BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power & Light Company for an Increase in Its Electric Distribution Rates.	))))	Case No. 15-1830-EL-AIR
In the Matter of the Application of The Dayton Power & Light Company for Accounting Authority.	))))	Case No. 15-1831-EL-AAM
In the Matter of the Application of The Dayton Power & Light Company for Approval of Revised Tariffs.	)))	Case No. 15-1832-EL-ATA

THE CITY OF DAYTON AND HONDA OF AMERICA MFG., INC.'S OBJECTIONS TO THE STAFF REPORT

I. INTRODUCTION

Pursuant to R.C. 4909.19(C) and Ohio Admin. Code 4901-1-28, the City of Dayton ("City") and Honda of America Mfg., Inc. ("Honda") submit the following objections to the Staff Report as filed on March 12, 2018:

1. Staff's failure to address any corporate tax rate changes as a result of the Tax Cuts and Jobs Act of 2017 ("TCJA"), opting instead to sidestep these issues for consideration in the ongoing Commission-ordered investigation in Case No. 18-0047-AU-COI. Staff should have made the tax impact from TCJA refundable to customers in this proceeding.

2. Staff's use of a hypothetical cost of debt rather than DP&L's actual cost of debt during the test year. If Staff was persuaded to use a hypothetical cost of debt, then that cost of debt should be reasonable. DP&L's projection of a huge increase in debt costs was not reasonable and should not have been adopted by Staff.

3. Staff's calculation of the cost of equity using an incorrect peer group, which included utilities still exposed to generation risk.

4. Sheet D10, Emergency and Auxiliary Service, was modified by Staff. Many of those modifications were appropriate, but Staff erred by failing to make additional revisions necessary to ensure the rates charged are reasonable and are allocated based on principles of cost-causation.

5. Staff's failure to recommend changes to the Street Lighting Tariff.

6. Staff failed to include certain revenue sources which should have been included by DP&L.

7. Staff improperly included expenses and items in rate base.

Notwithstanding the foregoing, the City and Honda reserve the right to supplement or modify these objections if Staff makes additional findings, conclusions, or recommendations with respect to the Staff Report. The City and Honda further reserve the right to respond to objections or other issues raised by other parties in the above-captioned proceedings.

II. OBJECTIONS

A. Staff fails to address any corporate tax changes as a result of the TCJA.

1. The Commission should address the impact of TCJA on DP&L rates and Riders in this rate case proceeding, not in a generic All-Utility Docket as Staff proposes.

Instead of addressing the impact of the TCJA specific to DP&L rates and Riders in this distribution rate case, "[t]he Staff Report does not address any corporate tax rate changes as a result of the Tax Cuts and Jobs Act of 2017 . . . [instead the Staff Report] will be subject to the outcome of Case No. 18-0047-AU-COI."[1] Staff's decision to defer the adjustments associated with the TCJA is ill-advised and potentially unlawful.

The TCJA will impact all utilities in the state in different ways and in varying degrees. Not only that, each industry (as well as each utility within each industry) is likely to encounter

[1] Staff Report, at 2.

different circumstances with different problems with respect to the impact of the TCJA. Importantly, DP&L agrees with this assessment, concluding that "each utility is uniquely situated to warrant an individual review of the TCJA impacts."[2] DP&L even noted that addressing the TCJA in this proceeding is necessary because, according to DP&L, it is "underearning by over $65 million such that an automatic reduction for tax reductions would cause the Company to further underearn."[3]

In light of the differences between utilities, there is no possible "one size fits all" scenario which can be applied across the state. Accordingly, the City and Honda agree with DP&L that the most effective proceeding to address these issues is a distribution rate case. This is the proceeding where rates are set, so it makes sense to conduct an individual issue-by-issue analysis here. Additionally, incorporating the tax issue in this proceeding would reduce the rate impact to customers of the anticipated increase in DP&L's rates. This not only will impact all customer classes, but it may also impact the Commission's interest in revising the rate design suggested in the cost of service study.

2. Staff should have made the tax impact refundable.

By delaying the Commission's decision of the TCJA, the Staff Report harms customers in two ways. First, it delays the date on which rates will be adjusted to reflect the impact of the TCJA. Second, it exposes customers to the risk that the benefits gained from the TCJA, i.e., from January 1, 2018 to the date of the ultimate Commission decision on the TCJA, will not be subject to customer refund. DP&L has taken the position that such costs are not refundable.[4]

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[2] *See In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-0047-AU-COI, DP&L Reply Comments (Mar. 7, 2018), at 2.
[3] *Id*.
[4] *Id*. at 6-7.

This is not merely an issue of delay, because DP&L will likely argue that the financial impacts of the TCJA can only be prospectively reflected in rates as part of a future base rate proceeding that results in comprehensive prospective rate changes, not through industry-wide adjustment investigations as Staff proposes. Indeed, DP&L has already taken this position.[5] It is axiomatic that utilities are permitted only to charge the filed and approved rates, and the Commission is authorized only to *prospectively* change those rates. *See Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257, 141 N.E.2d 465 (1957). Thus, DP&L will likely argue that the Commission may only modify rates and Riders prospectively in a rate case proceeding like this one, where there are specific, statutorily mandated due process mechanisms available, not in a generic Commission-ordered industry proceeding as Staff recommends. As soon as rates are set, they cannot be adjusted until new rates are established in a future rate case proceeding. *See Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.*, 46 Ohio St.2d 105, 346 N.E.2d 778 (1976). Accordingly, Staff's recommendation to address these corporate tax issues in Case No. 18-0047-AU-COI, instead of in a base rate proceeding like this one, could potentially contravene well-established Commission and Ohio Supreme Court precedent.

Similarly, DP&L will likely argue that the Commission may not unilaterally engage in single-issue ratemaking or change base rates without following the statutory process enshrined in R.C. Chapter 4909. Once again, DP&L has already advanced this argument.[6] Although the legislature has delegated authority to the Commission to establish just and reasonable rates for public utilities under its jurisdiction, the Commission may normally only do so in accordance with the specific, comprehensive, and mandatory ratemaking formula set forth in R.C. 4909.15.

[5] *Id*. at 1-4.
[6] *Id*. at 4-5.

Furthermore, a utility's base rates may only be established or modified through a base rate proceeding. *See Columbus Southern Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 537-538 (1993). Accordingly, individualized impacts from the TCJA must be incorporated in setting new base rates in this proceeding, not in a "one-size-fits-all" proceeding that does not adequately account for inter-industry and intra-industry differences.

In sum, this rate case proceeding presents the most propitious, efficient, and sensible forum to comprehensively and lawfully address the impact of the TCJA on DP&L's rates and associated Riders.[7] Staff's refusal to tackle these issues in this proceeding is ill-advised, problematic, and potentially unlawful. Accordingly, the City and Honda object to Staff's explicit exclusion of any/all TCJA issues in this proceeding.

B. The hypothetical debt rate is inappropriate and inaccurate.

DP&L witness MacKay testified that DP&L's actual embedded cost of debt is 2.72% after the exclusion of the Wright Patterson debt.[8] Mr. MacKay then testified that this debt was distorted by a $445 million short term debt, which had the effect of artificially lowering the cost of debt.[9] To address this alleged distortion, Mr. MacKay assumed that the market rate for refinancing the $445 million short term debt would have been 7.16% (6.6% coupon).[10] Based on that assumption, Mr. MacKay recommended a cost of debt at 5.29%.[11]

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[7] Importantly, DP&L agrees with this assessment, concluding that "each utility is uniquely situated to warrant an individual review of the TCJA impacts." *See In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-0047-AU-COI, DP&L Reply Comments (Mar. 7, 2018), at 2. DP&L even noted that addressing the TCJA in this proceeding is necessary because, according to DP&L, it is "underearning by over $65 million such that an automatic reduction for tax reductions would cause the Company to further underearn," thereby necessitating Commission consideration of TCJA issues in this base rate proceeding, not in the parallel Commission-ordered investigation case. *Id.*

[8] Direct Testimony of Jeffrey K. MacKay (Nov. 30, 2015), at 9-10.

[9] *Id*. at 10.

[10] *Id*. at 13.

[11] *Id*. at 12.

Staff accepted Mr. MacKay's recommended cost of debt of 5.29%.[12] In so doing, Staff incorrectly evaluated the cost of debt by using a peer group instead of DP&L's actual costs. There is no justification in Ohio law for a cost of debt to be calculated based on a peer group. This ignores the purpose of compensating utilities for interest expense—which is to reimburse them for funds actually spent. There is no justification for giving utilities a windfall if their actual interest expense is lower than that of a peer group. Similarly, utilities should not be punished for prudent borrowing decisions if their actual interest expense is higher than that of a peer group. Staff's conclusion is therefore fundamentally flawed.

In addition, DP&L's calculation of the hypothetical cost of debt was incorrect. DP&L's date certain was September 30, 2015.[13] There is no reason not to use the actual cost of date as of the date certain, i.e., 2.72%. Simply because the debt had upcoming expiration dates does not render the interest expense invalid. DP&L's cost of debt was 2.72% as of the date certain; thus, it should be used here. If debt cost rises in the future, DP&L can return to the Commission for a new rate case. Allowing DP&L to unilaterally select a more favorable long-term debt rate while ignoring long-term revenue enhancements and the separation of generation assets is unduly prejudicial to customers. Accordingly, Staff should have used DP&L's actual cost of debt as of the date certain rather than some hypothetical number that disproportionately benefits DP&L.

Even if it were appropriate for Staff to project a long-term rate for the $445 million debt, Staff erred in accepting Mr. MacKay's estimate of 7.16% (6.6% coupon). That estimate was wildly inaccurate as of the date certain, as shown by rates at the time and by how the debt was ultimately financed. DP&L's actual coupon rate of 1.875% as of the date certain illustrates this point. While the 1.875% rate related to short-term debt rather than a 30-year note, if DP&L was

[12] Staff Report, at 18.
[13] Entry (Nov. 18, 2015), ¶ 4.

actually paying 1.875% for debt which it had financed only shortly before, there is no justification for using a 6.6% estimated coupon rate as of that same date.

Mr. MacKay's wildly inaccurate estimate is even more evident when considering the ultimate cost DP&L paid to refinance this debt. When the debt was refinanced after the date certain through 2022, it only had a 4% coupon, well below the 6.6% rate projected by Mr. MacKay.[14] Even if it were appropriate for Staff to use something other than DP&L's actual cost of debt as of the date certain, at most Staff should have used the 4% coupon (i.e., DP&L's actual rate to refinance the debt). Critically, using a 4% coupon would have resulted in a cost of debt of 3.41%, which is much more in line with DP&L's actual 2.72% cost of debt as of the date certain, and well below the 5.29% hypothetical structure used by Mr. MacKay.

C. Staff incorrectly calculated the cost of equity.

DP&L proposed a cost of equity of 10.5%.[15] Staff calculated a cost of equity ranging from 9.59% to 10.61%.[16] Staff's cost of equity calculation is incorrect. Among other issues, Staff selected a non-representative peer group, which included generation owners.[17] That peer group is not appropriate because Ohio law and Commission orders require that DP&L separate its generation assets; therefore, DP&L should not be compared with utilities exposed to generation asset risk. Accordingly, the peer group used by Staff is significantly riskier than DP&L and overstates the appropriate cost of equity.

D. The Redundant Service Charge, Sheet D10, should have been further modified by Staff.

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[14] DP&L 2017 Form 10-K, available at https://www.sec.gov/Archives/edgar/data/27430/000078725018000008/dpl10k12312017q4.htm, at 105; *see also* Direct Testimony of MacKay, at 12-13.
[15] DP&L Application (Nov. 30, 2015), ¶ 7.
[16] Staff Report, at 19.
[17] For example, Alliant Energy owns coal, gas, solar, and wind generation assets.

DP&L proposed extensive changes to the Sheet D10, and Staff made several appropriate revisions to DP&L's proposal. However, Staff's revisions did not go far enough.

First, DP&L proposed using "peak" billing kilowatts from the prior twelve (12) months to calculate the contract capacity charge. More specificity is needed to give customers and DP&L additional guidance concerning how redundant service rates will be calculated. For example, does Staff mean "peak" or "peak usage during on-peak hours"? The latter is more frequently used in utility ratemaking, and would be an appropriate way to determine the impact of providing redundant service when system load is the highest. Additionally, how often is the contract capacity value adjusted? And once the contract is signed, what happens if on peak load rises or falls? Further, how long should DP&L be obligated to continue providing redundant service after it gives the customer notice it intends to terminate redundant service? The foregoing questions merely represent only a handful of outstanding issues that remain unanswered. There are numerous other examples, and DP&L's interests on these issues should be fairly balanced with customers' interests.

Second, Staff appropriately acknowledged that DP&L failed to establish that customers should pay 100% of the distribution rate as a projection of the cost of redundant service. However, Staff erred in its attempt to remedy DP&L's failure to meet its burden of proof by suggesting a proposed rate that can be calculated by eliminating demand-related costs that are continuous. While Staff is certainly correct that the identified line items would not be included in a validly calculated redundant service charge, that does not mean that all other costs are appropriate for inclusion in such a charge.

The fundamental flaw in Staff's calculation is easily shown through a simple hypothetical. If a customer wants to receive service through more than one delivery point, the

customer is already required to pay the cost of the additional delivery point, including line extension costs, switches, etc. If the primary feed fails, as pointed out by Staff, the customer will still receive the exact same amount of load from DP&L, and paying for it, through the secondary feed. Therefore, it would be inappropriate for DP&L to recover any of the costs associated with the primary service feed, such as general overhead costs, costs for local substations and poles, billing expenses, etc. The only costs which DP&L would actually incur to provide service on a secondary feed are the incremental costs associated with reserving capacity on that secondary feed for those customers taking service under the Redundant Service Charge tariff. Until DP&L affirmatively presents evidence as to the amount of those incremental costs, no redundant service charge is appropriate. As a result, Staff erred by allowing DP&L to impose redundant service charges on customers without DP&L identifying the actual costs to provide this service.

Staff also erred by failing to account for any new revenue DP&L would receive from assessing redundant service charges on customers. Here, there has been no consideration (let alone evidence) of the additional revenue DP&L would receive through the imposition of redundant service charges on customers. This glaring oversight must be addressed by requiring DP&L to identify all customers currently taking redundant service, as well as the revenue which DP&L expects to receive from those customers. And DP&L must account for this new, additional revenue in its overall revenue requirement as part of this rate case to ensure there is no double recovery from customers paying redundant service charges.

E. The rate design proposed by Staff is flawed

DP&L conducted a cost of service study and proposed several changes to cost allocation between customer classes. Staff rejected many of those changes, leading to significant increases for several customer classes, most notably Secondary, Primary, High Voltage, and Street

Lighting customers. While gradualism and rate shock are certainly appropriate considerations for Staff, Staff failed to adequately justify the increases imposed on the effected classes or why it rejected some of the findings of DP&L's cost of service study.

F. Street Lighting

DP&L proposes to eliminate unmetered service for, among other things, street lighting customers. DP&L testified that existing customers would be "grandfather[ed]" in under those provisions.[18] Staff erred by filing to place any limits on how that transition would take place, or in clarifying whether customers who currently have unmetered street light service will be able to keep that service if lights need to be repaired or replaced.

G. Staff failed to properly identify all revenue sources for DP&L.

Staff's calculations failed to properly include all revenue sources for DP&L. For example, neither Staff nor DP&L included Redundant Service Charge revenue in their calculations.

H. Staff improperly included expenses which were not appropriate for inclusion and improperly included items in rate base.

Staff improperly included expenses and items in rate base which are not appropriate for recovery.

[18] Direct Testimony of Robert J. Adams (Nov. 30, 2015), at 4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Objections to Staff Report was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 11th day of April, 2018. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ *Mark T. Keaney*
One of Attorneys for the City of Dayton and Honda of America Mfg., Inc.

Summary: Objection to the Staff Report electronically filed by Mr. Mark T Keaney on behalf of City of Dayton and Honda of America Mfg., Inc.