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. 20-1651-EL-AIR**
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR ACCOUNTING AUTHORITY.	**CASE NO. 20-1652-EL-AAM**
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF REVISED TARIFFS.	**CASE NO. 20-1653-EL-ATA**

ENTRY ON REHEARING

Entered in the Journal on December 15, 2021

I. SUMMARY

{¶ 1} In this Entry on Rehearing, the Commission denies the application for rehearing filed by Ohio Consumers' Counsel.

II. PROCEDURAL HISTORY

{¶ 2} The Dayton Power and Light Company (DP&L or the Company) is an electric light company and a public utility as defined in R.C. 4905.03 and R.C. 4905.02, respectively. As such, DP&L is subject to the jurisdiction of this Commission pursuant to 4905.04, 4905.05, and 4905.06.

{¶ 3} R.C. Chapter 4909 prescribes the fixation of rates for public utilities. An application for an increase in rates is governed by and must satisfy the requirements of R.C. 4909.17 to 4909.19 and R.C. 4909.42. In determining just and reasonable rates, R.C. 4909.15(C) mandates that the revenues and expenses of a utility be determined during a test period. When applying for a rate increase, a utility may propose a test period for this determination that is any 12-month period beginning not more than six months before, and not ending more than nine months after, the date the application is filed. R.C. 4909.15.

Unless otherwise ordered by the Commission, the test period shall be what is proposed by the utility. *Id.* Additionally, under R.C. 4909.15(C)(2), the date certain shall not be later than the date of filing.

{¶ 4} On October 30, 2020, pursuant to the Standard Filing Requirements set forth in Ohio Adm.Code 4901-7-01, Appendix A (Standard Filing Requirements or SFR), DP&L filed a notice of its intent to file an application to increase its rates for electric distribution service.

{¶ 5} Also on October 30, 2020, the Company filed a motion to establish a test period and date certain in accordance with R.C. 4909.15(C) and Chapter II(A)(5)(a) of the Standard Filing Requirements. DP&L proposed the twelve-month period beginning June 1, 2020, and ending May 31, 2021, as the test year and June 30, 2020, as the date certain for its forthcoming application, which it intended to file on November 30, 2020. The October 30, 2020 motion also requested waivers of certain Standard Filing Requirements pursuant to Chapter II, (A)(4)(a).

{¶ 6} On November 18, 2020, the Commission approved DP&L's motion to set the test period and date certain, as well as its motion for waiver of certain SFRs.

{¶ 7} On November 30, 2020, DP&L filed its application to increase its rates. On December 14, 2020, the Company filed direct testimony in support of its application.

{¶ 8} On April 7, 2021, the Commission accepted the application as of the filing date of November 30, 2020. As part of the same Entry, the Commission granted motions to intervene on behalf of Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE), as well as ten additional intervenors.

{¶ 9} On July 26, 2021, Staff filed its report of investigation (Staff Report).

{¶ 10} On July 30, 2021, the attorney examiner issued a procedural schedule setting forth case deadlines, including scheduling the matter for an evidentiary hearing on October

4, 2021. Pursuant to an Entry dated August 9, 2021, the attorney examiner granted a joint motion for continuance of the evidentiary hearing, resetting it for October 26, 2021.

{¶ 11} On August 5, 2021, OCC filed a motion to dismiss DP&L's application for a rate increase.

{¶ 12} On August 20, 2021, DP&L filed a memorandum in opposition to OCC's motion to dismiss.

{¶ 13} On August 27, 2021, OCC and OPAE filed separate replies in support of the motion to dismiss DP&L's application for a rate increase.

{¶ 14} On October 20, 2021, the Commission denied OCC's motion to dismiss finding that (1) DP&L's application to increase rates presents a justiciable issue, and (2) the arguments raised in the motion to dismiss relating to DP&L's ability to implement any rate increase should be adjudicated, rather than dismissed. In our decision, we noted that (1) the filing of the Staff Report is a significant threshold in the case, which occurs after substantial resources have been invested in the detailed review and consideration of the technical aspects of the rate application, and (2) allowing consideration of filings other than Staff Report objections could allow a party to evade the statutory deadline for objections by raising new issues in the motion that were not contained in the objections.

{¶ 15} On November 19, 2021, OCC filed an application for rehearing and memorandum in support.

{¶ 16} On December 6, 2021, DP&L timely filed a memorandum in opposition to OCC's application for rehearing.

III. DISCUSSION

{¶ 17} OCC raises a single issue in its rehearing application: whether the Commission erred in citing untimeliness as a basis for denying OCC's motion to dismiss the case. As part of our decision, we noted that OCC's motion to dismiss was improper because it was

filed after the filing of the Staff Report. We emphasized that, pursuant to R.C. 4909.19, the filing of the Staff Report triggers the 30-day deadline for filing objections to the Staff Report, and that allowing consideration of filings other than Staff Report objections "could" allow a party to evade the statutory timeframe for raising contested issues in a rate case. OCC claims that our decision was in error as to this finding because its motion to dismiss was filed within the 30-day time period for raising Staff Report objections such that it was not used to evade the objection deadline.

{¶ 18} DP&L counters OCC's argument by noting that our prior determination found only that allowing consideration of a motion to dismiss after the filing of a Staff Report "could" be used to evade the deadline for filing Staff Report objections. As we did not conclude that OCC's motion was filed after the deadline for filing Staff Report objections, DP&L argues that there was no error in our prior ruling.

{¶ 19} We find that OCC's application for rehearing is without merit. As we indicated, the Commission's consideration of rate cases following the filing of a Staff Report is guided by R.C. 4909.19, which describes the 30-day requirement to file objections to the Staff Report. We uphold our prior determination that OCC's filing of a motion to dismiss after the Staff Report filing was improper. OCC's motion was denied based on our determination that (1) DP&L's rate application case should proceed, and (2) any decision as to the timing of a change in rates would be considered as part of our final determination of the rate case. Thus, while OCC's motion to dismiss was improper, we agree with OCC that the issues raised in the motion to dismiss remain ripe for adjudication based on the fact that they were properly included in OCC's objections to the Staff Report, which were filed on August 25, 2021. Moreover, we acknowledge that OCC did not, in this case, utilize the motion to dismiss as an avenue to avoid the proper filing of timely Staff Report objections. Nevertheless, as our decision held, we affirm that the potential for circumventing the Staff Report objection period remains a factor in support of the decision to deny OCC's motion to dismiss.

IV. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That OCC's application for rehearing be denied. It is, further,

{¶ 22} ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MLW/hac

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Case No(s). 20-1651-EL-AIR, 20-1652-EL-AAM, 20-1653-EL-ATA

Summary: Entry on Rehearing denying the application for rehearing filed by Ohio Consumers' Counsel. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio