct testimony of DP&L Witness Nyhuis, DP&L claimed that "[the] Commission routinely allows utilities to defer amounts on their regulatory books and, therefore, create regulatory assets or liabilities."[67] However, when asked if the Commission historically allows utilities to defer revenues, Ms. Nyhuis stated that she is "not aware of what the Commission has historically allowed in all circumstances."[68]

At other times, DP&L simply claims that costs and revenues are the same thing. DP&L's witnesses seem to use the ratemaking process to conflate any potential revenues with any costs actually incurred by the Company. DP&L Witness Nyhuis claimed "the distinction between revenues and costs is not significant."[69] She then argued that since costs of service "are part of leading up to the revenue requirement," then the distinction between costs and revenues "is more of a presentation or timing difference."[70]

Again, DP&L is attempting to "have its cake and eat it too," in an attempt to circumvent traditional ratemaking. As noted by Staff Witness Lipthratt, this deferral request seeks to "circumvent a rate case by requesting deferral authority for revenue deficiencies that should otherwise be addressed in a rate case proceeding."[71] It is accurate that cost of service is one component of setting a revenue requirement in a ratemaking proceeding. It is also accurate that revenue decoupling collects the difference between authorized revenue and actual revenue. However, this does not mean that the difference in revenues collected versus revenues authorized

[67] AES Ohio Exhibit 1 at 2-3 (Direct Testimony of Karin M. Nyhuis (Mar. 5, 2021)).

[68] Tr. at 37 (Cross Examination of Nyhuis).

[69] Tr. at 22 (Cross Examination of Nyhuis).

[70] Tr. at 41 (Cross Examination of Nyhuis).

[71] Staff Exhibit 1 at 5 (Prefiled Testimony of David M. Lipthratt (Mar. 19, 2021)) ("Additionally, approving this deferral request could encourage a utility to circumvent a rate case by requesting deferral authority for revenue deficiencies that should otherwise be addressed in a rate case proceeding.").

is a cost to the Company. To the extent that these revenues are "costs" in the sense that they are calculated based on DP&L's cost of service, a difference in collection represents a revenue shortfall that should be recovered in a new rate case.[72]

Presumably, DP&L's attempts to conflate decoupling revenues with costs stems from the recognition that it cannot legally defer decoupling revenues. Staff Witness Lipthratt noted that "all decoupling mechanisms generally have been approved in the form of a rider and not…deferral authority."[73] Staff also does not typically support deferral of revenues, and the Commission typically denies such requests.[74] Furthermore, applying the Staff's test for evaluating the deferral of *costs* demonstrates that DP&L's Application to recover a deferral of *revenues* should be denied.[75] The deferral would not result in immediate cash flows or improve the financial integrity of the Company, and would require further Commission approval for collection.[76] Furthermore, the Commission typically approves deferral where the costs are atypical and infrequent,[77] whereas the current request represents a monthly charge.[78] And of course, Staff notes that the loss of the Decoupling Rider was within the Company's control,[79] which leads to the third reason the Commission should deny DP&L's Application—because the Company seeks to benefit from terms of the ESP III Stipulation that are most favorable to DP&L, which DP&L knowingly and voluntarily terminated.

---

[72] *Id.* ("Granting the deferral that DP&L is requesting could create a pathway for other utilities to file similar applications that request to defer what amounts to shortfalls in the revenue requirement.").

[73] Tr. At 234 (Redirect Examination of Lipthratt).

[74] Staff Exhibit 1 at 6 (Prefiled Testimony of David M. Lipthratt (Mar. 19, 2021)).

[75] *See id.* at 3-4.

[76] *Id.* at 4-5.

[77] For example, such as "extremely unique and unprecedented [revenue shortfalls] caused by a once in a century pandemic." *Id.* at 6.

[78] *Id.* at 4.

[79] *See id.* at 4.

C. DP&L seeks to continue benefiting from a bargain it no longer honors.

Throughout this proceeding, DP&L argues that DP&L should be able to defer decoupling revenues because the Company should be able to retain the benefits of past stipulations[80]—despite the fact that DP&L voluntarily withdrew from the ESP III Stipulation and terminated customer benefits of past stipulations. For example, in its Comments, DP&L discussed the "the intent of the parties to the [Rate Case] Stipulation"[81] and asserted that granting DP&L deferral authority despite the elimination of the Distribution Decoupling Rider "remains consistent with the intent of that Stipulation."[82]

DP&L's witness argues that since DP&L made concessions in reaching a settlement in the 2015 Rate Case with the signatory parties to the Rate Case Stipulation, "[deferral] of the Decoupling Amounts would enable DP&L to retain the benefit of its bargain in settling that proceeding."[83] However, DP&L conveniently ignores the fact that many of the same signatory parties agreed to both the ESP III Stipulation and the Rate Case Stipulation, with the understanding that the decoupling methodology agreed to in the Rate Case Stipulation was premised on the existence of the Decoupling Rider as created by the bargain in the ESP III Stipulation.[84]

DP&L terminated the ESP III Stipulation when it voluntarily chose to withdraw ESP III,[85] thereby denying customers and other signatory parties the benefits of any incentives bargained for and included in the ESP III Stipulation. According to Staff's witness, DP&L decided to withdraw

---

[80] Although, as described above, the signatory parties to the ESP III Stipulation and Rate Case Stipulation agreed to the collection, not the deferral, of decoupling revenues.

[81] DP&L Comments at 1.

[82] Id. at 2.

[83] AES Ohio Exhibit 2 at 6 (Direct Testimony of Tyler A. Teuscher (Mar. 5, 2021)).

[84] *See* Kroger Exhibit 3 at ¶ III.3 (Rate Case Stipulation) ("The Signatory Parties agree, that pursuant to the October 20, 2017 Opinion and Order in Case No. 16-395-EL-SSO, DP&L shall be permitted to implement Revenue Decoupling through its *existing* Decoupling Rider, as follows.").

[85] ESP III Case, Notice at 1 (November 26, 2019).

its ESP III with the understanding that doing so would result in the loss of decoupling revenues with no guarantee of deferral authority.[86] DP&L is attempting to still receive the benefits of the Decoupling Rider established by the ESP III Stipulation, while it denies customers and others the benefits that they obtained in exchange.

DP&L's witness noted that at the time the Commission removed the Distribution Modernization Rider from ESP III, "the Company had to take a look and evaluate different options," and ultimately chose to "remove the ESP III" because, "based on the analysis for what was best for the company and the customers at the time."[87] Essentially, DP&L made a choice to withdraw ESP III based on a cost-benefit analysis. Now, through this deferral request, DP&L is essentially asking the Commission to absolve DP&L of actually bearing any of the costs of making that choice. DP&L is requesting to do the same thing it tried to do when it reinstated ESP I: retain the remaining benefits of ESP III—such as the recovery of decoupling revenues—while not having being responsible for any consequences of that decision. The Commission has already rejected this request once,[88] and likewise, it should do so now.

V. CONCLUSION

Despite voluntarily withdrawing from the ESP III Stipulation that gave it authority to collect decoupling revenues, DP&L still hopes to obtain the decoupling revenues the Stipulation previously permitted it to collect. The Commission has already held that DP&L is not entitled to continue collecting these revenues, so now DP&L seeks to instead defer these revenues for future recovery. However, DP&L has not identified any legal authorization for it to collect or defer these

---

[86] Staff Exhibit 1 at 2 (Prefiled Testimony of David M. Lipthratt (Mar. 19, 2021)).

[87] Tr. at 90 (Cross Examination of Teuscher).

[88] *See, e.g.* OMAEG Exhibit 1 at ¶ 36 (Case No. 08-1094, et al., Second Finding and Order (Dec. 12, 2019)) ("Likewise, although DP&L has proposed to continue the decoupling rider and the RCR, these two riders were created in ESP III and should be eliminated.").

revenues, nor has DP&L presented evidence to satisfy the relevant FASB requirements for deferral of revenues. DP&L's request also cuts against Commission precedent rejecting requests to defer revenues. Lastly, DP&L unreasonably seeks to benefit from an agreement it no longer honors. For the foregoing reasons, DP&L has failed to meet its burden to demonstrate that it is entitled to defer, as a regulatory asset, the decoupling revenues as requested in its Application. As such, OMAEG respectfully requests that the Commission deny the Application in its entirety.

Respectfully submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko (0069402) (Counsel of Record)
Thomas V. Donadio (0100027)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
Bojko@carpenterlipps.com
Donadio@carpenterlipps.com
(willing to accept service by email)

Counsel for the Ohio Manufacturers' Association Energy Group

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on June 18, 2021 upon the parties listed below.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

ambrosia.logsdon@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
christopher.healey@occ.ohio.gov
colleen.shutrump@occ.ohio.gov
robert.eubanks@ohioattorneygeneral.gov
michael.schuler@aes.com
jsharkey@ficlaw.com
chollon@ficlaw.com
paul@carpenterlipps.com
wygonski@carpenterlipps.com

Attorney Examiners:
Michael.Williams@puco.ohio.gov
Patricia.Schabo@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/18/2021 11:32:46 AM

in

Case No(s). 20-0140-EL-AAM

Summary: Brief Post Hearing Brief of The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group