

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**THE DAYTON POWER AND LIGHT COMPANY'S
MOTION TO STRIKE OBJECTIONS TO THE STAFF REPORT
OF INTERVENORS CITY OF DAYTON AND HONDA OF AMERICA MFG., INC.**

Pursuant to Ohio Admin. Code § 4901-1-28(B), The Dayton Power and Light Company ("DP&L") moves to strike certain Objections by the City of Dayton and Honda of America Mfg., Inc. ("Dayton/Honda") to the March 12, 2018 Staff Report.¹ In particular, the Commission should strike Dayton/Honda's Objections that "Staff failed to properly identify all revenue sources for DP&L," and that "Staff improperly included expenses which were not appropriate for inclusion and improperly included items in rate base," for lack of specificity. In the Matter of the Application of Ohio-American Water Co. for Authority to Increase its Rates for Water Service Provided to its Entire Service Area, Case No. 01-626-WW-AIR, 2002 Ohio PUC LEXIS 15, at *3 (Entry, Jan. 4, 2002).

¹ Apr. 11, 2018 The City of Dayton and Honda of America Mfg., Inc.'s Objections to the Staff Report ("Dayton/Honda Objections").

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE DAYTON POWER AND
LIGHT COMPANY'S MOTION TO STRIKE OBJECTIONS
TO THE STAFF REPORT OF INTERVENORS
CITY OF DAYTON AND HONDA OF AMERICA MFG., INC.**

In their Objections to the Staff Report, Dayton/Honda assert two Objections that lack the specificity required by Ohio Admin. Code § 4901-1-28(B) ("All objections must be specific."). For failing to meet this threshold requirement, the Commission should strike the Objections, and Dayton/Honda should not be permitted to present evidence in support of the Objections to the extent they are stricken. Ohio Admin. Code § 4901-1-28(C).

When a public utility files an application to increase rates pursuant to Ohio Rev. Code § 4909.18, the Commission "shall at once cause an investigation to be made of the facts set forth in said application and the exhibits attached thereto, and of the matters connected therewith." Ohio Rev. Code § 4909.19(C). Then, "[w]ithin a reasonable time as determined by the commission after the filing of such application, a written report," i.e., the Staff Report, "shall be made and filed with the commission" Id.

Section 4909.19(C) further provides that interested parties may file Objections to the Staff Report. If Objections are filed, then "the application shall be promptly set down for hearing of testimony before the commission or be forthwith referred to an attorney examiner designated by the commission to take all the testimony with respect to the application and objections which may be offered by any interested party." Id.

The Commission has held that "the only requirements as to objections [to a Staff Report] are that they must relate to the findings, conclusions or recommendations in a staff report, or must relate to the failure of the staff report to address as items, and must be specific."

In the Matter of the Application of Water and Sewer LLC for an Increase in Rates and Charges, Case No. 03-318-WS-AIR, p. 2 (Entry, Nov. 10, 2003) (emphasis added). Pursuant to Ohio Admin. Code § 4901-1-28:

"(B) Any party may file objections [to the Staff Report], within thirty days after such report is filed with the commission. Such objections may relate to the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items. All objections must be specific. Any objections that fail to meet this requirement may be stricken upon motion of any party or the commission staff or upon motion of the commission, the legal director, the deputy legal director, or the attorney examiner.

(Emphasis added.)

The specificity requirement of Ohio Admin. Code § 4901-1-28 "exists so that Staff and the parties to the case may know what specific issues are to be contested during the course of the hearings." In the Matter of the Application of The Dayton Power and Light Co. for Authority to Modify and Increase Its Rates for Gas Service to All Jurisdictional Customers, Case No. 83-777-GA-AIR, 1984 Ohio PUC LEXIS 26, at *11-12 (Opinion and Order, Aug. 7, 1984). "[T]he Commission may not vary from these requirements." Water and Sewer LLC, at *3 (citing Indus. Energy Consumers v. Pub. Util. Comm., 63 Ohio St.3d 551, 589 N.E.2d 1289 (1992)).

Indeed, the Commission has repeatedly cautioned:

"Any objection which is not specific enough to convey what is actually being placed at issue will be struck pursuant to the above rule. Some hypothetical examples of objections which would be deemed not specific enough to satisfy the requirements of Rule 4901-1-28(B), O.A.C., are: "the staff incorrectly calculated test year labor expense"; "the staff unreasonably determined rate case expense"; "the staff unreasonably eliminated certain advertising costs"; and "the comments of the Consumers' Services portion of the report are unreasonable, inaccurate, and misleading". Those

hypothetical examples could be improved so that they would be deemed specific enough to satisfy the O.A.C. requirements: "the staff incorrectly calculated test year labor expense because it failed to use estimated end-of-test-period employee levels and wage rates in its calculation"; "the staff unreasonably determined rate case expense because it failed to include the cost of publishing the required legal notice of the local hearing and because it amortized the expense over a three-year period instead of a one-year period"; "the staff unreasonably eliminated \$15,375 of advertising costs which it deemed promotional because such advertising should have been classified as informational"; and "the statement in the Consumers' Services portion of the report that claims the company fails to respond to out-of-service reports in a timely manner is inaccurate."

In the Matter of the Applications of Columbia Gas of Ohio, Inc. to Establish a Uniform Rate for Natural Gas Service Within the Company's Northwestern Region, Lake Erie Region, Central Region, Eastern Region, South Eastern Region, et al., Case Nos. 89-616-GA-AIR, et al., 1989 Ohio PUC LEXIS 1207, at *1-3 (Entry, Nov. 7, 1989) (emphasis added).²

Here, Dayton/Honda failed to meet the specificity requirement of Ohio Admin. Code § 4901-1-28(B) as to two Objections. First, Dayton/Honda state, "Staff failed to properly identify all revenue sources for DP&L," but mention as an example only Redundant Service Charge revenue. Dayton/Honda Objections, p. 10. Second, Dayton/Honda contend that "Staff improperly included expenses which were not appropriate for inclusion and improperly included items in rate base," without providing any specific examples of improperly included expenses or

² Accord: In the Matter of the Application of Tomahawk Utilities, Inc. for an Increase in Rates and Charges, Case No. 94-1560-WW-AIR, 1995 Ohio PUC LEXIS 278, at *1-2 (Entry, Apr. 3, 1995) (partial list); In the Matter of the Application of Lakeland Utilities Co. for an Increase in Rates and Charges, Case No. 91-542-WS-AIR, 1994 Ohio PUC LEXIS 391, at *2-3 (Entry, May 20, 1994); In the Matter of the Application of the Imperial Water Co., Inc. for an Increase in Rates and Charges, Case No. 92-1884-WW-AIR, 1993 Ohio PUC LEXIS 396, at *1-2 (Entry, Apr. 26, 1993); In the Matter of the Application of The Cincinnati Gas & Electric Co. to File an Application for an Increase in Gas Rates in its Service Area, Case No. 92-1463-GA-AIR, 1993 Ohio PUC LEXIS 202, at *1-2 (Entry, Mar. 23, 1993); In the Matter of the Application of Columbus S. Power Co. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service, Case No. 91-418-EL-AIR, 1991 Ohio PUC LEXIS 1305, at *1-2 (Entry, Nov. 14, 1991).

rate base items. Id. These Objections are even less specific than "staff incorrectly calculated test year labor expense," which the Commission repeatedly has explained is insufficiently specific under Ohio Admin. Code § 4901-1-28. Columbia Gas of Ohio, Case Nos. 89-616-GA-AIR, et al., 1989 Ohio PUC LEXIS 1207, at *1-3 (Entry, Nov. 7, 1989).

These Objections should, therefore, be struck to the extent they fail to provide specific examples of revenue sources that the Staff allegedly failed to include in its Report, and specific examples of allegedly inappropriate expenses and rate base items that the Staff did include. Moreover, the Commission should not permit Dayton/Honda to present evidence in support of either Objection to the extent either one is stricken. Ohio Admin. Code § 4901-1-28(C).

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Motion to Strike the Objections to the Staff Report of Intervenors the City of Dayton and Honda of American Mfg., Inc. has been served via electronic mail upon the following counsel of record, this 18th day of April, 2018:

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Summary: Motion The Dayton Power and Light Company's Motion to Strike Objections to the Staff Report of Intervenors City of Dayton and Honda of America Mfg., Inc. electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company