

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

**FAX**

AT&T OHIO,

CASE NO. 06-1509-EL-CSS

Complainant,

v.

THE DAYTON POWER AND LIGHT  
COMPANY,

Respondent.

**RECEIVED**

JAN 25 2007

DOCKETING DIVISION  
Public Utilities Commission of Ohio

**ANSWER OF RESPONDENT  
THE DAYTON POWER AND LIGHT COMPANY**

Pursuant to Ohio Admin. Code § 4901-9-01, Respondent, The Dayton Power and Light Company ("DP&L"), hereby answers the Complaint and Request for Emergency Relief ("Complaint") filed by AT&T Ohio on or about December 28, 2006.

1. Admit

2. Admit.

3. Denied.

4. DP&L admits that on or about March 17, 1930, AT&T Ohio and DP&L entered into a Joint Pole Line Agreement Pole Rental Contract ("1930 Agreement"). DP&L denies that a complete and accurate, executed copy of the 1930 Agreement is attached to the Complaint. DP&L admits that the 1930 Agreement has been amended from time to time. To the extent that this paragraph seeks to characterize the 1930 Agreement, the 1930 Agreement speaks for itself. To the extent that any other facts are pled in this paragraph, those facts are denied.

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Technician

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5. To the extent that this paragraph seeks to characterize the 1930 Agreement, the 1930 Agreement speaks for itself. To the extent that any facts are pled in this paragraph, those facts are denied.

6. To the extent that this paragraph seeks to characterize the 1930 Agreement or the 1953 Operating Routine, those documents speak for themselves. DP&L denies that a complete and accurate, executed copy of the Operating Routine is attached to the Complaint. To the extent that any facts are pled in this paragraph, those facts are denied.

7. DP&L admits that it has allowed companies other than AT&T Ohio to attach to joint use poles owned by DP&L. DP&L further admits that it has paid no compensation, nor collected any fees, from AT&T Ohio in association to such attachments. DP&L denies all other facts pled in this paragraph.

8. DP&L denies that a Supplemental Agreement to the 1930 contract was signed in 1947. DP&L admits that such a Supplemental Agreement was signed in 1942. DP&L denies that a complete and accurate, executed copy of the 1942 supplemental agreement is attached to the Complaint. To the extent that characterizations of the 1930 Agreement or any amendment to that agreement are made in this paragraph, those documents speak for themselves. To the extent that any facts are pled in this paragraph, those facts are denied.

9. To the extent that this paragraph seeks to characterize the 1930 Agreement, or any amendment to that agreement, the 1930 Agreement and amendments speak for themselves. DP&L admits that it has been billing for the difference in the total number of joint use poles owned by each party. To the extent that any other facts are pled in this paragraph, those facts are denied.

10. To the extent that characterizations of the 1930 Agreement or any amendment to that agreement are made in this paragraph, the 1930 Agreement and amendments speak for themselves. To the extent that any facts are alleged in this paragraph, those facts are denied.

11. Admit.

12. To the extent that characterizations of the 1930 Agreement or amendments to that agreement are made in this paragraph, the 1930 Agreement and amendments speak for themselves. To the extent that AT&T's motivations are addressed in this paragraph, DP&L is without sufficient knowledge to admit or deny the allegation. DP&L admits that the joint use rental fee ("Deficiency Payment") was \$2.00 from 1930 until 1995, \$3.50 from 1995 until 2005, and \$45.00 from 2005 to the present. DP&L admits that it hoped to reach agreement with AT&T on a new Deficiency Payment and that DP&L's attempts were unsuccessful. To the extent that any other facts are pled in this paragraph, those facts are denied.

13. DP&L admits that it calculated the \$45.00 Deficiency Payment without using AT&T Ohio's pole cost information. DP&L further admits that to this day AT&T Ohio has never provided DP&L with its pole cost information nor even its calculation of the Deficiency Payment under the 1930 Agreement, as amended. To the extent that characterizations of the 1930 Agreement or any amendments to that agreement are made in this paragraph, the 1930 Agreement and amendments speak for themselves. To the extent that any other facts are pled in this paragraph, those facts are denied.

14. DP&L admits that the Federal Communications Commission's ("FCC's") pole attachment cost methodology did not exist when the 1930 Agreement was executed. DP&L admits that it calculated the \$45.00 Deficiency Payment in accordance with the FCC's cost

methodology. To the extent that characterizations of the 1930 Agreement or any amendments are made in this paragraph, the 1930 Agreement and amendments speak for themselves. To the extent that this paragraph purports to contain statements of law, no response is required. To the extent that any other facts are pled in this paragraph, those facts are denied.

15. DP&L admits that the \$45.00 Deficiency Payment became effective on March 17, 2005. DP&L admits that it submitted bills to AT&T Ohio in the amount of \$396,665.78 for the period October 1, 2004 through September 30, 2005 ("2005 Invoice"), and in the amount of \$690,660.00 for the period October 1, 2005 through September 30, 2006 ("2006 Invoice"). DP&L admits that AT&T Ohio paid DP&L \$53,459.00 for the 2005 Invoice. DP&L admits that AT&T Ohio sent DP&L a check for \$26,859.00 for the 2006 Invoice, but DP&L has not cashed that check. All other facts pled in this paragraph are denied.

16. DP&L admits that on December 6, 2006, DP&L notified AT&T Ohio that effective immediately, AT&T Ohio's rights to the granting of further joint use were suspended until AT&T Ohio corrects its default by paying the 2005 Invoice. DP&L further admits that it has taken no steps to remove AT&T Ohio from any existing joint use poles owned by DP&L. To the extent that any other facts are pled in this paragraph, those facts are denied. To the extent that characterizations of the 1930 Agreement or any amendment to that agreement are made in this paragraph, the 1930 Agreement and amendments speak for themselves.

17. Denied.

18. DP&L repeats its responses to paragraphs 1 through 17 above as if fully set forth herein.

19. DP&L admits that the Deficiency Payment increased from \$2.00 to \$3.50 per pole in 1995. To the extent that any other facts are pled in this paragraph, those facts are denied. To the extent that characterizations of the 1930 Agreement or any amendment to that agreement are made in this paragraph, the 1930 Agreement and amendments speak for themselves.

20. DP&L admits that it has been billing AT&T Ohio for the difference in the total number of poles owned by each party. DP&L denies that it breached the agreement through its manner of billing. To the extent that any other facts are alleged in this paragraph, those facts are denied.

21. To the extent that characterizations of the 1930 Agreement or any amendment to that agreement are made in this paragraph, the 1930 Agreement and amendments speak for themselves. To the extent that any facts are alleged in this paragraph, those facts are denied.

22. Denied.

23. DP&L repeats its responses to paragraphs 1 through 22 above as if fully set forth herein.

24. To the extent that any facts are pled in this paragraph, those facts are denied. This paragraph purports to contain statements of law to which no response is required.

25. Denied.

26. DP&L repeats its responses to paragraphs 1 through 25 above as if fully set forth herein.

27. To the extent that characterizations of the 1930 Agreement or any amendment to that agreement are made in this paragraph, the 1930 Agreement and amendments speak for themselves. To the extent that any facts are alleged in this paragraph, those facts are denied.

28. Denied.

29. To the extent that characterizations of the 1930 Agreement or any amendment to that agreement are made in this paragraph, the 1930 Agreement and amendments speak for themselves. To the extent that any facts are pled in this paragraph, those facts are denied.

30. Denied.

31. DP&L repeats its responses to paragraphs 1 through 30 above as if fully set forth herein.

32. Denied.

33. Denied.

34. DP&L repeats its responses to paragraphs 1 through 33 above as if fully set forth herein.

35. This paragraph purports to contain statements of law to which no response is required. To the extent that this paragraphs pleads any facts, those facts are denied.

36. DP&L admits that it claims the Deficiency Payment is \$45.00 per pole. DP&L admits that it has submitted bills to AT&T Ohio based on that rate. DP&L admits that it suspended AT&T Ohio's rights to future joint use under the 1930 Agreement until AT&T Ohio pays the outstanding bills in full. To the extent that any other facts are pled in this paragraph,

-those facts are denied. This paragraph purports to contain statements of law to which no response is required.

37. Denied.

38. DP&L admits that its Deficiency Payment calculation includes only the cost of its own poles. All other facts are denied.

39. This paragraph contains a prayer for relief to which no response is required. To the extent that any facts are pled in this paragraph, those facts are denied.

40. DP&L repeats its responses to paragraphs 1 through 39 above as if fully set forth herein.

41. To the extent that any facts are pled in this paragraph, those facts are denied. This paragraph purports to contain statements of law to which no response is required.

42. To the extent that any facts are pled in this paragraph, those facts are denied. This paragraph purports to contain statements of law to which no response is required.

43. To the extent that any facts are pled in this paragraph, those facts are denied. This paragraph purports to contain statements of law to which no response is required.

44. To the extent that any facts are pled in this paragraph, those facts are denied. This paragraph purports to contain statements of law to which no response is required.

45. This paragraph contains a prayer for relief to which no response is required. To the extent that any facts are alleged in this paragraph, those facts are denied.

46. Denied.

**ADDITIONAL DEFENSES**

47. The Commission lacks subject matter jurisdiction to resolve this matter.

48. AT&T Ohio's claims are barred by the doctrine of laches.

49. AT&T Ohio's claims are barred by the doctrine of unclean hands.

50. AT&T Ohio's claims are barred by the doctrine of waiver.

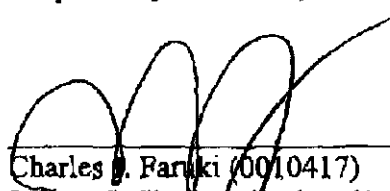
51. AT&T Ohio's claims are barred by the doctrine of estoppel.

WHEREFORE, The Dayton Power and Light Company asks this Commission to:

- (a) Dismiss AT&T Ohio's Complaint in this matter with prejudice; and
- (b) Grant to DP&L such further relief to which it is entitled.



Respectfully submitted,



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Attorneys for Respondent  
The Dayton Power And Light Company

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Answer of Respondent The Dayton Power and Light Company has been served via electronic mail and regular U.S. mail, postage prepaid, upon the following counsel of record, this 25th day of January, 2007:

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