

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN
OPPOSITION TO MOTION TO STRIKE DP&L'S OBJECTION TO THE
STAFF REPORT BY THE OFFICE OF THE OHIO CONSUMER'S COUNSEL**

I. INTRODUCTION AND SUMMARY

Pursuant to Ohio Rev. Code § 4909.19(C) and Ohio Admin. Code § 4901-1-28(B), The Dayton Power and Light Company ("DP&L") raised various objections to the March 12, 2018 Staff Report of Investigation ("Staff Report"), including the failure of the Staff Report to address a dramatic increase in DP&L's line-clearance expenses since the test year. Apr. 11, 2018 The Dayton Power and Light Company's Objections to the Staff Report ("DP&L Objections"), p. 12. Specifically, DP&L objected to the failure of the Staff Report to "address the fact that DP&L's tree-trimming expenses have increased by \$9.6 million since the test period." Id. Unless the Commission authorizes recovery of those expenses, DP&L's ability to provide safe and reliable service will suffer. Apr. 11, 2018 Supplemental Direct Testimony of Barry J. Bentley (Bentley Supp. Test.), pp. 5-6.

Contrary to the erroneous assertion of The Office of the Ohio Consumers' Counsel ("OCC"), this objection satisfies the requirements of Ohio Admin. Code § 4901-1-28(B) in that it both is specific and relates directly to the failure of the Staff Report to consider a specific expense that DP&L is permitted to recover pursuant to Supreme Court of Ohio and Commission precedent. Bd. of Commr's v. Pub. Util. Comm., 1 Ohio St.3d 125, 438 N.E.2d 111 (1982) (per curiam); In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify and Increase Its Rates for Electric Service to All Jurisdictional Customers, No. 80-687-EL-AIR, 1981 Ohio PUC LEXIS 6 (Opinion and Order, July 15, 1981). The April 18, 2018 Motion to Strike Objection to the PUCO Staff's Report of Investigation by The Office of the Ohio Consumers' Counsel ("Motion to Strike") should, therefore, be denied.

II. DP&L'S OBJECTION TO THE STAFF REPORT IS SUFFICIENTLY SPECIFIC UNDER OHIO ADMIN. CODE § 4901-1-28(B)

The Commission has held that "the only requirements as to objections [to a Staff Report] are that they must relate to 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, No. 03-318-WS-AIR, p. 2 (Entry, Nov. 10, 2003) (emphasis added). Pursuant to Ohio Admin. Code § 4901-1-28(B):

"(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 Company for Authority to Modify and Increase Its Rates for Gas Service to All Jurisdictional Customers, No. 83-777-GA-AIR, 1984 Ohio PUC LEXIS 26, at *11-12 (Opinion and Order, Aug. 7, 1984). The Commission has repeatedly explained:

"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, Southeastern Region, et al., Nos. 89-616-GA-AIR, et al., 1989 Ohio PUC LEXIS 1207, at *1-3 (Entry, Nov. 7, 1989) (emphasis added).¹

In addition, the Commission has specifically found that the following objections to a Staff Report were sufficiently specific under § 4901-1-28(B):

1. Objection that "Staff's recommended revenue requirement determination, as illustrated in Section A-1 of the Staff Report, will result in rate shock and is contrary to Commission policy." In the Matter of the Application of Water and Sewer LLC for an Increase in its Rates and Charges, 08-227-WS-AIR, 2009 Ohio PUC LEXIS 273, at *3 (Entry, Apr. 14, 2009) (internal quotation marks and citation omitted).

2. Objection that "Staff's determination of net plant in service as shown on Schedule B-2 of the Staff Report . . . failed to exclude unneeded sewer plant that is not used and useful." Id. at *4.

3. Objection that the Staff's "recommended sewer rate would negatively impact home values in the Briarwood subdivision served by" the utility. Id. at *9-10.

In this case, the Staff Report recommends an adjustment to DP&L's proposed Maintenance of Overhead Lines expense. Staff Report, p. 16. DP&L states in the objection at issue, however, that Staff failed to "address the fact that DP&L's tree trimming expenses have increased by \$9.6 million since the test period." DP&L Objections, p. 12. This objection places Staff and the parties to the case on notice with "what specific issues are to be contested during

¹ Accord: In the Matter of the Application of Tomahawk Utilities, Inc. for an Increase in Rates and Charges, 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 Company for an Increase in Rates and Charges, 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 Company, Inc. for an Increase in Rates and Charges, 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 Company to File an Application for an Increase in Gas Rates in its Service Area, 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 Southern Power Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service, No. 91-418-EL-AIR, 1991 Ohio PUC LEXIS 1305, at *1-2 (Entry, Nov. 14, 1991).

the course of the hearings,"² and is consistent with objections the Commission has found sufficiently specific under § 4901-1-28(B).³

III. LINE CLEARANCE EXPENSES INCURRED AFTER THE TEST YEAR MAY RECOVERED IN THIS RATE CASE

Both the Commission and the Supreme Court recognize that post-test-year expenses for line clearance may be recovered given their necessity "to provide safe, efficient service." Bd. of Commr's v. Pub. Util. Comm., 1 Ohio St.3d 125, 127, 438 N.E.2d 111 (1982) (per curiam). DP&L's objection relating to those expenses is, therefore, further appropriate as an item that the Staff Report failed to consider. Ohio Admin. Code § 4901-1-28(B).

In its 1980 rate case (Case No. 80-687-EL-AIR), DP&L proposed an adjustment to test-year expenses that would allow the recovery of increased expenses for tree-trimming. In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify and Increase Its Rates for Electric Service to All Jurisdictional Customers, No. 80-687-EL-AIR, 1981 Ohio PUC LEXIS 6, at *60 (Opinion and Order, July 15, 1981). OCC and others objected "on the grounds that the expenses have not as yet been incurred, and that rate recognition of the costs should await evidence that the company has actually embarked on the [tree-trimming] program." Id. at *61. The Commission, nevertheless, allowed DP&L to recover those expenses,

² In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify and Increase Its Rates for Gas Service to All Jurisdictional Customers, No. 83-777-GA-AIR, 1984 Ohio PUC LEXIS 26, at *11-12 (Opinion and Order, Aug. 7, 1984).

³ In the Matter of the Application of Water and Sewer LLC for an Increase in its Rates and Charges, 08-227-WS-AIR, 2009 Ohio PUC LEXIS 273, at *4 (Entry, Apr. 14, 2009) (refusing to strike objection that "Staff's determination of net plant in service as shown on Schedule B-2 of the Staff Report . . . failed to exclude unneeded sewer plant that is not used and useful"); 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, Southeastern Region, et al., Nos. 89-616-GA-AIR, et al., 1989 Ohio PUC LEXIS 1207, at *1-3 (Entry, Nov. 7, 1989) (stating that a hypothetical objection that "'the staff unreasonably eliminated \$15,375 of advertising costs which it deemed promotional because such advertising should have been classified as informational'" would be sufficiently specific).

noting that it had previously recognized "that allowance for actual test-year expenditures for overhead line clearance may not provide an appropriate basis for establishing a reasonable expense allowance for this item." Id. at *62.

The Supreme Court of Ohio affirmed the recovery of those expenses. Bd. of Commr's v. Pub. Util. Comm., 1 Ohio St.3d 125, 438 N.E.2d 111 (1982). The Court explained that it had never "adopt[ed] a *per se* rule which would preclude all post-test-year adjustments," and found that the increased tree-trimming expenses presented "a proper case for the allowance of a post-test-year adjustment." Id. at 127. It further observed that without appropriate clearance, "more power lines will be damaged with a consequent increase in power outages[,] . . . lead[ing] to safety hazards for both DP&L's customers and its employees." Id. Pursuant to former Ohio Rev. Code § 4909.15(D) (now § 4909.15(E)), the Court permitted the post-test-year adjustment to allow DP&L to recover "'reasonable compensation for the service rendered'" and "'to smooth out anomalies in the ratemaking equation that tend to make the test year data unrepresentative for ratemaking purposes.'" Id. (quoting Office of the Consumers' Counsel v. Pub. Util. Comm., 67 Ohio St.2d 153, 166, 423 N.E.2d 820 (1981) and Ohio Rev. Code § 4909.15).

Here, as Mr. Bentley explains in his supplemental testimony,⁴ the cost of tree-trimming for DP&L has ballooned from \$12,441,136 during the test year to over \$22 million for the 2018 maintenance year. Bentley Supp. Test., p. 2. This increase, which has been felt across

⁴ While OCC claims that it intends to move to strike Mr. Bentley's testimony on grounds that it was late filed under Ohio Admin. Code § 4901-7-01, Appendix A, Chapter II, (A)(6)(c), it has not done so. Moreover, his testimony is proper pursuant to that regulation, which specifically allows supplemental testimony relating to "matters which the applicant could not reasonably expect to be raised in the case, such as . . . [m]atters caused by changes . . . in financial conditions," and "[m]atters resulting from unforeseen changes in the utility's operations." Ohio Admin. Code § 4901-7-01 Appendix A, Chapter II, (A)(6)(c).

the electric industry, has been due to an increase in the cost of attracting and keeping labor for tree trimming, particularly given higher-paying jobs in the fracking industry. Id. at 3. It has adversely affected DP&L's ability to trim trees on schedule, which will in turn both affects DP&L's ability to provide safe and reliable service and increases the utility's long-term costs by causing DP&L to spend more money on repairs, particularly in response to storm damage. Id. at 4-6.

Given the dramatic increase in post-test-year tree-trimming expenses, and the unique and recognized relationship between such expenses and DP&L's ability to provide safe and reliable service, the Commission should allow DP&L to object to the failure of the Staff Report to consider that specific item in this proceeding pursuant to Ohio Admin Code § 4901-1-28(B). Bd. of Commr's, 1 Ohio St.3d 125.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny the April 18, 2018 Motion to Strike Objection to the PUCO Staff's Report of Investigation by The Office of the Ohio Consumers' Counsel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to Motion to Strike DP&L's Objection to the Staff Report by The Office of the Ohio Consumers' Counsel, has been served via electronic mail upon the following counsel of record, this 25th day of April, 2018:

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