

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| 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. |) | |

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| 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. |) | |

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

**MOTION TO STRIKE SUPPLEMENTAL DIRECT
TESTIMONY OF DP&L WITNESS BARRY J. BENTLEY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Dayton Power and Light Company (“DP&L”) filed supplemental testimony¹ that violates the PUCO’s rule for such testimony.² Violating that rule is unfair to consumers. On behalf of DP&L’s 460,000 residential customers, the Office of the Ohio Consumers’ Counsel (“OCC”) moves the Public Utilities Commission of Ohio (“PUCO”) for an order striking the Supplemental Bentley Testimony.

¹ Supplemental Direct Testimony of Barry J. Bentley (Apr. 11, 2018) (the “Supplemental Bentley Testimony”).

² Ohio Adm. Code 4901-7, Appendix A (the “Standard Filing Requirements” or “SFR”), Chapter II, paragraph (A)(6).

Respectfully submitted,

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/s/ Christopher Healey

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**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE SUPPLEMENTAL
DIRECT TESTIMONY OF DP&L WITNESS BARRY J. BENTLEY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

In a base rate proceeding like this one—where the utility seeks to increase the amount that it charges customers for electric distribution service—the utility is required to set forth its request in a comprehensive application supported by schedules and utility company testimony. That requirement provides fairness to others in the case, who should be protected from eleventh-hour utility claims that consumers should pay more. The PUCO’s Standard Filing Requirements are detailed rules that govern what the utility must include in its application—and what it cannot.

Twenty-nine months after DP&L filed its case and contrary to the rules for fairness, DP&L filed the Supplemental Testimony of Barry J. Bentley recommending another \$10 million in tree trimming costs. This violates the Standard Filing Requirements, which allow supplemental testimony only in limited circumstances that are not present here. The PUCO should strike the Supplemental Bentley Testimony.

II. BACKGROUND

Through the Supplemental Bentley Testimony, DP&L seeks to increase customers' rates even higher than as proposed in its Application. Mr. Bentley proposes a post-test year adjustment to DP&L's test period tree trimming expenses. He proposes to increase the \$12.4 million test-year expenses by \$9.6 million.³ In support of his proposal, Mr. Bentley refers to bids that DP&L received for tree trimming work in 2018.⁴

Notably, Mr. Bentley's proposal for higher tree trimming costs contrasts with the PUCO Staff's conclusion that DP&L's test period tree trimming expenses were too high, not too low. In its report, the PUCO Staff recommended a \$1.7 million reduction in test-period tree trimming expenses.⁵

III. ARGUMENT

A. The Supplemental Bentley Testimony is outside the scope of permissible supplemental testimony under the PUCO's rules.

The PUCO's rules guide a utility's filing of direct testimony in a base rate case. When a utility files an application to increase rates, it has 14 days to file direct testimony.⁶ This initial testimony must "fully and completely address and support all schedules and significant issues identified by the utility as well as all adjustments made to rate base and operating income items."⁷

³ Supplemental Bentley Testimony at 1-2.

⁴ *Id.* at 2.

⁵ PUCO Staff Report of Investigation at 16 (Mar. 12, 2018) (the "Staff Report").

⁶ SFR Chapter II, paragraph (A)(6)(a) ("Utilities shall file the prepared direct testimony of utility personnel or other expert witnesses in support of the utility's proposal within fourteen days of the filing of the application for increase in rates.").

⁷ *Id.*

Under limited circumstances, the utility can also file supplemental testimony with its objections to the staff report. The supplemental testimony cannot address issues that the utility could have raised in its initial testimony.⁸ Rather, supplemental testimony may address “matters raised for the first time in the staff report,” “matters caused by changes in the law and/or in financial conditions,” “matters resulting from unforeseen changes in the utility’s operations,” or “matters raised by the staff during its investigation or by intervenors during discovery.”⁹

DP&L’s Supplemental Bentley Testimony violates the PUCO’s rule regarding supplemental testimony.

DP&L’s alleged increase in tree trimming expenses is not related to a matter raised for the first time in the Staff Report. DP&L admits this in its objection to the Staff Report, stating that the Staff Report “did not address the fact that DP&L’s tree trimming expenses have increased....”¹⁰

DP&L does not claim that its alleged increase in tree trimming expenses is the result of a change in law or a change in DP&L’s financial condition.

Nor is DP&L’s alleged increase in tree trimming expenses the result of unforeseen changes in the utility’s operations. The utility’s operations involved tree trimming through outside contractors before and during the test year. There is no change in operations.

⁸ SFR Chapter II, paragraph (A)(6)(c) (“Supplemental testimony ... shall be limited to matters which the applicant could not reasonably expect to be raised in the case...”).

⁹ *Id.*

¹⁰ The Dayton Power and Light Company’s Objections to the Staff Report at 12 (Apr. 11, 2018).

If DP&L were concerned that its test-period tree trimming costs did not represent its typical operations, it could have raised that issue in its initial testimony. It chose not to. The PUCO should not allow DP&L's last-minute supplemental testimony on a new issue that no party has had an opportunity to examine in the 29 months since DP&L filed its Application.

B. DP&L's proposed increase in tree trimming expenses is single-issue ratemaking, which is not permitted in a base rate case.

It is well established that the PUCO is a creature of statute that may only exercise the authority granted to it by the Ohio General Assembly.¹¹ The Supreme Court of Ohio, in *Columbus Southern Power Co. v. PUCO*,¹² explained how this general rule applies to R.C. 4909.15:

While the General Assembly has delegated authority to the PUCO to set just and reasonable rates for public utilities under its jurisdiction, it has done so by providing a detailed, comprehensive and, as construed by this court, mandatory ratemaking formula under R.C. 4909.15.¹³

And because R.C. 4909.15 does not specifically authorize single-issue ratemaking, single-issue ratemaking is not permitted under R.C. 4909.15. The PUCO acknowledged this in a recent case involving FirstEnergy, concluding: "single-issue ratemaking and incentive ratemaking is not authorized by R.C. Chapter 4909..."¹⁴

¹¹ See, e.g., *Disc. Cellular, Inc. v. PUCO*, 112 Ohio St. 3d 360, 373 (2007).

¹² 67 Ohio St. 3d 535 (1993).

¹³ *Id.* at 537.

¹⁴ *In re Application of [FirstEnergy] for Authority to Provide a Standard Service Offer*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing ¶ 290 (Oct. 12, 2016). The PUCO did recognize that single-issue ratemaking is allowed under the electric security plan statute. *Id.* But that statute does not apply to this case.

DP&L's proposal to include an additional \$9.6 million in tree trimming expenses that it allegedly¹⁵ will incur after the test period is single-issue ratemaking. DP&L does not propose that the PUCO reexamine any of its other expenses and revenues to balance out the proposed increase for tree trimming. DP&L proposes only that the PUCO look at this one issue in isolation and authorize it to charge customers more as a result. This is single-issue ratemaking, which violates R.C. 4909.15.

Notably, the PUCO just recently approved DP&L's latest electric security plan, where single-issue ratemaking *is* allowed.¹⁶ In that case, DP&L did not ask for a tree trimming rider to recover any incremental costs of vegetation management above those included in base rates.¹⁷

If the PUCO is going to permit the unfair increase to consumers that DP&L proposes, then the PUCO should re-open discovery, postpone the hearing, and allow parties the opportunity to examine all other aspects of DP&L's operations. That examination would include, but not be limited to, the recent layoff of nearly 60 DP&L employees that occurred after the test period, would could offset DP&L's 11th hour revenue increase proposal.¹⁸

¹⁵ According to DP&L's supplemental testimony, these additional charges pertain merely to *bids* that DP&L received for tree trimming work in 2018. *See* Supplemental Bentley Testimony at 2-3. DP&L does not state that it actually signed any contracts for tree trimming at these increased costs or that it has in fact incurred any such costs.

¹⁶ *In re Application of Dayton Power & Light Co. to Establish a Standard Serv. Offer in the Form of an Elec. Security Plan*, Case No. 16-395-EL-SSO, Opinion & Order (Oct. 20, 2017).

¹⁷ *Id.*

¹⁸ *See* <https://www.daytondailynews.com/business/new-details-job-cuts-fall-two-local-sites/Vyn164NRj71yxfEZGyhWBN/>.

IV. CONCLUSION

DP&L's proposal to include post-test-period tree trimming expenses in this case violates the PUCO's rules for supplemental testimony and is unfair (in process and substance) to consumers. It also, if approved, would be unlawful single-issue ratemaking. To protect consumers and allow for a fair rate case process, the PUCO should strike the Supplemental Bentley Testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Strike was served on the persons stated below via electronic transmission, this 30th day of April 2018.

/s/ Christopher Healey

Christopher Healey
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Summary: Motion Motion to Strike Supplemental Direct Testimony of DP&L Witness Barry J. Bentley by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Healey, Christopher Mr.