

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Dayton)	
Power and Light Company for an Increase in)	Case No. 15-1830-EL-AIR
Electric Distribution Rates.)	

In the Matter of the Application of the Dayton)	
Power and Light Company for Approval to Change)	Case No. 15-1831-EL-AAM
Accounting Methods.)	

In the Matter of the Application of the Dayton)	Case No. 15-1832-EL-ATA
Power and Light Company for Tariff Approval.)	

**OBJECTIONS TO THE PUCO STAFF'S REPORT OF INVESTIGATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

Christopher Healey (0086027)
Counsel of Record
Terry L. Etter (0067445)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [Healey]: 614-466-9571
Telephone [Etter]: 614-466-7964
christopher.healey@occ.ohio.gov
terry.etter@occ.ohio.gov
(will accept service via email)

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. OBJECTIONS TO THE STAFF REPORT	4
A. Rate Base	4
Objection 1. The Staff Report overstates DP&L’s working capital by including non-cash expenses.....	4
Objection 2. The Staff Report overstates DP&L’s working capital by applying inappropriate lead and lag times to DP&L’s rate of return.....	5
Objection 3. The full amount of customer deposits should be deducted from rate base when calculating DP&L’s revenue requirement.	5
B. Operating Income.....	6
Objection 4. The Staff Report should have included 100% of “Forfeited Discounts” for purposes of calculating a reasonable revenue requirement to be collected from customers.	6
Objection 5. The Staff Report should include a revenue requirement reduction for the benefit of consumers that DP&L agreed to in response to an OCC interrogatory.....	6
C. Rate of Return	7
Objection 6: The Staff Report used an unreasonably high 9.55% risk premium in its CAPM analysis.	7
Objection 7: The Staff Report inappropriately increased the rate of return and the cost of common equity by allowing an adjustment for equity issuance and other costs.	8
Objection 8. The Staff Report recommended an unreasonably high rate of return and return on equity.....	8
Objection 9. The Staff Report inappropriately used a Gross Revenue Conversion Factor based on the old 35% federal corporate income tax rate instead of the currently-effective 21% rate.	9
D. Rates and Tariffs	10

Objection 10. The Staff Report properly rejected DP&L’s proposal for straight fixed variable rate design, but the Staff Report’s proposed \$7.88 customer charge is too high.	10
Objection 11. The Staff Report should have recommended that customers continue to have the option to make cash payments to service technicians.	11
Objection 12. The Staff Report should have recommended that residential customers not be charge for certain meter tests.	11
Objection 13. The Staff Report should have recommended that tariff sheet D8 include a formula to calculate charges to customers for engineering work or a relocation of the customer’s facilities.....	11
Objection 14. The Staff Report should have recommended that DP&L’s Decoupling Rider be reset to zero.....	12
Objection 15. The Staff Report should have recommended that language be added to all applicable tariffs making them subject to refund.	12
E. Tax Cuts and Jobs Act of 2017	14
Objection 16: The Staff Report should have adjusted rates based on the Tax Cuts and Jobs Act of 2017 to promptly and fully provide the benefit of lower corporate income taxes to DP&L’s customers.	14
F. Distribution Investment Rider.....	16
Objection 17. The Staff Report incorrectly claims that DP&L sought approval of a Distribution Investment Rider in this rate case.....	16
Objection 18. The Staff Report should have recommended that the Distribution Investment Rider be addressed in DP&L’s next rate case, not this one.	17
III. CONCLUSION.....	19

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I. INTRODUCTION

In this base rate case, the Dayton Power and Light Company (“DP&L”) seeks to charges its customers an additional \$65.8 million per year for base electric distribution service.¹ The Staff of the Public Utilities Commission of Ohio (“PUCO Staff”) issued its report of investigation recommending a more modest increase of \$23.2 to \$28.1 million.² The Office of the Ohio Consumers’ Counsel (“OCC”), through its objections and expert testimony, recommends a decrease of \$0.56 million for consumers.

OCC, on behalf of DP&L’s 460,000 residential customers, supports many of the recommended adjustments in the Staff Report because they would, if adopted, reduce the amount that consumers pay for electric distribution service as compared to DP&L’s Application.

¹ Application of the Dayton Power and Light Company to Increase its Rates for Electric Distribution at 3 (Nov. 30, 2015) (the “Application”).

² PUCO Staff Report of Investigation at 6 (Mar. 12, 2018) (the “Staff Report”).

OCC supports the following recommendations in the Staff Report:

- The PUCO Staff properly adjusted DP&L's gross revenue conversion factor to eliminate Kentucky income tax.³
- The PUCO Staff properly excluded fitness equipment from DP&L's plant in service because it is not used or useful in the provision of utility service to customers.⁴
- The PUCO Staff properly recommended that customers not pay an allowance for construction work in progress.⁵
- The PUCO Staff properly excluded a prepaid pension asset from Other Rate Base Items.⁶
- The PUCO Staff properly limited property tax expenses that customers pay to the latest rates and valuation percentages in effect as of the test year, rejecting DP&L's unreasonable escalation of such taxes.⁷
- The PUCO Staff properly recommended that DP&L's rate case expense reflect only prudent and reasonable expenses associated with the present case with a five-year amortization.⁸
- The PUCO Staff properly recommended that DP&L's electric security plan ("ESP") litigation costs not be included in rate case expense that customers pay.⁹
- The PUCO Staff properly recommended that DP&L's maintenance of overhead lines expense be lower so that customers pay a more appropriate level of tree timing based on historical spending.¹⁰

³ Staff Report at 7.

⁴ *Id.* at 8.

⁵ *Id.* at 11.

⁶ *Id.* at 11-12.

⁷ *Id.* at 14.

⁸ *Id.* at 15. To the extent any costs for the third-party audit in this case are later added to rate case expense, OCC reserves its right to object to such expenses on the grounds that customers should not be required to pay for the cost of an audit that was made necessary by DP&L's lack of adequate recordkeeping.

⁹ *Id.*

¹⁰ *Id.* at 16.

- The PUCO Staff properly limited labor costs and payroll taxes to reflect employee levels and wage rates as of March of 2016, with incentive pay allowed for only operational goals.
- The PUCO Staff properly rejected DP&L's proposal for straight fixed variable rate design for DP&L's residential customers.¹¹

At the same time, the Staff Report should have recommended additional changes for the benefit of consumers, including:

- The Staff Report overstated working capital and rate base by including non-cash items in the lead-lag study.
- The Staff Report should have recognized all customer deposits as jurisdictional, which would reduce rate base.
- The Staff Report should have included all "forfeited discounts" in calculating DP&L's revenue requirement.
- The Staff Report should have excluded certain expenses that DP&L agreed should not have been included in the test year.
- The Staff Report made various improper assumptions in calculating a proposed return on equity and rate of return, all of which, if adopted, would unreasonably increase the amount that consumers pay for electric distribution service.
- The Staff Report's proposed \$7.88 customer charge is too high.
- The Staff Report should have adjusted its recommendation to reflect the reduction in the federal income tax rate from 35% to 21% under the Tax Cuts and Jobs Act of 2017.
- The Staff Report should have recommended that refund language be added to all applicable tariffs.
- The Staff Report should have recommended that the Distribution Investment Rider be addressed in DP&L's next rate case, not this one.

These objections, and others, are discussed in more detail below and are developed further in OCC's testimony. OCC's consumer-protection recommendations, if

¹¹ *Id.* at 36.

adopted, would allow DP&L's customers to pay less than they currently do for base electric distribution service. The PUCO should adopt OCC's recommendations to achieve a just and reasonable result for Ohio consumers.¹²

II. OBJECTIONS TO THE STAFF REPORT

A. Rate Base

Objection 1. The Staff Report overstates DP&L's working capital by including non-cash expenses.

Schedule B-5 of the Staff Report recommends including a \$3.6 million working capital allowance in DP&L's rate base, using DP&L's proposed lead-lag study results. This overstates DP&L's working capital because it includes revenues and expenses associated with the recovery of non-cash expenses, such as depreciation expense (line 12), deferred income taxes (line 19) and investment tax credits (line 20) with an assumed zero lead days for "payment" of these non-cash expenses.

While this treatment appears to have no impact on these lines of Schedule B-5 in column F (column F being the calculation of the working capital requirement), the corresponding revenues for recovery of such costs are included in line 1 where a revenue lag day value is applied, resulting in overstatement of the "Working Capital Requirement" in column F. The revenues collected to recover non-cash depreciation and deferred income taxes should be excluded from line 1 of Schedule B-5 entirely because no measurement of the timing of cash outflows is possible for these non-cash expenses. The PUCO should not adopt the Staff Report's assumed zero payment lead day value for these line items.

¹² OCC reserves the right to supplement its testimony in this case should any of the Staff Report's findings, conclusions, or recommendations no longer be supported by the PUCO Staff.

Objection 2. The Staff Report overstates DP&L's working capital by applying inappropriate lead and lag times to DP&L's rate of return.

The Staff Report lead-lag study assumes zero lead days for the "Rate of Return" element of the revenue requirement at line 23 on Schedule B-5. But the revenue in line 1, which includes revenue representing recovery of return costs, is assigned a 42.7-day revenue lag value. This results in overstating working capital requirement amounts in the same manner as with depreciation and deferred income taxes. The revenues collected for rate of return should be excluded from line 1 of Schedule B-5 because the Staff Report does not include a study of the utility's actual payments of interest expenses and dividends. The PUCO should not adopt the Staff Report's assumed zero payment lead day value for this line item.

Objection 3. The full amount of customer deposits should be deducted from rate base when calculating DP&L's revenue requirement.

Schedule B-6 of the Staff Report shows over \$36.2 million in customer deposits as of September 30, 2015, including amounts received from utility customers as well as amounts deposited as collateral by competitive bid auction winners and competitive retail electric service providers offering electric choice. But only 10.34% of these deposits are included when adjusting DP&L's revenue requirement. DP&L does not contend that it has recognized and accounted for any of these deposits in determining costs or administering any of its tariff riders or rate schedules, so the full amount of customer deposits and related interest charges should be treated as jurisdictional to the distribution revenue requirement.

B. Operating Income

Objection 4. The Staff Report should have included 100% of “Forfeited Discounts” for purposes of calculating a reasonable revenue requirement to be collected from customers.

Staff Report Schedule C-2, line 4, includes \$11.46 million of “Other Operating Revenues” prior to adjustments. This amount is the sum of unadjusted jurisdictional revenues, as found in DP&L’s Schedule C-2.1, lines 9 through 14. In that schedule, DP&L identifies about \$3.1 million in “Forfeited Discounts” for the test year, but DP&L proposes to allocate only 27.92% of the total, or \$867,463, to the distribution revenue requirement. This allocation is based upon a ratio of base distribution charge revenues to total revenues. DP&L is effectively attributing the majority of these revenues (the remaining 72.08%) to generation charges, rider revenues, and other forms of revenues. This is inappropriate because no Forfeited Discount revenues have been recognized in determination of rates or rider charges. Distribution service other operating revenues should include 100% of Forfeited Discount revenues.

Objection 5. The Staff Report should include a revenue requirement reduction for the benefit of consumers that DP&L agreed to in response to an OCC interrogatory.

DP&L Schedule C-2.1, page 4, line 6 includes \$4,800,601 in unadjusted “Miscellaneous General Expenses” (Account 930.2). In response to OCC INT-497, DP&L agreed to reduce this amount by \$829,429. DP&L also responded that as a result of this reduction, its revenue requirement would decrease by \$329,774. Test year expenses should be reduced for this conceded adjustment for the benefit of DP&L’s customers. In addition, because the conceded adjustment of \$329,774 relates to only the recorded portion of the test year, an additional adjustment should be made for the forecasted test year months.

C. Rate of Return

Objection 6: The Staff Report used an unreasonably high 9.55% risk premium in its CAPM analysis.

The Staff Report inappropriately increased the rate of return and the cost of common equity by using a risk premium of 9.55% in its Capital Asset Pricing Model (“CAPM”).¹³ This estimated risk premium of 9.55% is overstated and unreasonable. It is unreasonably higher than the risk premium of five to seven percent typically used by most financial analysts and many PUCO Staff Reports in the past.

In the Staff Report, this risk premium of 9.55% was calculated as the difference between the annual total return of large company stocks from 1926 to 2014 (12.1%) and the U.S. Treasury Bond Yields of 2015 (2.55%).¹⁴ The use of a single-year bond yield as the “risk-free rate” or “return on risk-free assets” is inconsistent with the methodology of the CAPM as well as the risk-free rates adopted in the Staff Reports of many prior rate cases. A reasonable risk-free rate to use is the annual total return of U.S. Treasury Bond Yields from a longer period of time (such as 6.0% for the period of 1926 to 2016 from the same publications cited in the Staff Report).¹⁵ The use of an overstated risk premium of 9.55% will unnecessarily and unreasonably increase the cost of electric services to DP&L’s many residential customers.

¹³ See Staff Report at 18-19.

¹⁴ *Id.*

¹⁵ See Duff & Phelps (Ibbotson), *2017 SBBY Yearbook*, Exhibit 2.3.

Objection 7: The Staff Report inappropriately increased the rate of return and the cost of common equity by allowing an adjustment for equity issuance and other costs.

The addition of an equity issuance and other costs to the PUCO Staff's estimate of cost of common equity is not supported by sound regulatory principles.¹⁶ Even if an adjustment for equity issuance and other costs were allowed, the Staff Report inappropriately increased the cost of common equity by using a hypothetical and generic issuance cost factor of 3.5%.¹⁷ The Staff Report has not explained why this generic issuance cost factor is reasonable or why it should be applied in this proceeding. In addition, there is no demonstration in the Staff Report that DP&L is likely to incur these costs in the near future or the magnitude of these costs. The addition of arbitrary and unproven equity issuance and other costs will unnecessarily and unreasonably increase the cost of electric services to DP&L's residential customers.

Objection 8. The Staff Report recommended an unreasonably high rate of return and return on equity.

The Staff Report recommended a rate of return of 7.33 to 7.82% and a return on equity (or cost of common equity) of 9.59 to 10.61%.¹⁸ These unwarranted and overstated recommendations are based on unreasonable methodologies and data used in the Staff Report for its rate of return analysis.

In addition, the Staff Report's recommended rate of return and return on equity are unreasonable because they are considerably higher than those rates of return and returns on equity authorized for electric distribution utilities nationwide in recent years.

¹⁶ See Staff Report at 18-19.

¹⁷ *Id.*

¹⁸ *Id.*

For example, the average ROE for distribution-only electric rate cases decided in 2017 nationwide was 9.43%.¹⁹ The average rate of return authorized for all electric rate cases decided in 2017 was 7.18%.²⁰

DP&L has not demonstrated that it has significantly higher business and financial risks than the average electric distribution utilities to justify a higher authorized rate of return or return on equity. To the contrary, given the many favorable riders and subsidies approved by the PUCO in DP&L's current ESP, DP&L's authorized rate of return and return on common equity should be on the lower end of the returns authorized for electric utilities in recent years. An unreasonably high rate of return will unnecessarily and unreasonably increase the cost of electric services to DP&L's residential customers.

Objection 9. The Staff Report inappropriately used a Gross Revenue Conversion Factor based on the old 35% federal corporate income tax rate instead of the currently-effective 21% rate.

The Staff Report's proposed rate of return and return on equity are understated because they inappropriately rely on an overstated Gross Revenue Conversion Factor that was based on a 35% federal corporate income tax rate, in calculating DP&L's Revenue Deficiency and Revenue Increase Recommended.²¹ In adopting an overstated Gross Revenue Conversion Factor, the Staff Report's recommended revenue increase for DP&L, even at the recommended ROR and ROE, is overstated and unreasonable. This is because, given the lower 21% federal corporate income tax in effect now, the Staff Report is recommending an unwarranted revenue increase. This in turn will let DP&L

¹⁹ See S&P Global Market Intelligence, *RRA Regulatory Focus Major Rate Case Decision 2017* (January 30, 2018), 7.

²⁰ *Id.* at 6.

²¹ Staff Report at Schedule A-1, A-2.

earn a significantly higher after-tax rate of return of 8.91% to 9.21% than the range of 7.33% to 7.82% indicated in the Staff Report.

Similarly, by adopting an overstated Gross Revenue Conversion Factor, the Staff Report is effectively endorsing a significantly higher return on common equity of 12.90% to 13.54% than the range of 9.59% to 10.61% shown in the Staff Report. The use of an overstated Gross Revenue Conversion Factor based on a 35% federal corporate income tax rate will unnecessarily and unreasonably increase the cost of electric services to DP&L's residential customers, which results in unjust and unreasonable charges.

D. Rates and Tariffs

Objection 10. The Staff Report properly rejected DP&L's proposal for straight fixed variable rate design, but the Staff Report's proposed \$7.88 customer charge is too high.

The PUCO Staff properly recommended that the PUCO not adopt DP&L's proposal to more than triple its customer charge from \$4.25 to \$13.88.²² The Staff Report's proposed customer charge of \$7.88 (Table 5 on page 37), however, should not be adopted. In calculating this rate, the Staff Report includes \$28.2 million in Minimum Size Transformers (Account No. 368) as part of Total Customer Related Distribution Plant. The Minimum Size Transformers account should not be included in that calculation. This departure from the PUCO Staff's traditional customer charge calculation results in an overstatement of \$1.28 to the recommended customer charge. The customer charge utilizing "the current rate design methodology" should be \$6.60.

²² Staff Report at 36.

Objection 11. The Staff Report should have recommended that customers continue to have the option to make cash payments to service technicians.

The Staff Report should have recommended that customers continue to have the option to make cash payments to DP&L's service technicians in the field. DP&L has proposed to eliminate the cash payment option for customers and allow only credit card payments.²³ DP&L claims this would mitigate the safety risk and risk of loss when a technician accepts payment in the field.²⁴ But because many consumers may not be able to make credit card payments, cash payments should remain an option.

Objection 12. The Staff Report should have recommended that residential customers not be charge for certain meter tests.

The Staff Report should have recommended that residential consumers not have to pay for their first requested meter test and that subsequent requests also be free of charge if the meter is found to be registering incorrectly. This is required under Ohio Adm. Code 4901:1-10-05(F). DP&L's tariff should include language that complies with the rule.

Objection 13. The Staff Report should have recommended that tariff sheet D8 include a formula to calculate charges to customers for engineering work or a relocation of the customer's facilities.

The Staff Report should have recommended that DP&L provide an explanation in its tariff, Sheet No. D8, as to how much of a deposit it is allowed to charge a customer before beginning engineering work on a requested change or relocation of the customer's facilities. A formula to determine an amount should be included in Sheet D8.

²³ Direct Testimony of Kathryn N. Storm at 9 (Nov. 30, 2015).

²⁴ *Id.*

Objection 14. The Staff Report should have recommended that DP&L’s Decoupling Rider be reset to zero.

In DP&L’s most recently approved ESP case, the PUCO authorized DP&L to implement a Decoupling Rider.²⁵ Subsequently, the PUCO approved a settlement in DP&L’s energy efficiency portfolio case that affects this rider.²⁶ Under the approved settlement, DP&L is required to address the details of the Decoupling Rider, including cost allocation, term, and rate design in this base rate case.²⁷ Upon approval of this rate case, the Decoupling Rider is required to be reset, and DP&L is not entitled to charge customers for any more lost distribution revenues.²⁸ To date, DP&L has not submitted any proposal for the Decoupling Rider in this rate case.

The Staff Report should have recommended that DP&L’s Decoupling Rider be amended to ensure that customers will not pay any lost distribution revenues upon approval of this rate case. Likewise, it should have recommended that any decoupling charges be reset to zero.

Objection 15. The Staff Report should have recommended that language be added to all applicable tariffs making them subject to refund.

In a recent case involving FirstEnergy,²⁹ the PUCO audited a FirstEnergy rider and, based on the audit results, ordered FirstEnergy to return more than \$43 million in imprudently-incurred charges to customers.³⁰ On appeal, the Supreme Court of Ohio

²⁵ Case No. 16-395-EL-SSO, Opinion & Order at 11-12.

²⁶ Case No. 17-1398-EL-AIR, Stipulation & Recommendation at 6 (Oct. 27, 2017), Opinion & Order (Dec. 20, 2017).

²⁷ Case No. 17-1398-EL-AIR, Stipulation & Recommendation at 6 (Oct. 27, 2017).

²⁸ *Id.*

²⁹ *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 (“*FirstEnergy*”).

³⁰ *Id.* ¶ 10.

found that because the rider tariff did not state that the rates were subject to refund, the PUCO could not require FirstEnergy to return the imprudent charges to customers.³¹

In reaching this decision, the Court relied on the “filed rate doctrine” of R.C. 4905.32. The court stated that because FirstEnergy had collected costs from customers under a “filed” rate schedule, the PUCO was prohibited from later ordering a disallowance or refund of those costs.³² The Court noted that although FirstEnergy was entitled to collect only prudently-incurred costs from customers, “there can be no remedy in this case because the costs were already recovered.”³³

The Court’s decision has far-reaching and negative ramifications for consumers who pay charges through utility riders. This DP&L rate case may address several of DP&L’s current or proposed riders. First, DP&L requested approval of three riders in its Application: the Uncollectible Rider, the Regulatory Compliance Rider, and the Storm Cost Recovery Rider.³⁴ Second, DP&L proposed changes to its Excise Tax Surcharge Rider, Switching Fee Rider, Energy Efficiency Rider, and Economic Development Rider. Third, as discussed above, DP&L agreed to address its Decoupling Rider in this case. Fourth, the Staff Report makes various recommendations regarding the Distribution Investment Rider.³⁵

Unless the PUCO takes action to conform these riders to the Court’s *FirstEnergy* decision, any subsequently-conducted review of the riders could be rendered

³¹ *Id.* ¶ 8.

³² *Id.* ¶ 18.

³³ *Id.*

³⁴ Application at 3; Staff Report at 25.

³⁵ Staff Report at 8-10.

meaningless.³⁶ Consumers could be overcharged for utility service without any way to be reimbursed.

These riders should all contain language stating that the charges are subject to refund. Without such language, if the PUCO were to audit the riders and determine that costs were imprudently incurred, customers might have no remedy because *FirstEnergy* could prohibit any refund. To protect consumers from this unjust result and unnecessary charges, the PUCO should require DP&L to add refund language to each of these rider tariffs and any other applicable tariff under review in this case.

E. Tax Cuts and Jobs Act of 2017

Objection 16: The Staff Report should have adjusted rates based on the Tax Cuts and Jobs Act of 2017 to promptly and fully provide the benefit of lower corporate income taxes to DP&L’s customers.

The Tax Cuts and Jobs Act of 2017³⁷ (the “Tax Cut Act”) provides a rare opportunity for across-the-board rate reductions for Ohio utility consumers. Among other things, the Tax Cut Act reduced the corporate federal income tax rate from 35% to 21%, effective January 1, 2018. But the Staff Report does not address the Tax Cut Act’s impact on DP&L’s base rates. Instead, the introductory letter to the Staff Report states: “The Staff Report does not address any corporate tax rate changes as result of the Tax Cuts and Jobs Act of 2017. This Staff Report will be subject to the outcome of Case No. 18-0047-AU-COI.”

Ohio Supreme Court precedent requires the PUCO to account for changes to tax rates under the Tax Cut Act when setting new rates in pending cases before it.³⁸ The

³⁶ *Id.* ¶ 85 (French, J., dissenting).

³⁷ Pub. Law No. 115-97 (2017).

³⁸ See *E. Ohio Gas Co. v. PUCO*, 133 Ohio St. 212 (1938) (where PUCO knew about change in tax rate at the time of its order, it was required to use the new tax rate when setting utility charges); See also *Gen. Tel.*

PUCO has in past cases followed the Court's dictate and made adjustments that reflect changes in the actual taxes a utility is liable for.³⁹

The PUCO must protect customers in this case by accounting for the impacts of the Tax Cut Act. Indeed, based on its filed comments in the PUCO's tax investigation, DP&L appears to agree: "Using a full base rate case process to review and implement any appropriate changes to DP&L's rates [as a result of the Tax Cut Act] ... meets the legal requirements of Ohio law to have due process and the opportunity for an evidentiary hearing before a change in rates is ordered."⁴⁰

During the period DP&L's new distribution rates will be in effect, the current 21% federal income tax rate must be used to avoid overstating income tax expenses within the revenue requirement. Additionally, the Staff Report should have adjusted the gross revenue conversion factor to properly reflect the current 21% federal income tax rate. The Staff Report's calculation of the gross revenue conversion factor utilizes the now obsolete 35% rate. The revenue requirement calculated by Staff is overstated and incorrect as a result.

The lower prospective federal income tax rate under the Tax Cut Act also causes the utility's recorded Accumulated Deferred Income Taxes ("ADIT") balances to now be "excessive." These excess amounts must be returned to customers through reduced rates.

Co. v. PUCO, 174 Ohio St. 575, 576-80 (1963) (citing *E. Ohio Gas* and concluding that the PUCO is required to set rates based on the actual federal taxes that a utility will pay).

³⁹ See, e.g., *In re Application of Ohio Power Co. to Increase Certain of its Filed Schedules Fixing Rates & Charges for Elec. Serv.*, PUCO Case No. 78-676-EL-AIR, 1979 Ohio PUC LEXIS 2 (Apr. 16, 1979); See also *In re Application of the Cleveland Elec. Illuminating Co. for Authority to Amend & Increase its Filed Schedules Fixing Rates & Charges for Elec. Serv.*, Case No. 86-2025-EL-AIR, 1987 Ohio PUC LEXIS 28 (Dec. 16, 1987) (rejecting utility proposal to use higher tax rate when new lower tax rate was in effect).

⁴⁰ *In re the Commission's Investigation of the Fin. Impact of the Tax Cuts & Jobs Act of 2017 on Regulated Ohio Utility Cos.*, Case No. 18-47-AU-COI, Comments of the Dayton Power and Light Company at 2 (Feb. 15, 2018).

The utility's ADIT balances were previously collected from customers at the higher past federal income tax rates that were then in effect. Under the new Tax Cut Act, DP&L's deferred income taxes will now become payable on future tax returns at the lower 21% rate. The portion of recorded ADIT balances at Staff Schedule B-6 that are "excessive" must be reclassified as regulatory liabilities for return to customers, over amortization periods that comply with applicable legal restrictions, by inclusion of negative amortization expenses and rate base inclusion of the unamortized balances of the resulting regulatory liabilities. The Staff Report did not recognize the reclassification or the necessary amortization of the new regulatory liability caused by excessive ADIT balances under the new Tax Cut Act.

F. Distribution Investment Rider

Objection 17. The Staff Report incorrectly claims that DP&L sought approval of a Distribution Investment Rider in this rate case.

The Staff Report states: "In the Application in this case (Rate Case or Case No. 15-1830-EL-AIR), DP&L requests that the Commission establish a Distribution Investment Rider (DIR)."⁴¹ This is not true. Nowhere in DP&L's Application in this case did it request that the PUCO establish a Distribution Investment Rider ("DIR").⁴²

The PUCO lacks the authority to approve a recommendation in the Staff Report that goes beyond the scope of the Application in this case. Under R.C. 4909.19(C), the PUCO Staff is to investigate "the facts set forth in [the] application and the exhibits attached thereto, and of the matters connected therewith." By injecting the DIR into this

⁴¹ Staff Report at 8.

⁴² See Application at 3 (proposing three new riders, the Uncollectible Rider, Regulatory Compliance Rider, and Storm Cost Recovery Rider, but no Distribution Investment Rider).

proceeding two and a half years after the case was filed, the Staff Report unfairly goes beyond the statutory scope of its investigation. Absent a proposal for the DIR in DP&L's Application or supporting testimony, parties were not on notice that the issue would be resolved in this case, and there was no basis for parties to take any discovery on the issue or to otherwise address it in any manner whatsoever.⁴³

The PUCO should not, and cannot, adopt the Staff Report's recommendation to begin charging customers for the DIR in this proceeding when the DIR was not part of DP&L's Application in this rate case.

Objection 18. The Staff Report should have recommended that the Distribution Investment Rider be addressed in DP&L's next rate case, not this one.

In DP&L's most recent ESP case, the PUCO approved a settlement that established the DIR as a zero rider "to recover incremental capital investments."⁴⁴ Beyond this, no other details for the DIR were approved. Rather, in the ESP order, the PUCO ruled:

[T]he Amended Stipulation specifically provides that the DIR will initially be set at zero and be used to recover incremental distribution capital investment. All other matters related to the DIR, including cost allocation, term, rate design, and annual revenue caps will be addressed in DP&L's pending distribution rate case, Case No. 15-1830-EL-AIR, or a future distribution rate case.⁴⁵

As discussed above, DP&L did not request approval of the DIR in this rate case. DP&L, therefore, did not provide any details on what types of investments it would

⁴³ See, e.g., *In re Application of Aqua Ohio, Inc. for Authority to Increase its Rates & Charges*, Case No. 09-1044-WW-AIR, Entry (Jan. 20, 2010) (finding that where applicant's notice of intent to file an application did not raise a certain issue, it would violate parties' due process rights to allow the applicant to later introduce the issue in testimony).

⁴⁴ ESP Case, Opinion & Order at 7 (Oct. 20, 2017).

⁴⁵ *Id.* at 54.

charge customers for under the DIR, how much it would charge them, how costs would be allocated, what the DIR rate design would be, how long the DIR would last, or any other details.

The Staff Report, however, makes various recommendations regarding the DIR. Among other things:⁴⁶

- The Staff Report recommends that the rate of return under the DIR be the same as approved in this rate case.
- The Staff Report recommends that the DIR continue until October 31, 2023 to coincide with DP&L's approved ESP.
- The Staff Report recommends that DP&L be allowed to charge customers over \$175 million over five years under the DIR.

There is no basis for any of these recommendations because there is no DIR proposal by DP&L in this rate case.

The Staff Report also states: "The other provisions of the calculation and rate design DP&L proposed in its Application for the DIR are acceptable to Staff." Again, this statement appears to be in error. The Application in this rate case does not say anything at all about the DIR, so any reference by the PUCO Staff to the "calculation and rate design DP&L proposed in its Application" is unsupported and inaccurate.

DP&L has not proposed anything regarding the DIR in this rate case. The Staff Report should have recommended that the DIR remain a zero rider until DP&L's next distribution rate case. This is consistent with the PUCO's order in DP&L's ESP case, which explicitly ruled that the details regarding the DIR could be established "in DP&L's

⁴⁶ Staff Report at 8-10.

pending distribution rate case, Case No. 15-1830-EL-AIR, *or a future distribution rate case.*”⁴⁷

III. CONCLUSION

To protect consumers from paying rates that are unjust or unreasonable, the PUCO should adopt OCC's recommendations set forth in these objections, which are further developed in OCC testimony.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record
Terry L. Etter (0067445)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [Healey]: 614-466-9571
Telephone [Etter]: 614-466-7964
christopher.healey@occ.ohio.gov
terry.etter@occ.ohio.gov
(willing to accept service by e-mail)

⁴⁷ ESP Case, Opinion & Order at 54 (Oct. 20, 2017) (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Objections was served on the persons stated below via electronic transmission, this 11th day of April 2018.

/s/ Christopher Healey

Christopher Healey
Counsel of Record

SERVICE LIST

Thomas.mcnamee@ohioattorneygeneral.gov	Michael.schuler@aes.com
Bojko@carpenterlipps.com	djireland@ficlaw.com
ORourke@carpenterlipps.com	jsharkey@ficlaw.com
ghiloni@carpenterlipps.com	Kurt.Helfrich@ThompsonHine.com
sechler@carpenterlipps.com	Stephanie.Chmiel@ThompsonHine.com
dboehm@BKLawfirm.com	Michael.Austin@ThompsonHine.com
mkurtz@BKLawfirm.com	mfleisher@elpc.org
jkylern@BKLawfirm.com	dparram@taftlaw.com
sam@mwncmh.com	thomas.jernigan.3@us.af.mil
fdarr@mwncmh.com	cmooney@ohiopartners.org
mpritchard@mwncmh.com	jschlesinger@kfwlaw.com
jlang@calfee.com	dborchers@bricker.com
tallexander@calfee.com	mwarnock@bricker.com
slesser@calfee.com	ejacobs@ablelaw.org
jvickers@elpc.org	joliker@igsenergy.com
tdougherty@theOEC.org	lhawrot@spilmanlaw.com
mleppla@theOEC.org	dwilliamson@spilmanlaw.com
jfinnigan@edf.org	charris@spilmanlaw.com
swilliams@nrdc.org	mjsettineri@vorys.com
rdove@attorneydove.com	glpetrucci@vorys.com
kfield@elpc.org	whitt@whitt-sturtevant.com
mfleisher@elpc.org	campbell@whitt-sturtevant.com
	glover@whitt-sturtevant.com
Attorney Examiners:	jdoll@djflawfirm.com
gregory.price@puc.state.oh.us	mcrawford@gjflawfirm.com
patricia.schabo@puc.state.oh.us	

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Summary: Objection Objections to the PUCO Staff's Report of Investigation by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Healey, Christopher Mr.