

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of AT&T	)	
Ohio,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 06-1509-EL-CSS
	)	
The Dayton Power and Light Company,	)	
	)	
Respondent.	)	

ENTRY

The Commission finds:

- (1) On December 28, 2006, AT&T Ohio filed a complaint against The Dayton Power and Light Company (DP&L). AT&T Ohio alleges that DP&L breached the Joint Pole Line Agreement (Joint Agreement) that was entered into between the parties in 1930, as supplemented in 1942, and revised in 1995, and, therefore, DP&L received unjust enrichment.
- (2) By Entry issued March 28, 2007, in this matter, the Commission concluded, *inter alia*, that AT&T Ohio is a proper party to bring this complaint under Section 4905.26, Revised Code, and that AT&T Ohio stated reasonable grounds for complaint. The Commission denied DP&L's application for rehearing of the March 28, 2007 decision in its entry on rehearing issued May 16, 2007.
- (3) After discussions with the parties on May 14, 2007, the attorney examiner established the procedural schedule for this case by entry issued May 21, 2007. According to the schedule, AT&T Ohio was to file its amended complaint by May 24, 2007, DP&L was to file its answer to AT&T Ohio's amended complaint and its counterclaims by June 7, 2007, and AT&T Ohio was to file its answer to DP&L's counterclaims by June 18, 2007.
- (4) On May 24, 2007, AT&T Ohio filed its amended complaint reiterating the grounds for complaint set forth in its initial filing on December 28, 2006, and alleging several additional

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grounds for complaint. On June 7, 2007, DP&L filed its answer to AT&T Ohio's amended complaint and asserted a counterclaim. AT&T Ohio filed its answer to DP&L's counterclaim on June 18, 2007.

- (5) Also in its June 7, 2007 filing, DP&L submitted a motion to dismiss the amended complaint. AT&T Ohio filed a memorandum contra DP&L's motion to dismiss the amended complaint on June 14, 2007.
- (6) By entry issued July 9, 2007, the attorney examiner denied DP&L's motion to dismiss the amended complaint.
- (7) On August 7, 2007, DP&L, citing Section 4903.10, Revised Code, filed an "Application for Rehearing from the Commission's July 9, 2007 Entry Denying Respondent's Motion to Dismiss." In support of its filing, DP&L incorporated, by reference, its April 27, 2007 application for rehearing of the Commission's March 28, 2007 Entry.
- (8) On August 17, 2007, AT&T Ohio filed its memorandum contra DP&L's "Application for Rehearing from the Commission's July 9, 2007 Entry Denying Respondent's Motion to Dismiss." In support of its filing, AT&T Ohio incorporated by reference its January 11, 2007, May 7, 2007, and June 14, 2007 filings in this case.
- (9) Section 4903.10, Revised Code, states that "[a]fter any order has been made by the public utilities commission" any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (10) Rule 4901-1-15, Ohio Administrative Code (O.A.C.), Interlocutory appeals, sets forth the process a party must follow when objecting to a ruling in a proceeding by an attorney examiner, as well as the criteria a party must meet in order to have the attorney examiner's ruling heard by the Commission. This rule provides that any party wishing to file an interlocutory appeal must file its request with the Commission within five days after the ruling is issued and extensions of time may only be granted under extraordinary circumstances.

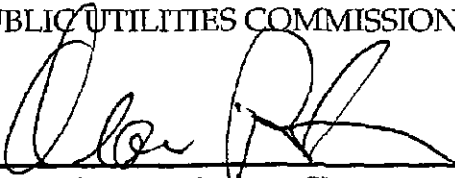
- (11) Upon review of DP&L's August 7, 2007 filing, it is evident that DP&L inappropriately filed an application for rehearing pursuant to Section 4903.10, Revised Code, to the attorney examiner's entry issued on July 9, 2007. As established in Section 4903.10, Revised Code, "[a]fter any order has been made by the public utilities commission," a party may seek rehearing of any matters determined by the Commission. However, the ruling objected to by DP&L came out of an entry issued by the attorney examiner, not the Commission. If DP&L wished to appeal the attorney examiner's July 9, 2007 ruling, DP&L should have followed Rule 4901-1-15, O.A.C, which allows for interlocutory appeals of attorney examiner rulings, not Section 4903.10, Revised Code. In this situation, even if the Commission were to review DP&L's filing as if it were an interlocutory appeal, not only would the filing have been docketed way beyond the required deadline, but the objection posed fails to meet the criteria necessary in order for an interlocutory appeal to be heard by the Commission in accordance with Rule 4901-1-15, O.A.C. Accordingly, the Commission finds that DP&L's August 7, 2007 filing should be dismissed.

It is, therefore,

ORDERED, That DP&L's August 7, 2007 filing be dismissed. It is, further,


ORDERED, That copies of this entry be served upon all parties of record.

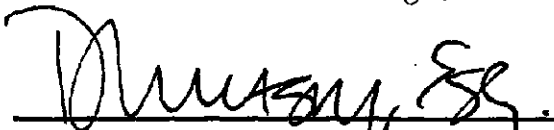
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
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CMTP/vrm

Entered in the Journal

AUG 29 2007



Renee J. Jenkins  
Secretary