BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The	)	
Dayton Power and Light Company to	)	Case No. 12-426-EL-SSO
Establish a Standard Service Offer in	)	
the Form of an Electric Security Plan.	)	

INITIAL POST-HEARING BRIEF OF INTERSTATE GAS SUPPLY, INC. D/B/A IGS ENERGY

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I. INTRODUCTION

Interstate Gas Supply, Inc. d/b/a IGS Energy ("IGS") provides competitive retail gas and electric service in approximately 40 utility service territories spanning 11states. IGS serves gas and electric customers in all of the major Ohio utility service areas, including the DP&L service territory.

Although DP&L's proposed electric security plan ("ESP") raises many complex issues, IGS is generally limiting its initial brief to only three of them: (*1*) the need for the ESP to establish a purchase of receivables ("POR") program; (*2*) the need to minimize stranded costs by instituting retail instead of wholesale auctions; and (*3*) the need to reject various riders and other proposals that would have clear, anticompetitive impacts . IGS's silence regarding any other issue should be construed as neither endorsement nor rejection of that issue.

II. ARGUMENT

A. The Commission should modify DP&L's ESP to include a Purchase of Receivables Program.

The Commission should modify the proposed ESP to require DP&L to establish a POR program. As the name implies, a POR program allows a regulated utility to purchase the accounts receivable of competitive suppliers. (*See* White Dir. at 9.) The utility then assumes responsibility for collecting the accounts. By eliminating the requirement for CRES suppliers to maintain duplicative billing and collection systems, POR programs reduce the overall cost of service and thus the costs that will be passed along to customers.

Utilities with POR programs suffer no disadvantage. First, EDUs like DP&L already have the necessary billing and collection infrastructure—which have been paid for by distribution customers—and are already in the business of collecting delinquent accounts. (White Dir. at 11.) Moreover, the EDU is made whole financially for any additional costs associated with CRES collection. POR programs provide for the EDU's recovery of uncollectible costs through a regulatory mechanism, such as an uncollectible expense rider, that essentially eliminates any financial risk to the EDU. (*Id*. at 11–12.) POR programs are a "win-win" for everybody, as each of the 4 major gas local distribution companies in Ohio, as well as Duke's electric utility, can attest.

1. The Commission has statutory authority to modify an ESP.

First, the Commission plainly has authority to order DP&L to adopt a POR program as a condition of the approval of its ESP. That DP&L has not proposed a POR program is no obstacle. The Commission may "modify and approve" any ESP filed under R.C. 4928.143(A). R.C. 4928.143(C)(1). And in determining whether an ESP should be modified and approved, the Commission "must consider more than price." *In re Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, ¶ 27 (2011). Indeed, R.C. 4928.143(C)(1) "instructs the commission to consider 'pricing *and all other terms and conditions*.' " *Id.* (emphasis in court decision). These "other terms and conditions" may include "provisions relating to the supply and pricing of electric generation service" and relating to shopping. R.C. 4928.143(B)(1) & (B)(2)(d).

2. Adoption of a POR program will promote and advance Ohio policy.

Not only *can* the Commission approve a POR program, it *should*. State policy requires the encouragement, advancement, and enhancement of competitive retail electric service. *See generally* R.C. 4928.02. Requiring DP&L to adopt a POR program would advance several state policies while hindering none.

a. A POR program promotes the efficient provision of service.

For example, R.C. 4928.02(A) requires the Commission to "[e]nsure the availability to consumers of adequate, reliable, safe, *efficient*, *nondiscriminatory*, and *reasonably priced* retail electric service." (Emphasis added.) A POR program would encourage efficiency. DP&L's billing and collection system was paid for, and continues to be paid for, by revenues collected from captive electric distribution customers. But despite having paid for this system, customers who shop must also pay for billing and collection services from the CRES supplier.

Thus, a POR program increases efficiency by enabling the sharing of otherwise duplicative infrastructure and personnel. (White Dir. at 10–11.) DP&L witness Rice agreed that it is more efficient, economical, and sensible to "share personnel, facilities, and equipment in a manner . . . that is beneficial to customers." (Tr. at 781–82.) Sharing these services makes sense because DP&L's shopping customers benefit from a reduced overall cost of service . (*See id.*) POR provides the most cost-effective means of collecting accounts receivable.

b. A POR program eliminates the application of needless cost-of-service and credit-standard distinctions to different customers.

A POR program also eliminates obstacles to the participation of at-risk populations in competitive supply markets. *See* R.C. 4928.02(A) (the Commission should ensure the availability of "nondiscriminatory . . . retail electric service"); R.C. 4928.02(C) (the Commission should give all "consumers effective choices over . . . supplies and suppliers"); R.C. 4928.02(L) (policy of the state to "[p]rotect at-risk populations").

A POR program allows CRES suppliers to apply the same credit standards to customers as the EDU. (White Dir. at 12.) Without POR, CRES suppliers must apply credit standards that are more stringent than the EDU's because the CRES supplier cannot terminate service to enforce payment. (*Id.*) This could potentially result in customers being unable to avail themselves of otherwise attractive, competitive offers. (*Id*.) Ironically, counsel for DP&Lmade this point as well as anyone could. On cross examination of Mr. White, it was demonstrated that without a POR program, "IGS could eliminate the risk of nonpayment by not doing business with [certain] customers" or by "requiring its customers to make a deposit." (Tr. 2609.) While true, it is a needlessly harsh way to address the issue.

c. A POR program increases the availability of reasonably priced electric retail service.

A POR program also promotes "the availability [of] . . . reasonably priced retail electric service." R.C. 4928.02(A). These programs can make or break whether a CRES supplier chooses to participate in an EDU's territory. (White Dir. at 12.) Mr. White testified that "when a utility offers a POR program in its service territory, more suppliers enter the market and the market becomes more competitive." (*Id*.) Competition reduces prices; POR fosters competition; thus, a POR program will tend to bring down prices in markets where it is adopted.

d. A POR program promotes diversity of electricity supplies and suppliers and effective choice.

A POR program also helps to "[e]nsure diversity of electricity supplies and suppliers[] by giving consumers effective choices over the selection of those supplies and suppliers." R.C. 4928.02(C). As just explained, "All else being equal, CRES [suppliers] will choose to focus their efforts in POR markets . . . . As supplier participation increases, competition increases. And as competition increases, prices decrease, and the introduction of new and innovative products is encouraged." (White Dir. at 12.) In contrast, the absence of a POR program will potentially cause CRES suppliers to stay out of a market.

e. A POR program increases consumer options and market access.

By enhancing competition and inviting additional market entry, POR programs also "[e]nsure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs." R.C. 4928.02(B).

f. A POR program encourages market access for CRES suppliers.

Likewise, POR programs "[e]ncourag[e] innovation and market access for cost-effective supply[-side] . . . retail electric service." *See* R.C. 4928.02(E). In addition to the market-access benefits described above, a POR program frees up resources and margin that would otherwise be inefficiently reserved for collection cost and activities. (*See* White Dir. at 10–11.) Instead, these resources may be devoted to develop and offer new, innovative products that help meet the needs of individual customer preferences. (White Dir. at 12.)

g. Approving a POR program would recognize "flexible regulatory treatment" favored under Ohio law.

In light of all these benefits, adopting a POR program would also recognize "the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment." R.C. 4928.02(G).

3. A POR program provides other benefits to customers.

As demonstrated above, a POR program advances state policy in a number of ways. But it provides other benefits, as well. A POR program provides customers with a single billing and collection point thereby eliminating a significant source of customer confusion regarding billing and collections. (White Dir. at 11.) As things stand, if a CRES customer's account becomes past due, DP&L turns over collection responsibility for the CRES amount to the supplier. (*Id.*; *see* Tr. 1383–84 (if a CRES supplier drops a customer for nonpayment, the CRES supplier charges remain on the bill for only a "limited period of time").)

But "[i]f a customer is delinquent on the supplier charges, they are also usually delinquent on the utility charges." (White Dir. at 11.) So the customer must deal with credit action taken by both the EDU and the CRES supplier, raising "a substantial likelihood of confusion for customers when both DP&L and a CRES supplier seek to collect different past due amounts from the same bill." (*Id.*) By streamlining the collection process, customer confusion will be significantly reduced if not eliminated. (*Id.*)

4. Adoption of a POR program will cause no hardship to DP&L.

Adopting a POR program will not cause any hardship to DP&L. As noted, it already possesses the requisite billing and collection infrastructure that has been paid for by the same distribution customers who would benefit from the program. (*See* White Dir. at 10–11; Tr. 1370–71, 1373–75.) Customers, including shopping customers, have been paying for this infrastructure for years. (*See, e.g.*, Tr. 1370–71; Tr. 1385 (DP&L receives a "customer fee" that covers the costs for "metering, billing, printing, postage and collection"); Tr. at 1394 (in addition to the "customer fee," DP&L has collected $16 million to reprogram their billing system for Electric Choice).)

Moreover, a POR program would include a mechanism by which DP&L may recover the costs of the program, such as a discount rate on accounts receivable, an uncollectible expense rider, or a combination of both. (White Dir. at 11–12.) If DP&L uses the discount rate method, it will "pay something less than the face value of the receivables as compensation for assuming the risk of unpaid accounts and collection expense." (White Dir. at 11.) And an uncollectible expense rider, a mechanism used by many utilities, would allow DP&L to recover the value of uncollectible accounts from its distribution customers.

Whichever mechanism is selected, a utility is made whole for collection costs associated with CRES supplier receivables.

5. DP&L has already sought approval of a markedly similar mechanism in the CBT Rider.

Moreover, any issues presented by a POR program—which are negligible—would be no more than entailed in DP&L's proposed Competitive Bid True-Up ("CBT") Rider. What DP&L is proposing in the CBT Rider—"to pay wholesale suppliers for the electricity upon delivery to DP&L" and "to recover any under-recovery . . . through the CBT Rider"—would be similar in execution to the POR program. (White Dir. at 9–10.) For this reason, it would be arbitrary, and indeed anticompetitive, for the Commission to allow a CBT Rider but not a POR program. As a result of the CBT Rider, wholesale providers "would not need to build collection cost[s] . . . into their pricing. However, CRES suppliers offering products into the market without a POR would be required to do just that." (*Id*. at 10.)

6. Experience has confirmed the beneficial impact of POR programs.

That POR programs are beneficial is not just a matter of opinion, but has been confirmed by long experience. Numerous POR programs are already in place in Ohio and have been for sometime, and experience shows that these programs have contributed significantly to competition in Ohio. (White Dir. at 12.) As of May 1, 2013, "[t]he PUCO electric Apples-to-Apples website show[ed] that Duke Energy Ohio, the only electric utility with a POR program in Ohio, ha[d] the greatest level of CRES supplier participation of all the electric utilities in Ohio," with 33 competitive offers made available by 23 CRES suppliers. (*See* White Dir. at 12.) DP&L's territory, however, sees less than half, with only 15 competitive offers from 11 CRES suppliers.

POR programs have been a major contributor to natural gas competition in Ohio. (*See id*.) All of the natural gas utilities that offer POR programs have seen significant migration of customers to competitive suppliers as well as more competitive offers to customers. According to May 1, 2013 Apples-to-Apples statistics, The East Ohio Gas Company d/b/a Dominion East Ohio and Columbia Gas of Ohio, both of which have well-established POR programs, have 21 and 17 competitive suppliers actively soliciting customers, respectively, each with a variety of competitive offers available. Indeed, competition has been so successful for these two utilities that each one recently received approval of substantial steps towards a complete exit of the merchant function. *See* Case No. 12-1842-GA-EXM; Case No. 12-2637-GA-EXM.

Ohio's experience is not exceptional; many other jurisdictions that have implemented POR programs have seen similar progress in competitive markets. "Utilities throughout the country have successfully implemented POR programs. POR is part of customer choice in many states including Ohio, Illinois, New York, Virginia, Pennsylvania, Indiana, Kentucky, Maryland, . . . and Michigan." (White Dir. at 13.) Among other things, this means that DP&L "can capitalize on this vast experience to make its implementation of POR relatively smooth and easy." (White Dir. at 12.)

In sum, there is every reason to require DP&L to implement a POR program. It promotes state policy; it provides customer benefits; it allows more efficient service; it is tried and true. In a state that encourages the development of competitive markets, like Ohio, there is no reason not to adopt a POR program. IGS respectfully requests that the Commission modify the ESP and condition its approval on the implementation of a POR program.

B. Several proposals in the ESP are anticompetitive and must be rejected to bring the ESP in line with state policy.

1. The SSR and ST must be rejected.

Two riders—the Service Stability Rider ("SSR") and Switching Tracker ("ST")—are anticompetitive subsidies that are inconsistent with state policy and violate Ohio law. These mechanisms are designed to increase the profitability of unregulated affiliates at the expense of ratepayers. Whether such a mechanism was ever appropriate, legacy policies adopted in earlier times under different circumstances should not and cannot be perpetuated indefinitely given changes in the law. The market development period was not intended to last forever, and the law cannot be ignored.

a. Transition costs are no longer recoverable.

R.C. 4928.38 prohibits the Commission from authorizing "the receipt of transition revenues or any equivalent revenues by an" EDU after the end of its market development period ("MDP"). "Transition revenues" represented costs allowed to the utility under R.C. 4928.39, and were required to satisfy several criteria before they were to be recovered: among other things, they were to be prudently incurred; be directly assignable or allocable to retail electric generation service provided to Ohio consumers; be unrecoverable in the competitive market; and be otherwise recoverable. *See* R.C. 4928.39(A)–(D).

The Commission originally approved DP&L's MDP to last until December 31, 2003, *In re DP&L*, Case No. 99-1687-EL-ETP, 2000 Ohio PUC LEXIS 1001, Opin. & Order at *67 (Sept. 21, 2000), and later extended it to December 31, 2005, *In re DP&L*, Case No. 02-2779-EL-ATA, 2003 Ohio PUC LEXIS 392, Opin. & Order at *53–54 (Sept. 3, 2003). This extension was "based upon DP&L's agreement to forego the recovery of transition costs beyond" December 31, 2003. *Id*.

Thus, DP&L's MDP had long concluded by the time DP&L filed this ESP on October 5, 2012, and along with it, DP&L's rightful opportunity to recover transition costs. R.C. 4928.38 prohibits their recovery and states expressly: after the market development period, "the utility shall be fully on its own in the competitive market." There can be no doubt that this prohibition is intended to remain applicable, as R.C. 4928.141(A) prohibits DP&L from recovering non-bypassable transition charges through its standard service offer.

b. The SSR and ST are improper attempts to collect transition costs.

These provisions rule out the SSR and ST, which attempt to collect the equivalent of transition costs after the end of the MDP.

Service Stability Rider. DP&L witness Chambers explained that the SSR is meant to increase DP&L's projected rate of return to a level that will allow it to recover the costs of its generation assets. (Chambers Dir. at 23–25.) Identifying several of DP&L's generation assets, Mr. Chambers implies that "electric shopping in Ohio has reduced the return on these assets through lower unit sales and lower unit prices." (White Dir. at 4 (citing Chambers Dir. at 25).) He states that the reduced return on these assets will hamper DP&L's ability to realize a reasonable rate on equity("ROE")—an ROE that it would otherwise be entitled an opportunity to recover. In order to cure this inability, DP&L proposed the SSR "to raise DP&L's projected ROE to a level that will ensure DP&L's 'financial integrity.'" (*Id.*)

Switching Tracker. Similar in effect is the ST. The ST is "a true-up mechanism designed to compensate DP&L for lost revenues related to additional customer switching." (Chambers Dir. at 3, fn. 2.) Like the SSR, the ST "is designed to protect DP&L from further loss of revenue from additional switching." (*Id*. at 26.) As Mr. Chambers explained, "switching reduces DP&L's retail load, thereby reducing its revenues as it sells more of its power at wholesale (lower) rates." (Chambers Dir. at 25.) Like the SSR, the ST is a clear attempt by DP&L to hold onto to a ratepayer-funded subsidy, rather than stand on its own and compete.

The MDP is over, and the law dictates DP&L "shall be fully on its own in the competitive market." R.C. 4928.38. Yet DP&L continues to request subsidies to support its generation assets.

c. The SSR and ST inhibit the development of competitive electric markets and incentivize anticompetitive behavior.

It is the Commission's duty to carry out state policy, and that policy is to "avoid[] anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service." R.C. 4928.02(H). For reasons described above, the SSR and ST not only run afoul of this policy, but are expressly designed to hinder it.

Each rider is expressly structured to subsidize DP&L's generation operations at the expense of the development of competitive markets in DP&L's service territory.

DP&L knows that its retail electric generation should be standing on its own by now. It admits that "ratepayers should not be expected to protect the financial integrity of nonregulated lines of business." (Tr. 549.) The SSR and ST must be rejected.

2. The Commission should require DP&L to implement retail auctions, instead of wholesale auctions, to serve its default service load.

DP&L proposes four auctions in its ESP: (*1*) a 10% auction for the period beginning upon adoption of their application and ending in May 2014, (*2*) a 40% auction from June 2014 through May 2015, (*3*) a 70% auction from June 2015 through May 2016, and (*4*) a 100% auction beginning June 2016 and every PJM planning year thereafter for the duration of the ESP period. (DP&L App. at 7.) As proposed, all four auctions would be wholesale auctions in which the supplier would bid for a portion of load. (*Id.*; White Dir. at 5.)

A wholesale auction will likely increase stranded costs for DP&L. As more of DP&L's default load is served by a CBP, less of the load will be served by DP&L at its current electric generation rates. (*Id.*) Because the current wholesale electric market prices are lower than DP&L's current electric generation rates, DP&L will not be able to recover the same revenues in a CBP default rate structure. (*Id.*)

If it is the Commission's intent to set DP&L's default rate, in whole or in part, by auction during the ESP period, the Commission should require those auctions to be retail auctions as opposed to wholesale auctions. (*Id*. at 8–9.) As Mr. White explained in his testimony and on cross examination, in a retail auction the Commission would administratively determine a discount rate at which CRES suppliers would bid to serve

DP&L's non-shopping retail customers. (Tr. 2588.) The winner of the auction would be the CRES supplier or suppliers that are willing to pay the most money to serve default customers at the set discount rate.

After the ESP period, the customers that receive service from CRES suppliers in the retail auctions will continue to remain with their CRES supplier at the CRES supplier's standard variable rate to be published on the PUCO apples-to-apples chart. These customers would be free to leave the CRES supplier at any time, during and after the ESP period, without cancellation fees. *(Id*. at 8-9.)

A retail auction is superior to a wholesale auction because a retail auction will not exacerbate stranded costs. As already noted, DP&L is asking to recover its stranded costs through riders SSR and ST, riders that are anti-competitive and harmful to customers. A wholesale auction will only serve to exacerbate these stranded costs. (*Id*. at 5.) The surplus revenues received from the bidders in the retail auction that are above the discount rate, however, could be used to reduce those stranded costs, if the Commission determines it is appropriate for DP&L to recover such costs. (*Id*. at 8–9.) If the Commission decides to approve the SSR and ST, the retail auction would mitigate the impact of customer switching that DP&L claims it must endure. (*Id.)*

Wholesale auctions also do nothing to encourage customer engagement in the competitive market. Engaged customers are better able to protect their own interests and project their preferences to the market.. Retail auctions, on the other hand, will put all customers in a direct retail relationship with a CRES supplier, furthering the Policy of the State of Ohio to transition to fully competitive electric markets.

Requiring shopping customers to pay the costs of DP&L's electric generation is an inappropriate subsidy flowing from shopping customers to default service customers. (*Id.* at 6.) The Commission should seek to mitigate these inappropriate subsidies to the greatest extent possible. Thus, if the Commission determines that DP&L's default SSO rate should be set by an auction, the Commission should require that those auctions be retail auctions, which would minimize to the greatest extent possible the stranded costs DP&L is seeking to recover through non-bypassable charges.

C. The Commission should reject DP&L's Reconciliation Rider.

Another attempt to protect unregulated affiliates at ratepayer expense is DP&L's proposed Reconciliation Rider ("RR"). Like the SSR and the ST, the RR is an anticompetitive subsidy that is inconsistent with State policy. And like those mechanisms, the RR should not be approved.

1. The RR violates state policy.

The RR is a nonbypassable rider designed to recover costs associated with serving the SSO load. (White Dir. at 7.) According to DP&L witness Rabb's testimony, the RR is designed to recover any deferred balance that exceeds ten percent of the base recovery rate associated with the FUEL Rider, the Reliability Pricing Model ("RPM") Rider, the bypassable Transmission Cost Recovery Rider ("TCRR-B"), the Alternative Energy Rider ("the AER"), and the CBT Rider. (Rabb Dir. at 8.) IGS is not taking the position that these costs are unrecoverable, but that any recovery should not be allowed through a nonbypassable rider. (White Dir. at 7.)

As these costs are incurred to serve the SSO load, not shopping load, and therefore they should be recovered from the benefiting, non-shopping customers. "All of these costs are incurred specifically for the purpose of providing SSO service"—service that shopping customers neither use nor cause the costs of. (White Dir. at 7; Tr. at 2239.) In addition to requiring non-cost-causers to pay, the RR provides "no mechanism to share the benefit with shopping customers in the event the true-up of these riders results in a credit to the SSO rate." (White Dir. at 8.)

Thus, if the RR is established as a non-bypassable rider, it would constitute an inappropriate subsidy flowing from shopping customers to non-shopping customers in violation of state policy, as discussed above. *See* R.C. 4928.02(H).

2. Instead of the RR, the Commission should modify DP&L's ESP to include a retail-auction mechanism.

Nevertheless, IGS recognizes that the Commission may find it appropriate to establish some mechanism to ensure that if shopping increases above certain levels, non-shopping customers are not left shouldering the burden of excessive stranded costs. However, a retail auction, as advocated for herein would eliminate the need to adopt Rider RR because with a retail auction, and the cost and risk associated with customer migration would be borne by CRES suppliers. Therefore, the Commission should reject the RR, and require DP&L to modify its ESP to include provisions instituting retail auctions. (White Dir. at 9.)

D. Any transfer of generation assets to an affiliate must be at the higher of net-book or fair-market value.

DP&L witness Jackson testified about the fixed-asset impairment to DP&L's Conesville and Hutchings generating facilities, which resulted in an $80.8 million pretax write-off and a $52 million post-tax write off. (Jackson Dir. at 5.) This write-off represents a substantial reduction of the net-book value of these generating facilities. (Tr. 232.) According to DP&L Witness Rice, DP&L "expects to request that the Commission authorize DP&L to transfer its generation assets by December 31, 2017." (Rice Dir. at

4.) Mr. Rice also testified that DP&L may transfer these facilities to DP&L's unregulated affiliate, DPLER. (Tr. at 792.)

If DP&L transfers generating assets that have been paid for by DP&L's customers to DPLER at net-book value, or anything less than fair market value, DPLER will have received a subsidy in violation of State policy. *See* R.C. 4928.02(H); *see also Ameritech Ohio v. Pub. Util. Comm.*, 86 Ohio St.3d 78, 80 (1999) (affirming Commission order finding violation of anti-discrimination statutes where utility "attempted to aid its [unregulated] affiliate" by "receiv[ing] less compensation" than otherwise applicable). To avoid allowing this unlawful and anticompetitive subsidy, the Commission should require that, if and when DP&L requests authority to transfer its generating assets, that it do so at the higher of either net-book or fair-market value.

III.   CONCLUSION

IGS respectfully requests that the Commission adopt the proposals and modifications described above.

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I hereby certify that a copy of the foregoing Initial Post-Hearing Brief for Interstate Gas Supply, Inc. d/b/a IGS Energy has been served upon the following parties via electronic mail this 20th day of May 2013:

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