

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for an Increase in Electric Distribution Rates.	:	Case No. 15-1830-EL-AIR
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In the Matter of the Application of The Dayton Power and Light Company for Approval to Change Accounting Methods.	:	Case No. 15-1831-EL-AAM
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In the Matter of the Application of The Dayton Power and Light Company for Tariff Approval.	:	Case No. 15-1832-EL-ATA
	:	

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN
OPPOSITION TO THE MOTION TO STRIKE THE SUPPLEMENTAL DIRECT
TESTIMONY OF BARRY J. BENTLEY BY THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

For the second time in less than two weeks,¹ The Office of the Ohio Consumers' Counsel ("OCC") asks the Commission to ignore the April 11, 2018 Supplemental Direct Testimony of Barry J. Bentley without citing, much less attempting to distinguish, longstanding precedent that allows post-test-year adjustments for increased tree-trimming expenses 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) (affirming 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)). As Mr. Bentley's testimony complies with the Standard

¹ Compare Apr. 18, 2018 Motion to Strike Objection to the PUCO Staff's Report of Investigation by The Office of the Ohio Consumers' Counsel with Apr. 30, 2018 Motion to Strike Supplemental Direct Testimony of DP&L Witness Barry J. Bentley by The Office of the Ohio Consumers' Counsel ("Motion").

Filing Requirements in Ohio Admin. Code § 4901-7-01, and supports the recovery of expenses allowed by law, the Commission should deny OCC's Motion and consider DP&L's request for tree-trimming expenses on the merits.

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, noting that it previously had 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).²

Ignoring that clear precedent, OCC primarily argues (pp. 2-4) that Mr. Bentley's supplemental testimony does not comply with the Standard Filing Requirements for rate cases. Those requirements, however, specifically allow 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).

As Mr. Bentley explains in his supplemental testimony, 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 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. Thus, there has been a change in financial conditions and unforeseen changes in DP&L's operations. Ohio Admin. Code § 4901-7-01 Appendix A, Chapter II, (A)(6)(c). OCC cites no

² This narrow authority for post-test-year adjustments as to tree-trimming expenses is premised on safety and reliability concerns, and does not open the door, as OCC suggests (p. 5), for the Commission to engage more broadly in single-issue ratemaking.

evidence that DP&L should have reasonably expected this dramatic increase when it filed this case in November 2015.³

Given the unique and recognized relationship between tree-trimming expenses and DP&L's ability to provide safe and reliable service, the Commission should allow DP&L to present Mr. Bentley's supplemental testimony in support of its objection to the Staff Report's failure to consider those expenses in this case pursuant to Ohio Admin Code § 4901-1-28(B). Bd. of Commr's, 1 Ohio St.3d 125. Thus, the Motion to Strike Supplemental Direct Testimony of DP&L Witness Barry J. Bentley by The Office of the Ohio Consumers' Counsel should be denied.

³ OCC suggests (p. 5) that DP&L could have sought recovery of these expenses in its most recent standard service offer case. In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, et al., Case Nos. 16-395-EL-SSO, et al. Again, however, OCC cites no evidence that DP&L could have known about the increase when it commenced that proceeding in February 2016 or amended its application in October 2016.

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 the Motion to Strike the Supplemental Direct Testimony of Barry J. Bentley by The Office of the Ohio Consumers' Counsel, has been served via electronic mail upon the following counsel of record, this 9th day of May, 2018:

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Summary: Memorandum The Dayton Power and Light Company's Memorandum in Opposition to the Motion to Strike the Supplemental Direct Testimony of Barry J. Bentley by The Office of the Ohio Consumers' Counsel electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company