

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Dayton Power and Light Company for)
Approval of Tariff Changes Associated) Case No. 05-1090-EL-ATA
With a Request to Implement a Storm Cost)
Recovery Rider.)

FINDING AND ORDER

The Commission finds:

- (1) The Dayton Power and Light Company (DP&L or Applicant) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On August 31, 2000, in Case No. 99-1687-EL-AIR et al., the Commission approved a stipulation (the ETP Stipulation) in DP&L's electric transition plan proceeding. *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Transition plan Pursuant to Section 4928.3, Revised Code and for the Opportunity to Receive Transition Revenues as authorized Under Sections 4928.31 to 4928.40, Revised Code, Case No. 99-1687-EL-ETP, et al. Opinion and Order (August 31, 2000).* The ETP Stipulation provided, *inter alia*, that DP&L's distribution rates be frozen through December 31, 2006. The ETP Stipulation, however, provided that such distribution rates could be adjusted to reflect, among other costs, relief from storm damage expenses. The ETP Stipulation provided that such adjustments be made by an application under Section 4909.18, Revised Code.

On September 3, 2003, in Case No. 02-2779-EL-ATA et al., the Commission approved a stipulation (the RSP Stipulation) which extended DP&L's market development period to December 31, 2005 and provided for a rate stabilization period from January 1, 2006 through December 31, 2008. *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for the Dayton Power and Light Company, Case No. 02-2779-EL-ATA, et al., Opinion and Order (September 2, 2003).* In addition, the RSP Stipulation provided, *inter alia*, that DP&L's distribution rates are to remain frozen through December 31, 2008, subject to the adjustments permitted in the

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ETP Stipulation, including storm damage expenses. Further, the RSP Stipulation provided that the allowed adjustments to the distribution rates be made by the filing of an ATA application.

- (3) On September 2, 2005, DP&L filed an application in this proceeding for approval of changes to DP&L's tariffs to implement a new rider to recover storm costs. The request is the result of storms that had a devastating impact on DP&L's system during December 2004 and January 2005 in which DP&L incurred over \$12.6 million of costs to repair this damage and to restore service to its customers. The application proposes to recover these costs over a two-year period or a shorter period as may be sufficient to fully recovery the approved revenue requirement. DP&L will monitor the recovery on a monthly basis and will withdraw the rider once the approved amount is recovered.
- (4) On September 30, 2005, DP&L filed a supplement to its application to correct rates which were not accurately reflected in the proposed Storm Cost Recovery Rider filed on September 2, 2005. On October 20, 2005, DP&L filed an additional supplement to its application to reflect the inclusion of three years of depreciation expense and return on rate base rather than one year as reflected in DP&L's original application. This amendment also reflected additional costs attributable to the December 2004 ice storm and a revised O&M and capital split.
- (5) Pursuant to discussion with Commission Staff, DP&L filed a third supplement to its application on February 22, 2006, to incorporate an incremental cost approach to quantifying extraordinary storm damage expenses. The incremental cost approach reduces the recovery by the estimated amount included in DP&L's current distribution rates for recovery of storm date costs. DP&L proposes to recover \$8,601,815.
- (6) On September 26, 2005, the Ohio Consumers' Counsel (OCC) filed a motion to intervene. On November 16, 2005, the Industrial Energy Users-Ohio (IEU-Ohio) filed a motion to intervene.
- (7) Further, on June 9, 2006, OCC filed a motion to dismiss the application filed in this proceeding. On June 27, 2006, DP&L

filed a memorandum contra the motion to dismiss. OCC filed its reply to the memorandum contra on July 6, 2006.

- (8) Upon consideration, the Commission finds that it is not necessary to grant intervention to the OCC and IEU-Ohio in order to consider their pleadings in our determination of this application.
- (9) OCC argues that the application and supplemental applications violate statutory ratemaking procedures and the procedures required under the ETP Stipulation and the RSP Stipulation. Specifically, OCC claims that DP&L was required by the ETP Stipulation and the RSP Stipulation to recover the storm damage expenses through an application to increase rates filed under Section 4909.18, Revised Code.

In its memorandum contra the OCC's motion to dismiss, DP&L argues that the RSP Stipulation authorizes DP&L to implement the storm cost recovery rider by filing an "ATA" case. In addition, DP&L argues that the storm cost recovery rider constitutes a new rate, and the rate case procedures under Section 4909.18, Revised Code, are therefore inapplicable.

- (10) The Commission finds that the ETP Stipulation and the RSP Stipulation, to which both OCC and IEU-Ohio were signatory parties, provided for the recovery of storm damage expenses through an application for tariff approval pursuant to Section 4909.18, Revised Code. The ETP stipulation implemented a distribution rate freeze through December 31, 2006. However, the ETP Stipulation provided that, after December 31, 2003, distribution rates could be adjusted to obtain relief from storm damage expenses by an application under Section 4909.18, Revised Code (ETP Stipulation at 3-4).

Further, in the RSP Stipulation, the parties agreed to extend the distribution rate freeze through December 31, 2008, subject to the same adjustments provided for in the ETP Stipulation and clarified that the agreed adjustments to the rate freeze should be made through "the filing of an 'ATA' application" rather than through an application for an increase in rates (RSP Stipulation at 12). Therefore, OCC's argument that DP&L is required by the Stipulations to comply with the procedural requirements for an application for an increase in rates is inconsistent with the

language of the Stipulations, which make it clear that adjustments to the rate freeze may be made by the filing of an application for tariff approval (i.e., an "ATA" proceeding) rather than an application for an increase in rates (i.e., an "AIR" proceeding). It certainly was not intended that the adjustments permitted under the Stipulations would be reviewed in proceedings used for applications for an increase in rates under Chapter 4909, Revised Code. Finally, the Commission notes that both the ETP Stipulation and the RSP Stipulation were adopted following a full hearing before the Commission regarding the distribution rate freeze and the agreed-upon adjustments.

- (11) In addition, OCC argues that DP&L's application relies on stipulations which DP&L has breached. Specifically, OCC claims that DP&L has breached the distribution rate freeze provisions of the ETP Stipulation and the RSP Stipulation by implementing a rider to recover billing system modification cost deferrals. Further, OCC alleges that DP&L breached the RSP Stipulation by seeking recovery of costs that exceeded the stipulated maximum rate increase. Finally, OCC claims that DP&L breached the ETP Stipulation and the RSP Stipulation by violating its obligations under the Stipulations regarding treatment of transmission charges incurred during the market development period.

In its memorandum contra the motion to dismiss, DP&L argues that the Commission has repeatedly considered and rejected OCC's arguments that DP&L has breached either the ETP Stipulation or the RSP Stipulation.

- (12) The Commission finds that DP&L has not breached the ETP Stipulation or the RSP Stipulation as alleged by the OCC. In each instance raised by OCC, DP&L sought, and received, approval from the Commission for its actions. Further, in each proceeding, we specifically addressed the question, raised by OCC, whether DP&L had breached either the ETP Stipulation or the RSP Stipulation.

With respect to the rider to recover billing system modification cost deferrals, the Commission held that the rider did not violate the RSP Stipulation. *Dominion Retail, Inc. v. The Dayton Power and Light Company*, Case No. 03-2405-EL-CSS et al.,

Opinion and Order (February 5, 2005) at 10-11. Entry on Rehearing (March 23, 2005) at 4-5. Further, regarding OCC's allegation that DP&L breached the RSP Stipulation by seeking recovery of costs that exceeded the stipulated maximum rate increase, we determined that the stipulation in that case did not represent a collateral attack on the RSP Stipulation and that modification of the RSP Stipulation was "clearly needed." Case No. 05-276-EL-AIR, Opinion and Order (December 28, 2005) at 10-11, Entry on Rehearing (February 22, 2006) at 4-6. Finally, with respect to OCC's claim that DP&L breached the ETP Stipulation and the RSP Stipulation by violating its obligations under the Stipulations regarding treatment of transmission charges incurred during the market development period, we held that DP&L did not breach the RSP Stipulation by seeking to defer certain transmission charges incurred during the market development period or by implementing a rider to recover such deferrals. *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedures*, Case No. 04-1645-EL-AAM, Entry on Rehearing (July 13, 2005) at 2; *In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with a Request to Implement a PJM Administrative Fee*, Case No. 05-844-EL-ATA, Finding and Order (January 25, 2005) at 2-3, Entry on Rehearing (March 7, 2005) at 3-5.

- (13) Therefore, the Commission finds that OCC's motion to dismiss should be denied.
- (14) The Commission finds that the application seeks recovery of incremental costs, which are over and above the costs normally incurred to repair storm damage, based upon a three-year average from 2001 through 2003. The Commission believes that this approach is reasonable and that this approach limits recovery to only those costs which are related to the severe weather experienced in the DP&L service territory in 2004 and 2005. Therefore, the Commission finds that the application, as supplemented, should be approved.
- (15) Further, the Commission finds the Storm Cost Recovery Rider tariff, P.U.C.O. 17, Sheet D36, does not adequately describe the nature of the costs the Applicant is seeking to recover. The Applicant should include the following language in its tariff:

The rates and charges listed in this tariff are to recover certain costs related to restoring service and repairing distribution facilities as a result of severe storms the Company experienced in 2004 and 2005.

- (16) This application has been filed pursuant to Section 4909.18, Revised Code, and our orders in Case Nos. 99-1687-EL-AIR et al. and 02-2779-EL-ATA, et al. The Commission finds that the calculation of the rider is consistent with those orders, does not appear to be unjust or unreasonable, and should be approved. Therefore, the Commission finds that it is unnecessary to hold a hearing in this matter.

It is, therefore,

ORDERED, That the application filed by The Dayton and Power and Light Company, as amended by the supplemental applications, be approved. It is, further,

ORDERED, That the motions to intervene filed by the Ohio Consumer's Counsel and the Industrial Energy Users-Ohio be denied. It is, further,

ORDERED, That the motion to dismiss filed by OCC be denied. It is, further,

ORDERED, That the Applicant file in final form four complete copies of tariffs consistent with this Finding and Order. One copy shall be filed with this case docket, one shall be filed with the Applicant's TRF docket and the remaining two copies shall be designated for distribution to the Rates and Tariffs Division of the Commission's Utilities Department. The Companies shall also update their respective tariffs previously filed electronically with the Commission's Docketing Division. It is, further,

ORDERED, That the effective date of the new tariffs shall be a date not earlier than both the date of this Finding and Order and the date upon which four complete printed copies of final tariffs are filed with the Commission. The new tariffs shall be effective for services rendered on or after such effective date. It is, further,

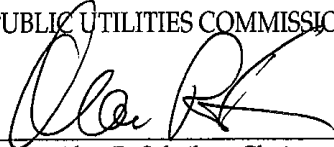
ORDERED, That the Applicant shall notify all effected customers via a bill message or via a bill insert within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That the rider shall be effective until the costs identified in Finding (5) have been fully recovered or two years, whichever is shorter. The Applicant shall monitor the recovery on a monthly basis after the first 18 months of recovery and shall notify the Accounting and Electricity Division of the Commission's Utilities Department approximately 60 days prior to the full recovery of the costs. Any over-recovered amount shall be refunded through a reconciliation adjustment. It is, further,

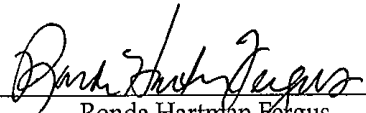
ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

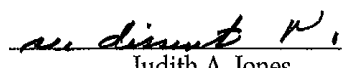
THE PUBLIC UTILITIES COMMISSION OF OHIO



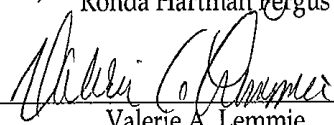
Alan R. Schriber, Chairman



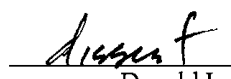
Ronda Hartman Fergus



Judith A. Jones



Valerie A. Lemmie

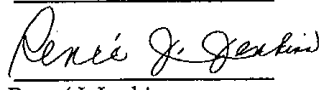


Donald L. Mason

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Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Dayton)
Power and Light Company for Approval of) Case No. 05-1090-EL-ATA
Tariff Changes Associated With a Request)
to Implement a Storm Cost Recovery Rider.)

DISSENTING OPINION OF COMMISSIONERS
JUDITH A. JONES AND DONALD L. MASON

The winter weather damage of December 2004-January 2005 presented an unusual challenge to the management and employees of Dayton Power and Light. However, it appears they responded quickly and responsibly to the storm which caused ice to form on the company's lines and equipment. No doubt, the weather conditions were the type contemplated by all parties when they signed and submitted the ETP and RSP stipulations to the Commission for approval. The stipulations, adopted with modification by Commission order, froze the distribution charges with certain exceptions. One of the exceptions would allow for excessive storm damage expenditures to be passed on to ratepayers. Following the storm, DP&L encountered trees from outside the right-of-way making contact with power lines. Additionally, the ice and snow on trees and branches caused additional damage. The winter rain caused ice to form on the lines and the weight was more than the lines and poles could withstand.

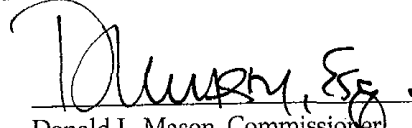
The concern we have with DP&L's proposal to recover storm damage expenses is that the company had a well-funded vegetation management program in place prior to Senate Bill 3, which became effective in 1999. In 1996-1998 the average line clearance expenditure for the distribution system was approximately \$8.2 million per year. In 1999-2003 the average annual expenditure was cut to just above \$4 million per year. In 2005-2006 the average line clearance expenditure returned to approximately \$8 million per year.

We are pleased that the DP&L's new management team has returned funding for line clearance expenditures to a more appropriate level. However, it is difficult to draw conclusions for the line clearance expenditures for 2004 because we are unsure how much was for line clearance during and after the winter event compared to how much was for line clearance throughout the entire year. It is also difficult for us to determine how much of the requested \$8.6 million is due to unavoidable weather conditions and how much was due to the decreased funding of traditional line clearance in the years just prior to 2004.

While we believe that DP&L is entitled to some recovery of its proposed storm damage expense, in our mind DP&L has failed to provide sufficient information to demonstrate what portion of the \$8.6 million could have been avoided had the line expenditure funding stayed at the 1996-1998 level rather than being cut by 50 percent for

the years prior to the storm. Because DP&L has not provided sufficient information from which we can draw a reasonable conclusion and because DP&L has the burden of justifying its level of storm damage expense, we dissent from the majority opinion that permits DP&L to recover its total requested amount.


Judith A. Jones, Commissioner


Donald L. Mason, Commissioner