BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY BRIEF OF INTERSTATE GAS SUPPLY, INC. D/B/A IGS ENERGY

Mark A. Whitt (Counsel of Record)
Andrew J. Campbell
Gregory L. Williams
WHITT STURTEVANT LLP
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, Ohio 43215
Telephone: (614) 224-3911
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
williams@whitt-sturtevant.com

Vincent Parisi
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000
Facsimile: (614) 659-5073
vparisi@igsenergy.com

ATTORNEYS FOR
INTERSTATE GAS SUPPLY, INC.
D/B/A IGS ENERGY

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I. INTRODUCTION

The Dayton Power and Light Company's ("DP&L") electric security plan ("ESP") feigns compliance with the State's electricity policy. While there are a few half measures that promote the transition to competitive markets in DP&L's territory, its ESP leaves much to be desired. In order to fully promote the State's policy of transitioning to competitive markets, DP&L's ESP should be modified in three important ways.

First, the Commission should modify DP&L's ESP to include a Purchase of Receivables ("POR") program. POR programs are a tried and true method of promoting competitive markets in Ohio. DP&L's brief does not establish otherwise.

Second, the Commission should reject the anticompetitive Service Stability Rider ("SSR") and Switching Tracker ("ST"). Neither help competition; indeed, both hinder the advancement of State policy. Likewise, the Commission should not burden shopping customers with the costs of various true-up riders—costs that they have not incurred—via the nonbypassable Reconciliation Rider ("RR").

Third, in lieu of a wholesale auction, the Commission should adopt a retail auction to set DP&L's default generation price. A retail auction would be superior to a wholesale auction insofar as retail auctions are better aligned with State policy and, should the Commission decide to authorize the SSR, will mitigate the cost impact of that mechanism.

II. ARGUMENT

A. DP&L articulates no sound reason why the Commission should not adopt a POR program.

DP&L resists implementation of a POR program on three grounds. It starts with a conclusory argument that a POR program would be "very costly" and "provide[] no benefit to customers." (DP&L Initial Brief at 102 (citing Tr. 2309) (internal quotations omitted).) But this is not the case. As detailed in IGS's Initial Post-Hearing Brief, a POR program promotes State policy and the efficient provision of service by eliminating needless costs-of-service and credit-standard distinctions for different customers while causing no hardship (financial or otherwise) to DP&L. Any reasonable and prudent costs DP&L incurs in operating a POR program can be recovered by DP&L, just as these costs are recovered in the Duke Ohio service territories and all of the major gas utilities in Ohio.

DP&L next argues that the proposed POR program "lacks specifics." (*Id*. at 101–02.) But that IGS has not attempted to dictate to DP&L or the Commission all of the specific details of a POR program is no reason to dismiss the concept out of hand. The Commission and DP&L have myriad successful POR programs—in both Ohio and other jurisdictions—that they may look to in designing one that will work for DP&L's shopping customers. DP&L cannot be heard to cry foul because of the fact that designing a successful POR program will require getting into specifics.

DP&L also argues that "there is no Commission rule that requires DP&L to implement" intervenor-proposed competitive enhancements, "and there is thus no basis for the Commission to order additional enhancements," including a POR program. (*See id.* at 100.) This is true, but irrelevant. There *is* a rule that allows the Commission to modify an ESP to include a POR program, *see* R.C. 4928.143(A), as well as a State policy that encourages it to do so, *see* R.C. 4928.02. If the existence of a specific rule were the touchstone for what is or is not permissible in an ESP, many of DP&L's

proposals would have to be rejected as well, including the riders and true-up mechanisms discussed below.

At bottom, neither DP&L nor any other party has offered a sound reason *not* to adopt a POR program, while the evidence abounds that a POR program will be good for the State and DP&L's shopping customers. The Commission should modify DP&L's ESP to include a POR program.

B. The Commission should reject DP&L's SSR and ST.

1. The SSR and ST are improper attempts to collect the equivalent of transition revenues.

DP&L argues that neither the SSR nor the ST are "transition charges" under Ohio law because they are not "cost-based charges." (DP&L Initial Brief at 43.) Therefore, according to DP&L, the Commission is not prohibited from authorizing each of those riders. (*Id*. at 45.) The problem for DP&L is that R.C. 4928.38 prohibits the Commission from authorizing *either* transition revenues *or* "any equivalent revenues" after the market development period ("MDP"). Saying that SSR and ST charges are not "cost-based" gets DP&L nowhere.

DP&L admits that the SSR and the ST "were designed to allow DP&L the opportunity to earn a reasonable ROE." (*Id*. at 43.) But to be more specific, the SSR and the ST were designed to allow a specific ROE on the *utility's generation assets*. (*See* Chambers Dir. at 23–24.) The company admits that the book value of these assets exceeds their market value. (*See id.* at 25.) This means that these generating assets cannot operate economically in a competitive market. It is the inability to recover these "stranded" costs that results in a lower-than-desired ROE. (*Id.*) And it is these stranded costs that DP&L is attempting to recover with the $687.5 million SSR and the as-yetunknown amount of the ST—unrecovered generation revenues arising from the assets' inability to compete in the market. *See* R.C. 4928.39(A)–(D).

The revenues DP&L seeks to recover through the SSR and the ST represent the same type of revenue that DP&L was allowed to collect in its 1999 ETP case. SSR and ST revenues are therefore the equivalent of transition revenues. There is no getting around this. R.C. 4928.38 expressly forbids the receipt of transition revenues "or any equivalent revenues" after DP&L's MDP, which ended on December 31, 2005. The time has long since arrived for DP&L's generation to "be fully on its own in the competitive market." R.C. 4928.38.

2. R.C. 4928.143(B) does not permit transition revenues to be recovered as "stability charges."

DP&L next claims that even if SSR and ST revenues are deemed transition charges, they are nevertheless recoverable as "stability charges" under R.C. 4928.143(B)(2)(d). (DP&L Initial Brief at 46.) But DP&L never explains how its proposed charges fit the statutory definition. R.C. 4928.143(B)(2)(d) allows an ESP to include charges "relating to limitations on customer shopping . . . bypassability, standby, back-up, or supplemental power service, [and] default service . . . as would have the effect of stabilizing or providing certainty regarding retail electric service." DP&L does not explain how the SSR and the ST would allegedly "stabilize" or "provide certainty" to any aspect of retail electric service.

Likewise, DP&L simply asserts that there is a "conflict" between R.C. 4928.38 and 4928.143(B)(2)(d), and since the latter statute was enacted after the former, the latter controls. (DP&L Initial Brief at 46.) But there is no conflict between these statutes. One addresses transition charges, which were approved as a mechanism to compensate utilities for generation investments made prior to retail competition. The other has nothing to with compensation. So-called "stability charges" are limited to mechanisms that stabilize or provide certainty regarding retail service. The Generally Assembly recognized this distinction in enacting R.C. 4928.141(A) (as a part of S.B. 221) by directing the Commission to "exclude any previously authorized allowances for transition costs" from an electric utility's SSO. Far from R.C. 4928.141(B)(2)(d) and 4928.38 being irreconcilable, R.C. 4928.141(A) makes it perfectly clear that transition revenues or their equivalent may not be recovered in a utility's SSO.

No matter how DP&L tries to spin it, the bottom line is that the SSR and the ST are illegal, anticompetitive, and should be rejected.

C. If the Commission approves the SSR, it should also adopt a retail auction to set DP&L's default price.

1. There is statutory authority for a retail auction mechanism.

DP&L argues that "there is no statutory support for a retail auction." (DP&L Initial Brief at 49.) In making this argument, DP&L ignores the very statute it cites as authority to recover transition charges under the guise of stability charges. As IGS's Matthew White explained, R.C. 4928.143(B)(2)(d) allows the Commission to authorize retail auctions. (Tr. 2612–13.) The statute itself makes this clear, as it permits any term or condition "as would have the effect of stabilizing or providing certainty regarding retail electric service." R.C. 4928.143(B)(2)(d). A retail auction complies with this statute in at least three ways.

First, as opposed to a wholesale auction, a retail auction allows CRES providers to bid for the right to serve customers *directly*. The additional benefit this direct relationship provides encourages supplier participation in the market. More participating suppliers stabilizes the retail electric service market because greater numbers reduces the net effect any one supplier can have on that market. *See* R.C. 4928.143(B)(2)(d).

Second, the Commission could determine the retail price at which auction participants must serve customers. A retail auction would be an "ascending clock" auction in which CRES providers bid the number of tranches they would be willing to serve shopping customers at a Commission-set discount off the base generation rate. Finally, the Commission would retain the authority to reject an auction result if it believes that it is not in the public interest or that it will not benefit customers. This combination of Commission authority has the effect of "providing certainty regarding retail electric service." *See* R.C. 4928.143(B)(2)(d). This language clearly allows the Commission to authorize a retail auction to the very same extent that it might authorize a wholesale auction. Any argument to the contrary is disingenuous.

2. A retail auction would be more aligned with State policy and could help mitigate the cost impact of the SSR.

DP&L mischaracterizes Mr. White as saying "there is no reason to expect rates would be lower under a retail auction than under a wholesale auction." (DP&L Initial Brief at 49.) This is *not* what Mr. White said. Mr. White testified that there very well could be reason to expect rates would be lower "to the extent suppliers are willing to pay . . . more for a retail relationship with a customer, depending on how the retail auction is structured." (Tr. 2605.) Mr. White refused to speculate, however, what that price would be, explaining: "I can't tell you what the price is going to be in retail auctions versus wholesale auctions because that would be just speculation, but what I can say is . . . it's potential to structure the bidding to come in below DP&L's base generation rates." (Tr. 2606.)

A retail auction would further State policy to a greater degree than a wholesale auction. It is the policy of the State of Ohio to transition to fully competitive electric markets. *See* R.C. 4928.02. Retail auctions put all customers in a direct retail relationship with a CRES supplier; wholesale auctions do not. This relationship will encourage customers to become engaged in the market, and engaged customers are better able to protect their own interest and project their own preferences in a competitive market, as Mr. White explained. (*See* Tr. 2618–19.)

Retail auctions would have the added benefit of not exacerbating stranded costs. As detailed in IGS's Initial Post-Hearing Brief, if the Commission determines that the SSR is appropriate then the surplus revenues received from the bidders in a retail auction could be used to reduce the cost of that rider. For these reasons, a retail auction is superior to, and the Commission should adopt it in lieu of, DP&L's proposed wholesale auction.

D. If the Commission approves both the SSR and a wholesale auction, then it should not accelerate DP&L's transition to a 100% auction-based price, which would reduce DP&L's default price at the expense of shopping customers.

If the Commission approves the anticompetitive SSR and rejects the superior retail auction, then it should not further come down on shopping customers by accelerating DP&L's transition to a 100% auction-based price. Commission Staff, the Ohio Consumers' Counsel ("the OCC"), FirstEnergy Solutions ("FES"), and Ohio Partners for Affordable Energy ("OPAE") advocate for a faster transition; Staff and the OCC specifically argue that it would allow customers to more quickly benefit from low electricity wholesale prices (Staff Initial Brief at 16; OCC Initial Brief at 19). But shopping customers certainly would not benefit.

In the first place, DP&L's R. Jeffrey Malinak testified that a faster transition would be, at best, "a wash" for default service customers. (Tr. 656.) That is, default service customers would not realize a savings, but would at best break even. This is because to the extent a faster transition lowers DP&L's default price, its revenues would also be lower, which would increase the amount of the SSR. (Tr. 656; DP&L Initial Brief at 63 (in order to maintain an average ROE of 7% with an accelerated transition, the amount of the SSR would increase from $151 million to $163 million annually).) But even this best-case scenario would not apply to shopping customers.

Shopping customers—who pay a competitive price, not the noncompetitive, default price—would not break even, let alone realize any savings. Instead, their cost for service would *increase*, despite unfounded suggestions to the contrary. (*See, e.g.,* OCC Initial Brief at 21 and FES Initial Brief at 60 (claiming that an accelerated transition to 100% auction-based pricing would encourage CRES providers to lower prices).) There is absolutely no evidence to support any suggestion that an accelerated transition would do anything but force shopping customers' electric bills to get *more* expensive. They would be required to pay their retail price *plus* an inflated nonbypassable SSR—inflated in an amount equal to the "savings" default customers would receive. That is, default customers would receive a discount paid for by shopping customers. The "benefits" of an accelerated transition are simply illusory, not to mention contrary to the State policy of prohibiting anticompetitive subsidies flowing from a competitive to noncompetitive retail electric service. R.C. 4928.02(H).

If the Commission approves both the SSR and wholesale auctions, it should not further burden shopping customers by accelerating DP&L's transition to 100% auction-based pricing.

E. The Commission should not allow nonbypassable recovery of various true-up riders in DP&L's RR; if it does, it must modify DP&L's ESP to otherwise promote State policy.

1. Default service customers should pay for the deferred balance of true-up riders.

The RR is a nonbypassable rider designed to recover, among other things, any deferred balance that exceeds ten percent of the base recovery rate associated with any of the following true-up riders: the FUEL Rider, the RPM Rider, TCRR-B, AER, and the CBT Rider. (Rabb Dir. at 8.) But these costs are not caused by shopping customers and, therefore, should not be paid by shopping customers. (White Dir. at 7.) To make recovery of these costs nonbypassable is to authorize an inappropriate subsidy flowing from shopping customers to nonshopping customers in violation of State policy. *See* R.C. 4928.02(H).

2. If the Commission authorizes the recovery of costs as proposed by DP&L in the RR, then it should also include a mechanism to share any credit with shopping customers.

If the Commission authorizes recovery of the true-up riders as proposed by DP&L, the Commission should also include a mechanism to share the benefit of any credit to these riders with shopping customers. As it is currently designed, when the deferred balance of these riders exceeds ten percent, DP&L will be allowed to recover that excess in the nonbypassable RR. (Rabb Dir. at 11.) This recovery "will be trued-up on a seasonal quarter basis to account for any over- or under-collection." (Rabb Dir. at 11.) But in the event that there is any over-collection for a particular period, it is unclear how that credit will be shared with customers. It is quite possible that the credit will be shared via a reduction in the default price. But this mechanism ignores the nonbypassable payments that shopping customers, who are not subject to any price reduction in the default price, have made.

If the Commission authorizes nonbypassable recovery for costs that are not incurred by shopping customers, to be equitable the RR should also include a mechanism that shares any credit to these true-up riders with shopping customers.

3. If a nonbypassable RR is approved, it should include the costs of a POR program.

Among the costs DP&L proposes to recover through the RR are certain "competitive retail enhancements," as well as the costs of conducting competitive auctions. DP&L witness Dona Seger-Lawson (who sponsored the testimony of Emily W. Rabb) testified that the "costs of implementing and administering the CBP should be shared by all customers because customers are free to switch to alternative suppliers and return to the SSO at anytime." (*Id*. at 12.) This is another way of saying that because all customers benefit from the CBP, all customers should bear the costs of the CBP.

The same can be said for costs associated with a POR program. All customers, whether they shop or not, currently pay DP&L's billing and collections costs through distribution rates. A POR program would essentially be another "retail enhancement" to DP&L's billing and collections process. All customers would be eligible to shop; in fact, depending on their needs, customers could switch back and forth between DP&L's default service and service offered by CRES providers. Because a POR-enhanced billing and collections process would be available to all customers, the costs for that enhancement should be paid by all customers. Requiring shopping customers to pay billing and collections-related costs twice—once through distribution rates, and again through the RR—would be plainly inconsistent with state policy.

The RR as currently proposed is not consistent with State policy. It would result in an anticompetitive subsidy from shopping customers to nonshopping customers and hinders the development of the electric market. But if the Commission approves this mechanism anyway, it should also adopt IGS's modifications.

III. CONCLUSION

DP&L's claimed need for "financial integrity," "service stability," and "enhancing competition" is in reality a thinly-veiled attempt to keep CRES providers out of DP&L's service territory. If the Commission approves the ESP at all, it should do so with the conditions outlined by IGS in its post-hearing briefs.

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Respectfully submitted,

/s/ Mark A. Whitt
Mark A. Whitt (Counsel of Record)
Andrew J. Campbell
Gregory L. Williams
WHITT STURTEVANT LLP
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, Ohio 43215
Telephone: (614) 224-3911
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
williams@whitt-sturtevant.com

Vincent Parisi
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000
Facsimile: (614) 659-5073
vparisi@igsenergy.com

ATTORNEYS FOR
INTERSTATE GAS SUPPLY, INC.
D/B/A IGS ENERGY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief for Interstate Gas Supply, Inc. d/b/a IGS Energy has been served upon the following parties via electronic mail this 5th day of June 2013:

Thomas.mcnamee@puc.state.oh.us
Devin.parram@puc.state.oh.us
Judi.sobecki@dplinc.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
joliker@mwncmh.com
Amy.spiller@duke-energy.com
Jeanne.kingery@duke-energy.com
BMcMahon@emh-law.com
Elizabeth.watts@duke-energy.com
Rocco.DAscenzo@duke-energy.com
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
jkyler@BKLlawfirm.com
myurick@taftlaw.com
zkravitz@taftlaw.com
mhpetricoff@vorys.com
smhoward@vorys.com
ssherman@kdlegal.com
jhague@kdlegal.com
Stephanie.Chmiel@ThompsonHine.com
Philip.Sineneng@ThompsonHine.com
Michael.Dillard@ThompsonHine.com
matt@matthewcoxlaw.com
Bojko@carpenterlipps.com
Sechler@carpenterlipps.com
bill.wells@wpafb.af.mil
chris.thompson.2@tyndall.af.mil
gmeyer@consultbai.com
cfaruki@ficlaw.com
jsharkey@ficlaw.com
mwarnock@bricker.com
tsiwo@bricker.com
tony_long@ham.honda.com
asim_haque@ham.honda.com
haydenm@firstenergycorp.com
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com
jejadwin@aep.com
gpoulos@enernoc.com
ricks@ohanet.org
cmooney2@columbus.rr.com
tobrien@bricker.com
Christopher.miller@icemiller.com
Gregory.dunn@icemiller.com
Chris.michael@icemiller.com
trent@theoec.org
cathy@theoec.org
joseph.clark@directenergy.com
dakutik@jonesday.com
aehaedt@jonesday.com
ejacobs@ablelaw.org
mjsatterwhite@aep.com
stnourse@aep.com
ssolberg@eimerstahl.com
stephen.bennett@exeloncorp.com
Cynthia.Brady@Constellation.com
mchristensen@columbuslaw.org

/s/ Gregory L. Williams
Gregory L. Williams, Esq.

One of the attorneys for
Interstate Gas Supply, Inc.
d/b/a IGS Energy