

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Dayton Power and Light Company for an) Case No. 15-1830-EL-AIR
Increase in its Electric Distribution Rates)
)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 15-1831-EL-AAM
Accounting Authority)
)
)

In the Matter of the Application of Dayton)
Power and Light Company for Approval of) Case No. 15-1832-EL-UNC
Revised Tariffs)
)
)

INITIAL BRIEF OF INTERSTATE GAS SUPPLY, INC.

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I. INTRODUCTION

The question in this case is simple. Should Choice customers be required to pay more because they exercise their right to shop?

Under the current construct, Choice customers must pay for their own electric generation service, and also pay for costs to support utility default generation customers. This creates an artificial penalty for shopping for electricity in Ohio.

Now, the Commission must evaluate a Stipulation and Recommendation (“Stipulation”) that would embrace a flawed methodology to allocate costs between standard service offer (“SSO”) and Choice customers. Specifically, the Stipulation proposes that the Commission authorize Dayton Power & Light (“DP&L”) to recover through its non-competitive distribution rates costs related to its provision of SSO service. This outcome is not only inequitable, but it is unlawful. Under Ohio law, the Commission lacks the authority to allow the utility to recover costs to provide SSO generation service through distribution rates.

Making matters worse, the Stipulation would allow for the continuation of significant fees on CRES provides. Such fees would be required from all CRES providers just to be able offer competitive services in DP&L’s services area. These costs are in addition to the costs that CRES providers must incur to provide generation service to their customers, despite the fact that DP&L recovers the same comparable cost for SSO customers through distribution rates. Therefore, the Stipulation results in a world where shopping customers are double charged for competitive services—once for the CRES service that they actually do receive and a second time to support SSO generation service

which they don't receive and, potentially a third time for any fees assessed to the customer or CRES providers.

The proposal before the Commission is equivalent to heads SSO customers wins; tails choice customers lose. It is unjust, unreasonable, unlawful, and fundamentally unfair to assign costs directly to customers and their CRES suppliers when a customer shops, and to then assign the DP&L's comparable costs to non-competitive distribution service rates when a customer take the SSO. Costs associated with the SSO must be allocated to that service—not distribution rates. To that end, Interstate Gas Supply, Inc. ("IGS") and the Retail Energy Supply Association ("RESA") have proposed a more appropriate cost allocation methodology, which refunctionalizes DP&L's SSO-related costs to the bypassable SSO rate. RESA and IGS' proposal is net revenue neutral to all customers, is based on an actual cost analysis and would remedy the currently unlawful subsidy flowing from distribution rates to SSO generation service. Further, RESA's proposed modification in consistent with Ohio law and policy and should therefore adopted.

In addition to discriminating against shopping customers, the Stipulation contains other discriminatory provisions. For example, it proposes rate structures that would discriminate against distributed generation customers. Moreover, the Stipulation fails to rectify DP&L's practice of discriminating against privately held CRES providers in the assessment of collateral and credit requirements.

Therefore, to the extent that the Commission authorizes DP&L's application to increase rates, it should modify the Stipulation to address the errors identified herein.

II. BACKGROUND

A. Restructuring and Unbundling

In 1999, the Amended Substitute Senate Bill (“S.B. 3”) restructured the Ohio electric market. S.B. 3 “restructured Ohio's electric-utility industry to foster retail competition in the generation component of electric service.”¹ “In short, each service component was required to stand on its own.”² The foundation for competition was established by requiring “the three components of electric service — generation, transmission, and distribution — to be separated.”³ This process was initially implemented through the electric transition plans filed by the investor owned utilities to implement the mandate in S.B. 3. The Commission took a hatchet to separate the existing pancaked rates into distribution, transmission, and generation. This first step was important as it laid the initial foundation for customers to evaluate differing competitive retail electric service options from different suppliers.

Through restructuring, the General Assembly eliminated the Commission’s authority over competitive retail electric services, except for certain limited areas such as the standard service offer. The Commission has no authority to regulate or provide compensation for competitive retail electric services through distribution rates. Indeed, “a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963.” Since restructuring

¹ *Industrial Energy Users-Ohio v. Pub. Util. Comm’n*, 117 Ohio St. 3d 486, 487 (2008).

² *Migden-Ostrander v. Pub. Util. Comm’n*, 102 Ohio St. 3d 451, 452-53 (2004).

³ *Industrial Energy Users-Ohio v. Pub. Util. Comm’n*, 117 Ohio St. 3d 486, 487 (2008).

occurred, the Commission has not exercised its traditional regulatory authority to increase DP&L's base distribution rates under Chapter 4909.18, that is until this proceeding.

B. The Application to Increase Distribution Rates

Pursuant to R.C. 4909.18, on November 30, 2015, DP&L filed an application to increase its base electric distribution rates ("Application").⁴ DP&L's last base rate case was in 1991, at a time when DP&L was vertically integrated. The current application proposed to increase its rates by approximately \$65.8 million. DP&L sought to collect the distribution rate increase through a combination of increased customer charges, demand charges, and volumetric charges.

As discussed further below, the application also proposed to recover through distribution rates costs related to utility provided SSO generation service. While discovery ensued on the Application, little substantive activity occurred in the proceeding until the issuance of the Staff Report of Investigation ("Staff Report") on March 12, 2018.

C. The ESP Case

Pursuant to R.C. 4928.143, on February 22, 2016, DP&L filed an application to establish a standard service offer in the form of an electric security plan ("ESP"). On January 30, 2017, a diverse group of parties submitted a Stipulation and Recommendation⁵ to resolve the contested issues in this proceeding.⁶ As part of that

⁴ Because DP&L failed to mark the Application as an exhibit or to attempt to move the Application into the record, any citations to the Application refer to the Staff Report of Investigation.

⁵ ESP Order at 2 (Oct. 20, 2017).

⁶ To the extent that IGS withdraws from the Amended Stipulation and Recommendation, IGS reserves the right to require parties to support the Stipulation and Recommendation executed on January 30, 2017 before the Commission or a court of competent jurisdiction.

settlement, DP&L agreed to establish a component of the SSO rate to recognize costs related to but avoided by default service.

On March 14, 2017, following additional negotiations and bargaining, the parties to the initial Stipulation, the Commission Staff, and other parties executed an Amended Stipulation⁷ to resolve the outstanding issues in this proceeding.⁸ The Amended Settlement made the Reconciliation Rider (“RR”) bypassable to customers served by a CRES provider.⁹ Further, the Amended Stipulation acknowledged the existence of SSO-related costs embedded in distribution rates. While the Amended Stipulation allowed for a relatively small allocation of SSO uncollectible expense to SSO service, the lion’s share of the evaluation and reallocation was delegated to DP&L’s pending distribution rate case.

Regarding the immediate allocation, the Stipulation required the removal of uncollectible expense “charge offs” associated with SSO-related uncollected receivables, with an additional allocation to occur in this proceeding to remove any additional SSO-related costs uncollectible expenses embedded in distribution rates.¹⁰ The remainder of

⁷ IGS Ex. 2 (hereinafter referred to as “Amended Stipulation”).

⁸ ESP Order at 2-3 (Oct. 20, 2017).

⁹ *Id.* at 11.

¹⁰ The Amended Stipulation provides:

As originally proposed in DP&L’s distribution rate case, DP&L will implement an Uncollectible Rider to recover the uncollectible expense through a nonbypassable, annually filed true-up rider with the exception that DP&L will recover uncollectible expense associated with bypassable standard service offer rates through a bypassable component of the Uncollectible Rider. This rider will recover uncollectible expense that has historically been included in individual rate components and will track and recover actual costs. Implementation of this rider also represents the removal of uncollectible expense from other individual rate components except for the historical uncollected uncollectible Percentage of Income Payment Plan amounts up to the effective date of the rider. DP&L will address any uncollectible expense included in base distribution rates in the annual true-up filing of this rider, which will include an adjustment to revenue until new base distribution rates are in place.

the unbundling evaluation and reallocation of SSO related costs was delegated to this proceeding:

*In DP&L's distribution rate case (Case No. 15-1830-EL-AIR), there will be an evaluation of costs contained in distribution rates that may be necessary to provide standard service offer service. Any reallocation of costs to the standard service offer as a result of this evaluation will be revenue neutral to DP&L.*¹¹

The Amended Settlement also deferred to this proceeding issues related to supplier fees and the supplier tariff.¹²

On October 20, 2017, the Commission issued an Opinion and Order modifying and approving the Amended Stipulation. While the Order authorized many aspects of the Amended Stipulation—including the framework for evaluating costs “that may be necessary to provide the standard service offer”¹³—the Order modified the RR, making recovery of OVEC-related costs non-bypassable.¹⁴ Consequently, IGS and several other entities filed applications for rehearing.¹⁵ The Commission has yet to issue an Entry on Rehearing.

D. The Staff Report and Stipulation

ESP Amended Stipulation at 19-20 (emphasis added).

¹¹ ESP Amended Stipulation at 9.

¹² “IGS and RESA are not prohibited from advocating for unbundling or changes to SSO rate or supplier tariffs in that proceeding or any other distribution rate case.” ESP Amended Stipulation at 38, FN 10.

¹³ *Id.* at 9.

¹⁴ *Id.* at 35.

¹⁵ Given that the Amended Stipulation provided parties with the right to withdraw from as a signatory party in the event of a modification that is not appropriately addressed in an Entry on Rehearing (and litigate as if the Amended Stipulation was never filed), it is a distinct possibility that there will be additional litigation in the DP&L ESP Case.

On March 12, 2018, the Commission Staff issued the Staff Report detailing its investigation of DP&L's proposed rate increase. Among other things, as purportedly required by the Amended Stipulation, the Staff Report included a short section discussing the Staff's evaluation of SSO-related costs proposed for recovery through distribution rates. Although the Amended Stipulation provided there would be an evaluation and reallocation of costs necessary to support the SSO, the Staff Report reframed the required analysis and added additional conditions:

Staff attempted to evaluate those costs contained in the distribution rates that are necessary to provide standard service offer (SSO) service *and would be removed from DP&L distribution expenses if SSO service was no longer a default service*, and those costs that are not already recovered through a bypassable charge.¹⁶

In addition to changing the scope of the evaluation contemplated by the Amended Stipulation, the Staff Report delegated its evaluation to DP&L, stating that “[t]he Company at this time is unable to quantify different costs between shopping and non-shopping customers and expressed that it would be prohibitively expensive to track costs for the functions of administering the competitive retail market or providing a standard service offer.”¹⁷ Moreover, despite DP&L's agreement to refunctionalize costs to the SSO in this case, in an about-face, DP&L claimed that all SSO-related costs (and costs related to administering the choice market) are “appropriately assigned to the distribution function of DP&L because a distribution utility is required by law to offer a standard service offer and has obligations with regard to administering aspects of the competitive market.”¹⁸

¹⁶ Staff Report at 28 (emphasis added). Staff's testimony, however, did not defend its initial recommendation that any analysis should focus no costs that would be removed if there was no default service. Staff changed its position in the testimony of Mr. Smith, claiming that no allocation should occur because there is some yet-to-be-quantified amount of choice-related costs that DP&L incurs.

¹⁷ *Id.*

¹⁸ *Id.*

The Staff Report, however, identified one cost proposed for recovery through distribution rates that was undeniably related to the SSO and therefore appropriate for refunctionalization to the SSO:

Nevertheless, Staff has identified one potential area, the cost associated with Regulatory Expense (FERC 928), which contains the PUCO/OCC assessment expense. Staff recommends that the SSO generation revenue percentage of the PUCO/OCC assessment expense be recovered through an appropriate bypassable rider.¹⁹

Adding insult to injury, the Staff Report made no recommendations regarding DP&L's proposed switching fees applicable to CRES providers and their customers with respect to switching (\$5 per switch) and historical usage requests (\$150 per request).

The Staff Report further recommended a reduction to the increase in the customer charges, as well as a reduction to the increase in demand charges. But the Staff Report continued to accept DP&L's proposed methodology for calculating a customer's billing determinants. That methodology is based upon three separate calculations, but each calculation is focused on a customer's non-coincident demand, rather than the customer's demand when there is stress on the distribution circuit. Therefore, the methodology is disconnected from principles of cost causation.

Finally, the Staff Report contained no recommendations regarding DP&L's collateral and credit requirements, even though such issues had been reserved for evaluation in this case under the Amended Stipulation.

Based upon the clear and apparent infirmities in the application and the Staff Report, IGS and the Retail Energy Supply Association submitted detailed objections.

¹⁹ *Id.*

On June 18, 2018, certain intervenors entered into a Stipulation and Recommendation (“Stipulation”). On the eve of trial, DP&L and the City of Dayton entered into a Supplemental Stipulation. Neither the Stipulation nor Supplemental Stipulation addressed any of the objections submitted by IGS or the Retail Energy Supply Association. Therefore, IGS will only address the Stipulation briefly.

On June 26, 2018, DP&L submitted the testimony of Sharon Schroder to support the Stipulation and Recommendation. At the hearing, DP&L submitted only the testimony of Ms. Schroder and witness Barry Bentley to support the reasonableness of the Stipulation. Neither witness was presented by DP&L to provide testimony to support the reasonableness of the costs that DP&L proposed for recovery through distribution rates²⁰ or the cost of service study.²¹ Therefore, their direct testimony and the Stipulation provides little weight to resolve the issues raised in IGS and RESA’s objections.

E. The Staff Report Erred and the Stipulation should be Modified

As noted above, IGS and RESA submitted several objections, which were not resolved or addressed by the Stipulation.

1. Unbundling

First, IGS objected to the Staff Report’s incomplete, and conclusory analysis of SSO-related costs proposed for recovery through distribution rates. While IGS appreciated the Staff Report’s identification of a *minimal amount of costs* associated with default service proposed for recovery in distribution rates, IGS objected to the Staff

²⁰ TR Vol. I at 33 L 5-8. As Mr. Schroder stated, “No, I wasn’t involved in the preparation of the original application.” Tr. Vol. I at 67 L 22-24. “I don’t directly support any of the detailed support of those costs, just the costs that are – that ultimately are included as part of the Stipulation and the resulting rates and the pieces that are supported here in the Stipulation.” Tr. Vol. I at 68 L 12-20.

²¹ Tr. Vol. I at 68 L21 to 69 L 12.

Report's process for evaluation as well as the amount of costs identified. Specifically, IGS objected to the Staff Report's failure to identify and recommend that DP&L allocate to the SSO all costs contained in distribution rates that may be necessary to provide that service.²² IGS further objected to the Staff Report's recommendation to unbundle distribution rates using a short-term avoided cost analysis.²³ IGS further objected to the Staff Report's acceptance of DP&L's cost of service study and the failure to properly functionalize, classify, or allocate costs associated with the provision of the SSO to that service rather than distribution rates.²⁴

Moreover, IGS noted that DP&L's difficulty to identifying costs in distribution rates necessary to support default service is irrelevant.²⁵ The purpose of a Staff Report is to perform an *independent investigation of the utility's proposal* to increase its rates—it is not intended to rely on the exclusive analysis of the utility. If that were the case, there would be no statutory obligation or benefit of a staff report. The utility would simply be allowed to put its desired rates into place. Moreover, the Staff's failure to conduct a analysis of its own is not convincing, given that in other areas of the Staff Report, the Staff sought and obtained the assistance of an independent auditor when its own analysis fell short.²⁶ Accordingly, the Staff Report should have independently evaluated each category of costs and derived a methodology to identify and allocate costs associated with default service to that service.

²² Objections to Staff Report and Summary of Major Issues of Interstate Gas Supply, Inc. at 4-9.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 5.

²⁶ See Staff Report, Blue Ridge Consulting Services, Inc. Audit of Plant in Service.

IGS and RESA submitted the testimony of J. Edward Hess in support of its objection to the Staff's flawed evaluation of SSO-related costs proposed for recovery in distribution rates. Mr. Hess is an esteemed former member of the Commission Staff, holding the role of Chief of the Accounting and Electricity Division of the Utilities Department. Mr. Hess was intimately involved in both the passage of restructuring legislation and the implementation of SB 3 in its final form. Indeed, Mr. Hess was responsible for managing the Staff's herculean effort of simultaneously implementing transition plans for eight electric distribution utilities on an expedited. Given Mr. Hess' prior experience, his testimony supports IGS objection within the appropriate historical context, factual analysis, and policy.

Mr. Hess recommended that DP&L unbundle the distribution costs required to process and administer the standard service offer (SSO) and allocate those costs to SSO customers directly rather than allocating those costs to all customers including shopping customers. Mr. Hess testified it is unlawful and unreasonable to consider these costs distribution related. Mr. Hess determined that "the SSO rate is artificially low because it is only a wholesale pass-through of commodity costs. It does not include all other additional costs incurred by Dayton necessary to process and administer SSO service."²⁷ Mr. Hess determined that this has a negative impact, because "[s]hopping customers are subsidizing the costs of non-shopping customers through the distribution rates."²⁸ Moreover, "Artificially low SSO rates have a negative effect on competition."²⁹

²⁷ RESA/IGS Ex. 2 at 11.

²⁸ *Id.* at 12.

²⁹ *Id.* at 12.

“[S]ubsidizing the SSO leads to less competition in the Dayton service territory and fewer products being available to customers.”³⁰

He further recommended that the SSO-related costs proposed for recovery in this case be refunctionalized to SSO rates as they relate to the provision of competitive service. He proposed a non-bypassable credit and avoidable charge rider to achieve this result. The net impact is revenue neutral to DP&L.

The result of Mr. Hess’ allocation is three-fold. First, it ensures that non-shopping customers pay for all the services that they receive.³¹ Second, it ensures that shopping customers are not charged for services that they do not receive. Third, the ultimate result of his proposed allocation is to eliminate an existing subsidy that artificially lowers the price of SSO service. Thus, Mr. Hess’ proposed allocation provides a more level playing field between the SSO and services available in the competitive market. Unbundling and reallocating SSO-related costs to the non-shopping customers and adding the cost to the advertised price-to-compare will continue the Commission’s long-standing practice of appropriately allocating costs to cost causers as well as eliminating barriers for customers to leave the SSO and shop for a competitive retail supplier. This is also consistent with the State’s policy to ensure the availability of unbundled and comparable retail electric service and corrects for the current problem of subsidization by the regulated utility.

As discussed below, Mr. Hess further identified that Staff Report contained several flaws.

a. The Staff Report’s Flawed Framework

³⁰ *Id.*

³¹ RESA/IGS Ex. 2. at 4-5.

Initially, Mr. Hess identified a critical foundational flaw which flows through the entirety of the Staff's analysis:

The issue that was stipulated to in the SSO case requested an evaluation of costs contained in distribution rates that are necessary to provide standard service offer service. The Staff added an additional standard that the costs will also be removed from Dayton distribution expenses if SSO service was no longer a default service.³²

Mr. Hess further noted that the Staff's analysis misses the mark inasmuch as:

We are not recommending that the SSO service no longer be the default service. Cost allocation is not an avoidable expense issue that reduces the revenue requirement calculation. It is a cost of service allocation issue. Costs that are necessary to provide standard service customers may not reduce the revenue requirements of the distribution company in the short term. However, these costs are necessary to administer and process the SSO portion of an SSO customer's service and should be allocated to the SSO customer rather than socialized to all distribution customers.³³

As discussed previously, the status of the Amended Stipulation is already on shaky ground. The Staff Report's modification of the agreed upon unbundling framework—in addition to being legally wrong—further erodes confidence in the settlement process.

b. Staff's flawed fact finding "investigation" into SSO-related costs

Next, Mr. Hess challenged the Staff Report's attempt to sidestep the unbundling issue based upon DP&L's difficulty of tracking costs by function. As Mr. Hess testified:

We agree that tracking these costs individually could be expensive, although Dayton has not identified how expensive that process would be. Regardless, that is why we are recommending a cost of service allocation methodology that approximates the costs incurred by Dayton in providing this service. It is the industry's acceptable methodology to identify costs between different types of customers when tracking costs is prohibitively expensive.³⁴

³² RESA/IGS Ex. 2 at 6-7.

³³ *Id.* at 7.

³⁴ *Id.* at 7.

During cross-examination, DP&L and Staff confirmed Mr. Hess' conclusion that it is common industry practice to use allocation factors to assign costs when it is determined that it would be cost prohibitive to directly track and assign costs.³⁵ Thus, the Staff Report's claim that it would be too difficult to undertake the process that Staff and DP&L agreed to in the Amended Stipulation is unsubstantiated and discredited by their own testimony. This portion of the Staff Report should be given no weight in the Commission's analysis of this case.

c. Staff's Half-Complete Unbundling of Uncollectible Expenses

In addition to altering the framework for its analysis, the Staff Report failed to complete the unbundling of uncollectible expenses agreed to in the ESP Stipulation. As noted previously, the ESP case immediately allocated to the bypassable portion of uncollectible expense rider the "charge offs" or "bad debt" associated with uncollected SSO receivables.³⁶ The Stipulation required DP&L in this proceeding to remove any additional uncollectible expenses from base distribution rates.³⁷ Yet, DP&L identified that there is \$1.4 million in uncollectible administrative overhead costs proposed for recovery through base distribution rates.³⁸ Mr. Hess concluded that a portion of the \$1.4 million must be allocated to the SSO consistent with the Amended Stipulation. There should be no debate over the Staff Report's oversight and DP&L's obligation to allocate to the SSO a portion of these uncollectible costs; therefore, IGS will not address this issue further.

³⁵ Tr. Vol. II at 218 L 6-10; Tr. Vol. II at 326 L 25 to 327 L 3.

³⁶ *Id.* at 14.

³⁷ ESP Amended Stipulation at 19-20.

³⁸ RESA/IGS Ex. 2 at 10.

d. Distribution Rates Subsidize SSO Service

While DP&L and Staff alleged that it would be difficult to directly track costs associated with the SSO that are proposed for recovery through distribution rates, they agreed that such costs do in fact exist. Mr. Hess provided a comprehensive list of these costs:

- Call center infrastructure and employees to maintain appropriate customer service and customer complaints for SSO customers;
- Printing and postage to communicate with SSO customers;
- Accounting infrastructure and employees to establish and maintain records and data sufficient to verify compliance with any Commission rules for SSO customers;
- IT employees, infrastructure, and software;
- Administrative and general salaries and infrastructure to comply with the regulatory rule requirements for the SSO service and oversee minimum standards for service quality, safety and reliability and to manage the risks of providing the service;
- Outside and inside legal, regulatory, and compliance personnel to comply with the regulatory rule requirements for the SSO;
- Administrative and processing costs for uncollectible;
- Office space for employees to provide these services;
- The regulatory assessments for the PUCO and the Ohio Consumers' Counsel (OCC) that are based on SSO generation revenue, but are recovered through distribution rates;
- Taxes Other than Income Taxes such as labor taxes, property taxes and excise taxes associated with other costs to support SSO service.³⁹

According to the FERC Uniform System of Accounts, Dayton accounts for these expenses in FERC categories Customer Accounting Expense, Customer Service and

³⁹ RESA/IGS Ex. 2 at 14-15.

Information Expense, Sales Expense, Administrative and General Expenses and Taxes Other than Income Taxes Expense. At various points of the hearing, DP&L and Staff agreed that many of these costs must be incurred to support the SSO.⁴⁰ These costs proposed for recovery through distribution rates are in addition to the unfunded subsidy that the Stipulation proposes that DP&L provide to the SSO, for example, for \$5 million in unrecovered litigation expenses related to the last SSO case.⁴¹

d. CRES Providers Bear Comparable Costs and Pay Fees to DP&L

The record reflects that the costs that SSO-related costs that DP&L proposes to recover through distribution rates “are like the costs that are required of the CRES providers to administer and process shopping customers generation service.”⁴² Some of these costs are detailed by the Commission’s own rules. For example, like DP&L, CRES providers must have resources to investigate customer inquiries, complaints,

4901:1-21-08(B) requires CRES providers to investigate customer complaints and provide a status report within three business days following receipt of the complaint. This rule requires CRES providers to staff and educate a complaint department and be prepared to respond to any complaint that a customer initiates. Similarly, OAC Section 4901:1-10-21(C) requires each electric utility investigate customer/consumer complaints and provide a status report within three business days of the date of receipt of the complaint.⁴³

⁴⁰ Tr. Vol. I at 50 L 10 to 51 L 12 (uncollectible expense overhead); Tr. Vol. I at 86 L 18-25 (call center expense); Tr. Vol. II at 220 L 9-19 (call center expense); Tr. Vol. II at 223 L 7-25 (regulatory expenses); Tr. Vol. II at 231 (unrecovered SSO litigation expenses); Tr. Vol. II at 236 (unrecovered SSO-related cash working capital requirements); Tr. Vol. II at 305 L 4-22 (SSO-related legal, regulatory, IT, and call center expenses); Tr. Vol. I at 51 L 9-12 (accounting and tracking costs).

⁴¹ Tr. Vol. II at 231 L 18-23.

⁴² RESA/IGS Ex. 2 at 8.

⁴³ *Id.* at 9.

Moreover, Mr. Hess identified many other costs such as customer education, protections against misleading practices, administration and overhead costs associated with contracts, record retention requirements, compliance with Commission rules, and customer billing:

Other types of costs would include providing minimum standards for customer service quality, safety, and reliability, providing consumers with sufficient information to make informed decisions about competitive retail electric service, protect consumers against misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of CRES and in the administration of any contract for that service, establish and maintain records and data sufficient to verify its compliance with the requirements of any applicable commission rules and support any investigation of customer complaints, maintain those records for no less than two years, establish reasonable and nondiscriminatory creditworthiness standards, require a deposit or other reasonable demonstration of creditworthiness from a customer as a condition of providing service, provide reasonable access to its service representatives, a customer complaint process, environmental disclosures, timely provide to the customer up to twenty-four months of the customer's payment history, net-metering service and customer billing and payments.⁴⁴

*Each of these costs are in addition to the millions of dollars in switching fees and interval data fees that CRES providers pay DP&L just to serve customers.*⁴⁵ Indeed:

In the test year alone, CRES suppliers and their customers paid Dayton \$247,120 in switching fees. These fees likely exceeded \$1 million since 2012. Customers are not required to pay switching fees to return to the SSO. Moreover, Dayton charges CRES providers \$150 for each interval data request. During the test year, CRES providers paid Dayton \$339,300 in interval data fees. The historical usage fees amounted to over \$500,000 in 2016 alone, and approximately \$2.7 million since 2012. Each of the fees discussed above are separate and apart from internal costs that CRES providers must incur to make a competitive product available and must recover these costs through their rates.⁴⁶

⁴⁴ *Id.*

⁴⁵ *Id.* at 10-11.

⁴⁶ *Id.* at 10-11.

Incredibly, DP&L has performed zero analysis to support the reasonableness of any of the fees that it assesses to CRES providers or customers.⁴⁷

After reviewing the outcome proposed by the Stipulation, Mr. Hess concluded the proposed paradigm—requiring CRES customers to pay for overhead costs of their CRES providers, embedded fees, and the overhead of SSO customers through distribution rates—is fundamentally unfair. Therefore, Mr. Hess was compelled to quantify the competitive SSO costs that the Stipulation proposes DP&L be permitted to recover through its non-competitive distribution rates and to recommend a reallocation of such costs to SSO rates.

e. Quantification of the SSO Subsidy

To quantify the distribution rate subsidy the Staff Report acknowledged but declined to address, Mr. Hess relied upon standard industry ratemaking practices to develop a methodology to eliminate SSO-related costs from distribution rates. Specifically, Mr. Hess evaluated each of the categories of expenses and rate base items proposed for recovery through distribution rates:

I reviewed the Schedule C-2.1 and have identified several accounts included in distribution expenses that would include the type of expenses I discussed earlier. These accounts are included in the FERC categories Customer Accounts Expense, Customer Service and Information Expense, Sales Expense, Administrative and General Expenses and Taxes Other Than Income Taxes. I reviewed these categories by specific FERC account to identify the accounts that would include costs that should be allocated to SSO customers. These accounts include costs such as PUCO and OCC assessments, legal and regulatory expenses, payroll taxes, call center costs, accounting costs, infrastructure costs, and several other categories of costs I have identified throughout my testimony. These accounts, which I have identified, contain costs that are being incurred to process or administer to the SSO. For instance, Customer Account Expense contains costs for receiving, recording, and handling of inquiries, complaints, and requests for investigations from customers, including SSO customers.

⁴⁷ RESA/IGS Ex. 1 at 1-3.

Dayton also recovers items such as the PUCO and OCC assessment, legal and compliance and other costs required to support the SSO service through the General and Administrative account. These are items that directly support SSO customers. The accounts that I selected are identified on JEH-2.⁴⁸

Mr. Hess “then eliminated expenses that would have been directly associated with expenses and investments outside of the five categories.”⁴⁹

Regarding the categories of expenses Mr. Hess identified, “[t]he adjusted expenses listed in each category support both distribution service and SSO service and need to be allocated to both services.”⁵⁰ To allocate these expenses between distribution service and SSO service, Mr. Hess “developed an allocation factor based upon the relationship of Dayton’s SSO revenue to total Dayton revenue and an allocation factor based on a weighted customer count allocator.”⁵¹ The use of allocation factors is common industry practice when costs cannot easily be allocated directly to a cost causer. As explained further by Mr. Hess, the net result of applying the allocation factors of each category of cost is to identify expenses and rate base items that should be eliminated from distribution rates recovery from shopping customers.⁵²

To calculate the revenue allocation factor, Mr. Hess “divided Dayton’s SSO revenue by Dayton’s total revenue collected from customers to get the revenue allocation

⁴⁸ RESA/IGS Ex. 2 at 16.

⁴⁹ *Id.* at 16. The practical consequence of this step is to accept all eliminated expenses as appropriately allocated to non-competitive distribution service.

⁵⁰ *Id.* at 17.

⁵¹ *Id.*

⁵² *See Id.* at 5.

factor.”⁵³ For the weighted customer allocation factor, Mr. Hess “accounted for SSO customers as both distribution customers and generation customers and accounted for shopping customers as only distribution customers.”⁵⁴

Further, Mr. Hess’s allocation factor is particularly conservative because the numerator of the calculation considers only customers on the SSO. But the denominator counts each SSO customer twice (once for their distribution service and again for their competitive service) in addition to counting shopping customers once in the denominator. Consequently, although DP&L has more customers on SSO service than shopping, the weighted customer allocation factor is only 35%.⁵⁵ This result is conservative but gives weight to the fact that DP&L also provides distribution services to shopping customers in the five categories that Mr. Hess identified.

Mr. Hess further explained the instances that necessitated the use of each allocation factor:

The Customer Accounts Expenses and the Customer Service and Information Expenses that I allocated are customer related expenses. These expenses vary by numbers of customers. I applied a weighted customer allocation ratio to these expenses consistent with that relationship. The ratio was weighed to account for the costs to support distribution service for CRES customers and distribution and generation service for SSO customers.

I chose to allocate Administrative and General Expenses and Rate Base based on the amount of SSO revenue Dayton receives from customers. A utility company’s revenues provide a proxy for and generally mirror the costs that are required to provide the utility service to various customer categories.⁵⁶

⁵³ *Id.* at 17.

⁵⁴ *Id.*

⁵⁵ RESA/IGS Ex. 2 at JEH4.

⁵⁶ *Id.* at 17-18.

In total, Mr. Hess identified \$11,399,452 in unlawful SSO-related costs proposed for recovery through distribution rates.⁵⁷ The specific categories and the resulting allocations identified by Mr. Hess are contained on Exhibits JEH 2 and JEH 3.⁵⁸

f. The Non-bypassable Credit and Bypassable Charge Rider

To address the unlawful recovery of SSO-related costs, Mr. Hess recommended that the Commission authorize a rider to eliminate the recovery of those costs through distribution rates. “The costs first need to be excluded from the Staff’s proposed rates by calculating a volumetric credit rider that will be applied to all customers.”⁵⁹ Mr. Hess recommended that the rider be calculated “by customer class by dividing the total amount per class by the total sales (shopping and non-shopping customers) per class.”⁶⁰

To ensure that SSO customers pay for the cost of their own service, Mr. Hess recommended that “[t]hese same costs will then be charged to the SSO customer by creating an avoidable rider by customer class. The amount per kWh would be calculated by dividing the identified costs by the SSO sales by customer class.”⁶¹

Based upon the Staff Report, Mr. Hess’ methodology would require the following kilowatt hour charges and credits to refunctionalize costs to the SSO:

⁵⁷ RESA/IGS Ex. 2, JEH 1.

⁵⁸ During the hearing, Mr. Hess identified a very minor miscalculation on JEH 2 whereby a revenue allocation factor was applied instead of the weighted customer allocation. The discrepancy results in a difference on the top line of JEH 1 and JEH 2 of (11,235,576 vs. 11,234,677 or approximately \$900). The difference does not have a material impact on Mr. Hess’s recommendation.

⁵⁹ RESA/IGS Ex. 2 at 18.

⁶⁰ *Id.* at 18.

⁶¹ *Id.* at 18.

	Residential	Comercial	Industrial and Other
Credit Rate to All Customers	\$ (0.0020050)	\$ (0.0003035)	\$ (0.0000076)
Avoidable Rider to Non-Shoppers	\$ 0.003804	\$ 0.001332	\$ 0.000035

The net impact of Mr. Hess' recommendation "provides a revenue-neutral mechanism for Dayton while also allocating costs more equitably, it provides a better comparison for shopping customers furthering the Commission's desires to provide shopping incentives to customers, and it would eliminate the subsidization that the distribution company is currently providing the SSO customers."⁶²

g. The Staff's Testimony

In response to IGS' objection, the Staff presented the testimony of one witness, Craig Smith. Mr. Smith concedes that the Stipulation would authorize DP&L to recover SSO-related costs through its distribution. Staff, however, performed no quantitative analysis of the SSO-related costs proposed for recovery through distribution rates. But Mr. Smith claims that it is appropriate to permit such recovery for two reasons. First, based upon DP&L's discovery responses, he reiterated the Staff Report's conclusion that DP&L is unable to track SSO-related costs and that it would be prohibitively expensive to do so. Second, in a slight twist from the Staff Report, Mr. Smith claims that it is appropriate to recover SSO-related costs in distribution rates because there are also choice-related costs that DP&L incurs and recovers through distribution rates.⁶³ Based upon Staff's "investigation", Mr. smith stated that "Staff determined that both SSO and non-SSO

⁶² *Id.* at 18.

⁶³ Staff Ex. 5 at 13.

customers utilized similar services.”⁶⁴ While Mr. Smith claims that choice-related costs that DP&L incurs are part of “distribution service” that justifies subsidizing the SSO, he fails to acknowledge that choice customers and CRES providers pay DP&L fees for these services. Mr. Smith of course does not recommend the elimination of any of these fees.

In any event, under cross-examination, the holes in Mr. Smith’s testimony were apparent. Mr. Smith admitted he is not in the rates and analysis department, which is responsible for addressing rate-related analysis.⁶⁵ He did not evaluate the cost of service study and he could not testify to its accuracy—he simply accepted it.⁶⁶ And DP&L didn’t present the witness (Bruce Chapman) that sponsored the cost of service study. He further conceded that he has no experience determining whether costs should be functionalized to the distribution service function.⁶⁷ Despite his limited experience, he conceded that it allocation factors are typically used to overcome challenges to directly assign costs to cost causers.⁶⁸ Moreover, witness Parke—the witness that claimed it would be too difficult to directly track SSO-related costs—likewise agreed that allocation factors may be utilized to allocate costs when *it is too difficult to track them directly*.⁶⁹

Moreover, Mr. Smith’s conclusions are based upon DP&L’s discovery responses.⁷⁰ Thus, any flaws in DP&L’s discovery responses carries over into Staff’s conclusions. This

⁶⁴ *Id.* at 8.

⁶⁵ Tr. Vol. II at 288.

⁶⁶ Tr. Vol. II at 291 L 2-4.

⁶⁷ Tr. Vol. II at 290 L 23 to 291 L1.

⁶⁸ Tr. Vol. II 326 L 22 to 327 L 3.

⁶⁹ Tr. Vol. II at 218.

⁷⁰ Staff Ex. 5 at 5.

reality is evident in spades. For example, to support his conclusion that all default service costs are only recovered through the SSO rate, he relied upon DP&L witness park's response to discovery. But Mr. Parke agreed that he performed no quantitative analysis and looked at no documents to reach his conclusion.⁷¹ Moreover, and more importantly, both Mr. Parke and Mr. Smith conceded that there are in fact administrative and processing costs related to the provision of SSO service proposed for recovery in distribution rates.⁷² They just didn't attempt to quantify them.

Additionally, to support his claim that there are choice-related costs proposed for recovery in distribution rates, Mr. Smith relied upon the fact that choice customers selected the interactive voice response ("IVR") option labeled "electric choice." Although there were five IVR options,⁷³ *only 1% of all customer calls resulted in a selection of "electric choice."*⁷⁴ Hardly evidence to suggest that choice customers are receiving comparable service to SSO customers. Moreover, when DP&L has a conversation with a shopping customer, DP&L is not speaking about any specific CRES product in the market and DP&L has no capacity to answer questions about a specific product in the market.⁷⁵ DP&L does not provide competitive retail electric service when it is discussing choice as a general matter.

⁷¹ Tr. Vol. II at 210 at L 10 to 211 L 1.

⁷² Tr. Vol. I at 50 L 10 to 51 L 12 (uncollectible expense overhead); Tr. Vol. I at 86 L 18-25 (call center expense); Tr. Vol. II at 220 L 9-19 (call center expense); Tr. Vol. II at 223 L 7-25 (regulatory expenses); Tr. Vol. II at 231 (unrecovered SSO litigation expenses); Tr. Vol. II at 236 (unrecovered SSO-related cash working capital requirements); Tr. Vol. II at 305 L 4-22 (SSO-related legal, regulatory, IT, and call center expenses); Tr. Vol. I at 51 L 9-12 (accounting and tracking costs).

⁷³ Mr. Smith claimed that there are seventeen IVR options. This is not true. As DP&L's witness, Mr. Bentley, testified, there are five categories. Tr. Vol. I at 26. There are seventeen different categories of internal reports that DP&L may run.

⁷⁴ Tr. Vol. I at 34 L 14 to 35 L 9.

⁷⁵ Tr. Vol II at 325 L 11-20.

But when DP&L's call center engages with SSO customers about the SSO, the call center is providing direct support to a competitive retail electric service provided by DP&L.

Next, Mr. Smith appears to imply that choice customers receive the same level of service as SSO customers in the disconnection and collection process. To support his conclusion, Mr. Smith makes much of the fact that in 2016 a total of \$70,000 was remitted to CRES providers in conjunction with a customer disconnection. The DP&L witness responsible for responding to Staff's discovery regarding collections, however, simply could not provide any information regarding the figures that Mr. Smith relied upon.⁷⁶ As Mr. Bentley stated, "I'm just not that familiar with the specifics behind it."⁷⁷ Indeed, other than his familiarity with the payment priority, DP&L witness Bentley was generally unfamiliar with his own discovery responses. For example, witness Bentley agreed that shopping customers received one third to one half of the disconnection notices that SSO customers received—a factor that indicates services are not equal.⁷⁸ But Mr. Bentley could not provide any insight into whether the shopping customers would only receive a notice of disconnection for failure to pay for distribution charges whereas non-shopping customers would receive disconnection notices for failure to pay distribution and SSO charges.⁷⁹

Likewise, Mr. Bentley sponsored discovery identifying that DP&L "charged off" significantly more receivables from SSO customers (85% to 90% more) after

⁷⁶ Tr. Vol. I at 46 L 25 to 47 L12.

⁷⁷ Tr. Vol. I at 47 L 4-10.

⁷⁸ Tr. Vol. I at 45 L 18 to 46 L 14.

⁷⁹ *Id.*

disconnection.⁸⁰ But he could not explain whether the identified charges were completely distribution-related, whether they included any CRES charges, or whether the “charged off” amounts are remitted to the CRES to attempt to collect themselves.⁸¹

Mr. Smith’s claim that DP&L hears complaints from shopping customers is equally unavailing. Once again, Mr. Bentley could not provide any detail behind the statistics he sponsored. For example, he could not identify whether the complaints related to shopping customers about their CRES provider or simply complaining about power outages.⁸² Furthermore, even if DP&L receives complaints about CRES providers, the appropriate response by DP&L is to direct those complaints to the PUCO or the CRES provider as DP&L does not have jurisdiction to adjudicate CRES complaints. Similarly, Mr. Smith failed to take account for the fact that CRES suppliers may receive calls from customers complaining about DP&L distribution service, that CRES suppliers refer the calls to DP&L, but don’t seek to make DP&L pay for the cost of those calls.

In summary, both Staff and DP&L agree that there are SSO-related costs in distribution rates. They did not attempt to quantify them. They believe that DP&L’s incurrence of some level of unquantified amount of choice-related costs justifies not allocating SSO costs to the SSO. At the same time, neither Staff nor DP&L

⁸⁰ For example, in 2016 approximately \$567,000 in revenue from shopping customers and \$4,530,00 in revenue from SSO customers. Staff Ex. 5, Attachment 3.

⁸¹ Tr. Vol I at 44 L 9-17.

⁸² Q. Are a portion of the complaints identified on this table related to times when a customer that is shopping with a CRES provider has a concern about their distribution service?

A. I don’t know specifically the detail behind this.

Q. And if you know, when a customer has a concern about their competitive retail electric service and they are taking service from a CRES provider, and there's a call to the DP&L contact center, does DP&L refer that customer to their CRES provider?

A. I specifically -- I do not know.

Tr. Vol. I at 37 L5-17.

recommending reducing the fees that CRES providers. and their customers pay DP&L to pay for the choice-related costs that DP&L incurs.

2. Rate Design—Use of Non-Coincident Peak Discourages Distributed Generation

IGS objected to the Staff Report's failure to recommend that DP&L modify the manner in which it establishes commercial customers billing determinants. IGS objected to the Staff Report's acceptance of DP&L's proposed methodology for determining customer demand based upon the non-coincident peak of an individual customer.⁸³ The Staff Report states "[t]he size of a distribution system does not depend on the highest coincident-peak demand on a utility's system, but rather its size depends on the non-coincident peak of the customers it serves."⁸⁴ Under cross-examination, the Staff witness delegated to support the Staff Report could not speak to how DP&L plans its distribution grid.⁸⁵ The witness could not identify whether the distribution system must be designed based upon non-coincident peak or whether each distribution circuit and feeder must be constructed to withstand the coincident peak demand on the circuit.

Moreover, the Staff conceded that they did not consider the impact of utilizing non-coincident peak demand on distributed generation resources, such as solar.⁸⁶ Yet, distribution circuits are likely to peak between the hours of 8:00 and 6:00.⁸⁷ Logically, the distribution circuit is likely to peak at times when a distributed generation, such as onsite

⁸³ Staff Report at 38-43.

⁸⁴ Staff Report at 36.

⁸⁵ Tr. Vol. II at 279 at L 4-7.

⁸⁶ Tr. Vol. II at 279 L 10-15.

⁸⁷ Tr. vol. II at 281 L 14-22.

solar, is producing behind the meter generation that reduces a customer's peak. Consequently, customers with distributed generation that reduce stress on the grid should receive a more efficient price signal than proposed by the Stipulation.

3. Credit and Collateral Requirements

IGS objected to the Staff Report's failure to propose changes to the credit and collateral requirements contained in DP&L's Supplier Tariff. Since the authorization of the Amended Stipulation approving DP&L's electric security plan, DP&L had begun applying its Supplier Tariff inconsistent with its historical practice and to the detriment of CRES providers that are not publicly traded.

Prior to the authorization of DP&L's ESP, DP&L typically required either a de minimus amount or zero credit from CRES providers such as IGS.⁸⁸ After the Commission authorized DP&L's ESP, however, DP&L "changed how it calculated the required credit amount, applying its credit requirements in a manner inconsistent with historical practice."⁸⁹ For CRES providers with the required long-term credit rating, no collateral is necessary. But, for CRES providers without the required credit rating (mainly privately held companies), DP&L's tariff provides that DP&L shall make alternative arrangements. The Supplier Tariff states that "[t]he amount of the security required must be and remain commensurate with the financial risks placed on the Company by that supplier, *including recognition of that supplier's performance.*"⁹⁰ But DP&L does not take

⁸⁸ IGS Ex. 3 at 8.

⁸⁹ *Id.* at 4.

⁹⁰ DP&L Alternative Generation Supplier Coordination Tariff, sheet G8, page 24 of 30 (emphasis added).

the latter factor or the general risk profile of a CRES provider into account when establishing collateral levels.⁹¹

Instead, DP&L requires a CRES provider to post collateral based upon a formula without any weight to supplier performance or strength of balance sheet. DP&L “multiplies 30 days of the supplier’s estimated summer usage by the highest monthly average megawatt-hour price from the prior summer’s PJM Day Ahead market and multiplies by 30 days of the supplier’s capacity obligation by the final Dayton zonal capacity megawatt-day price for the upcoming delivery year.”⁹² “Calculating 30 days of exposure *and* including the capacity obligation significantly increases the amount that a supplier is required to post.”⁹³ DP&L requires significantly more collateral than any of other Ohio distribution utilities.

DP&L’s collateral process “is unduly burdensome to privately held companies with strong balance sheets.” Moreover, “[s]imilar public companies with credit ratings are not required to post any collateral and yet, financially strong private companies are required to post collateral.”⁹⁴ This is fundamentally unfair given that “privately held, unrated companies such as IGS may have little or no business reason to get a credit rating; therefore, DP&L’s tariff is structured to the disadvantage of companies like IGS.”⁹⁵

⁹¹ IGS Ex. 3 at 6.

⁹² DP&L Alternative Generation Supplier Coordination Tariff, sheet G8, page 24 of 30.

⁹³ IGS Ex. 3 at 5.

⁹⁴ *Id.* at 8.

⁹⁵ *Id.* at 8.

Additionally, following the ESP case, DP&L unilaterally changed the remedy timing that it requires. Remedy timing is the amount of time the surety has to pay the obligee any indebtedness the principal has incurred up to the promised amount stated on the bond.⁹⁶ At the time IGS attempted to submit its bond form, the form indicated 30 days. DP&L unilaterally changed the timing to 5 days.⁹⁷ Now the current posted bond form indicates 2 days.⁹⁸

As discussed below, the proposed settlement is unjust, unreasonable, discriminatory, against the public interest, and would violate Ohio law; therefore, it should be modified consistent with the recommendations contained herein.

III. SETTLEMENT EVALUATION CRITERIA

Before approving a contested settlement, the Commission must find that: (1) the settlement is a product of serious bargaining among capable, knowledgeable parties; (2) the settlement, as a package, benefits ratepayers and the public interest; and; (3) the settlement package does not violate any important regulatory principles or practices.⁹⁹

A settlement is not evidence and it is not binding on the Commission. It is a recommendation by parties to a proceeding on how the Commission should address and resolve contested issues and nothing more. A settlement cannot provide the Commission with authority. A settlement does not allow the Commission to disrespect procedural or

⁹⁶ *Id.*

⁹⁷ *Id.* at 9.

⁹⁸ *Id.*

⁹⁹ *Consumers' Counsel v. Pub. Util. Comm'n*, 64 Ohio St.3d 123, 126 (1992). See, also, *AK Steel Corp. v. Pub. Util. Comm'n*, 95 Ohio St.3d 81, 82-83 (2002).

substantive requirements established by the General Assembly or the Commission's rules. For example, Monongahela Power relied upon a settlement for its authority to end the five-year market development period early. The Ohio Supreme Court ("Supreme Court") rejected the claim that the settlement provided support for the early termination, stating:

Nevertheless, to the extent that Section IV of the Stipulation approved by the commission in the ETP Order can be considered an order authorizing the early end of Mon Power's MDP, that order was premature. *It was based upon an optimistic assumption that the requisite levels of the switching rate or effective competition would be achieved by December 31, 2003, an assumption that proved to be unwarranted, making any such order ending the MDP unenforceable because the order exceeded the statutory authority of the commission.*¹⁰⁰

The Commission should heed this warning from the Court. The Stipulation recommends that the Commission exercise its authority under Chapter 4909 to permit DP&L to recover SSO-related costs through distribution rates. The General Assembly eliminated the Commission's authority to authorize the recovery of competitive services through non-competitive distribution rates. Thus, the settlement violates Ohio law, discriminates against choice customers, and is contrary to the public interest.

ARGUMENT

A. The Commission Lacks authority to Authorize Recovery of SSO costs through Non-Competitive Distribution Rates

Prior to 1999, Ohioans received one bundled rate for all retail electric services. Senate Bill 3 restructured the retail electric market, separating the distribution, transmission, and generation functions that were traditionally provided through pancaked

¹⁰⁰ *Monongahela Power Co. v. Pub. Util. Comm'n.*, 104 Ohio St.3d 571, 2004-Ohio-6896 at 26 (2004) (emphasis added).

bundled rates. The purpose of unbundling was to separate the competitive and non-competitive functions so that customers could “shop” for their competitive retail electric service. Prior to restructuring, all retail electric services were regulated under Chapter 4909. Under this traditional form of regulation, commonly referred to as economic regulation, the Commission established retail electric rates based upon a formula.¹⁰¹ “Stated differently, the Commission may not legislate in its own right.”¹⁰²

The Commission has no authority to regulate or provide compensation to support competitive retail electric service through distribution rates. Indeed, the General Assembly specifically provided that “*a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission under Chapters **4901. to 4909.**, 4933., 4935., and 4963.*” R.C. 4928.05(A)(1) (emphasis added). SB 3 removed the Commission’s jurisdiction to regulate competitive retail electric service under Chapter 4909. In other words, the Commission lacks authority to authorize the recovery of costs related to competitive retail electric services in a distribution rate case filed under 4909.18.

By law, the SSO is a utility offering of a competitive retail electric services.¹⁰³ The record is uncontroverted that the Stipulation would permit DP&L to recover SSO-related costs through distribution rates authorized under R.C. 4909.18. Moreover, these costs are comparable to the costs that CRES providers must incur simply to make a competitive product available. Thus, the Stipulation proposes recovery of competitive retail electric

¹⁰¹ *Office of Consumers’ Counsel v. Pub. Util. Comm’n*, 67 Ohio St. 2d. 153 (1981).

¹⁰² *Id.* at 166.

¹⁰³ R.C. 4928.03; RC. 4928.141 (“a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers.”)

service costs through distribution rates. The Stipulation proposes an outcome outside the Commission's jurisdiction.

The Commission's authority to supervise and regulate the SSO is limited to R.C. 4928.141-144. "Nothing in this division shall be construed to limit the commission's authority under sections 4928.141 to 4928.144 of the Revised Code, On and after the starting date of competitive retail electric service." R.C. 4928.05(A)(1). Of those statutes, the Commission's ability to establish rates is limited to R.C. 4928.142 and 4928.143. Although electric security plans are typically referred to as SSOs, in fact, only the portion of the electric security plan that relates to competitive retail electric service comprises the SSO.

Moreover, R.C. 4928.143(b)(2)(g) explicitly contemplates recovering all costs related to SSO service through an SSO. The statute provides for SSO cost recovery for items "relating to transmission, ancillary, congestion, *or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that the electric distribution utility incurs on or after that date pursuant to the standard service offer.*" While Ohio law dictates recovery of SSO related costs through the SSO, here, the Stipulation proposes that the Commission authorize the recovery of competitive retail electric service-related costs under Chapter 4909 and to recover such costs through non-competitive distribution rates. This outcome is barred by statute, policy, and violates the public interest. Therefore, the Commission must modify the stipulation and recommendation to properly reallocate costs related to the SSO to that service.

The Staff's attempt to classify the SSO-related costs at issue as related to "distribution service" is not persuasive. The Staff's claim is based upon the assumption

that DP&L incurs costs to facilitate the choice market. The Staff presents a flawed apples to oranges comparison.

First, when DP&L incurs cost related to the choice market, these costs relate to services that are a traditional monopoly function. For example, when DP&L provides meter data through an EDI transaction to a CRES provider, there is no other way to obtain that data to be able to bill a customer.¹⁰⁴ When DP&L provides such service, it is not in fact providing a competitive retail electric service. The provision of the CRES product is handled by the CRES, which sends an EDI transaction in the other direction to administer the product.

Likewise, when DP&L's call center educates one of its customers regarding the general existence of the choice market, DP&L is not in fact providing a competitive retail electric service. It is acting as a distribution utility to facilitate choice as required by Ohio's restructuring legislation. Conversely, when DP&L's call center provides customer support regarding DP&L's SSO product, it is incurring cost directly related to the provision of a competitive generation service.

Second, Staff's argument is inconsistent. While Staff seeks to treat choice-related costs as a part of "distribution service," Staff ignores the fact that there are significant fees applicable to Choice customers and their CRES providers to recover the cost of these services. Neither Staff nor DP&L attempted to quantify whether these fees are cost justified. Regardless, if such costs were truly distribution-related, they should be recovered from all distribution customers and the fees should be eliminated. Choice-

¹⁰⁴ RESA/IGS Ex. 1 at 2.

related costs cannot be distribution-related but also recovered directly from the CRES providers and their customers. At bare minimum, the unjustified fees assessed to CRES providers and their customers should be eliminated.

IGS recognizes that the Stipulation and recommendation authorized in DP&L's ESP case designated this proceeding as to evaluate the amount of costs that should be reallocated to SSO bypassable rates. Therefore, IGS submitted the testimony of Edward Hess in this proceeding to provide a recommendation to effectively remove SSO-related costs from distribution rates and refunctionalize those costs to SSO service. Mr. Hess proposed a lawful and reasonable methodology to refunctionalize SSO-related costs to the SSO, whereas the result proposed by the Stipulation is patently unlawful and unreasonable.

B. The Stipulation proposes and Outcome that violates State Policy and Precedent

Ohio law requires the Commission to “[e]nsure the availability of unbundled and comparable retail electric service.”¹⁰⁵ Ohio policy further requires the Commission to ensure that customers have “nondiscriminatory, and reasonably priced retail electric service.”¹⁰⁶ Likewise, the Commission must “[e]nsure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product

¹⁰⁵ R.C. 4928.02(B); *see also* R.C. 4928.05(A)(1) eliminating authority to apply traditional regulatory authority to unbundled competitive services.

¹⁰⁶ R.C. 4829.02(A).

or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.”¹⁰⁷

The Supreme Court has noted that the General Assembly “restructured Ohio’s electric-utility industry to foster retail competition in the generation component of electric service.”¹⁰⁸ To that end, the General Assembly “required the unbundling of the three major components of electric service — generation, distribution, and transmission — and the components that make up the three major service components.”¹⁰⁹ “In short, each service component was required to stand on its own.”¹¹⁰

The Court has rebuffed prior attempts to rebundle the recovery of competitive services through non-competitive distribution rates. For example, in *Elyria Foundry*, 14 Ohio St.3d 305 (2007), the Commission authorized FirstEnergy to recover SSO-related fuel costs through distribution rates. Following an appeal, the Court held that “[f]uel is an incremental cost component of generation service. Thus, by allowing that generation-cost component to be deferred and subsequently recovered in a distribution rate case, or alternatively allowing FirstEnergy to apply generation revenues to reduce distribution expenses, the commission violated R.C. 4928.02(G).” *Id.* at 315. Here, the record evidence shows that the Stipulation would permit DP&L to recover through distribution rates costs components related to the provision of the competitive SSO. Rather than requiring SSO service to “stand on its own”, the Stipulation would permit DP&L to bundle

¹⁰⁷ R.C. 4928.02(H).

¹⁰⁸ *Industrial Energy Users-Ohio v. Pub. Util. Comm’n*, 117 Ohio St. 3d 486, 487 (2008).

¹⁰⁹ *Industrial Energy Users-Ohio v. Pub. Util. Comm’n*, 117 Ohio St. 3d 486, 487 (2008).

¹¹⁰ *Migden-Ostrander v. Pub. Util. Comm’n*, 102 Ohio St. 3d 451, 452-53 (2004).

components of the SSO into distribution rates and therefore provide the SSO with an anticompetitive subsidy. The subsidy is collected exclusively from shopping customers; therefore, it is discriminatory. The Stipulation proposes a result that violates Ohio law and Supreme Court precedent that requires unbundled rates.

C. Customer Billing Determinants Should be Assessed in a Manner that Promotes Distributed Generation

The Stipulation proposes to increase customer charges and continue to utilize the non-coincident peak-like method to establish a customer's billing determinants. It is the state policy to "[e]ncourage implementation of distributed generation."¹¹¹ Both of the above provisions in the Stipulation would negatively impact customer's that deploy distributed generation.

1. The Customer Charge Increase

A customer charge is a fixed-unavoidable charge. It erodes the value of net metering and fails to account for the benefits that distributed generation customers may provide to the grid. Therefore, any increases to the customer charge negatively impact the economic value of deploying distributed generation resources. Accordingly, the Commission should reject the increase to the customer charge and reallocate the revenue requirement to DP&L's volumetric rates.

2. The Demand Charge Calculation

The Stipulation accepts DP&L's proposed methodology for assigning a customer's billing determinants. That methodology focuses on a customer's peak demand,

¹¹¹ R.C. 4928.02(K).

regardless of the hour in which the usage occurs.¹¹² While the Staff concedes that one of the goals of distribution ratemaking is to send an efficient price signal,¹¹³ DP&L's proposed process fails to do so. The proposed demand calculation will not incentivize customers to reduce their usage in times of system stress or otherwise behave in such a way to reduce the need construct additional distribution lines in the long-term.

A more localized measurement of customer usage at times when the local distribution system is operating near capacity or at a localized peak on the distribution circuit is a better reflection of the customer's contribution to the cost of the distribution system. The manner in which the Staff Report proposes to calculate demand charges may discourage customers from deploying distributed energy resources that shift customer peak demand away from hours when the localized distribution system is under stress. This result is inconsistent with State policy and the Commission's intent in Power Forward.

To that end, IGS recommended that DP&L calculate a customer's demand based upon their usage at the time of the peak on that customer's localized distribution circuit or feeder. At a minimum, DP&L should be directed to make available a pilot tariff through which a customer with distributed generation may have their billing determinants assessed based upon their usage during the peak on their localized distribution circuit. This will ensure that distribution rates are more closely aligned with principles of cost causation.

D. DP&L's Credit and Collateral Practices are Discriminatory and Violate its Own Tariff

¹¹² Fourteenth Revised Sheet No. D19, page 3 of 4.

¹¹³ Tr. Vol. II at 280 L 5-8.

While DP&L did not propose any changes to its Supplier Tariff in the Application, the Amended Stipulation preserved the right of RESA and IGS to propose additional changes in this proceeding: “IGS and RESA are not prohibited from advocating for unbundling or changes to SSO rate or supplier tariffs in that proceeding or any other distribution rate case.”¹¹⁴ As Mr. Crist testified, DP&L has recently started applying its tariff in a manner that discriminates against privately held companies, therefore additional changes and directives from the Commission are necessary.

Companies without the bond rating specified in DP&L’s tariff must make alternative credit arrangements with DP&L. In furtherance of such alternative credit arrangements the Commission should order DP&L to follow its tariff and order additional changes to the tariff to ensure that DP&L’s credit requirements are just, reasonable, and not discriminatory against privately held companies.

First, DP&L should be directed to follow the portion of its tariffs that requires that “[t]he amount of the security required must be and remain commensurate with the financial risks placed on the Company by that supplier, including recognition of that supplier’s performance.”¹¹⁵ DP&L’s practice is to ignore this section in its tariff in its entirety—DP&L gives no weight to the strength of a CRES providers balance sheet, business diversity, capital structure, or past performance. DP&L is applying its tariff in an unlawful and unreasonable fashion, discriminating against one CRES provider in the market in violation of R.C. 4905.34 and R.C. 4905.26.

¹¹⁴ Amended Stipulation at 38, FN 10.

¹¹⁵ DP&L Alternative Generation Supplier Coordination Tariff, sheet G8, page 24 of 30.

Second, DP&L should be directed to modify its tariff to be more in line with other electric distribution utilities. To that end, DP&L should be directed to put in place either a standard collateral amount (such as FirstEnergy) or a calculation based on energy only based upon 15 days' exposure (like Ohio Power Company).¹¹⁶

Third, DP&L should be required to submit any bond form modifications for Commission review and approval. Such a process would eliminate DP&L's ability to unilaterally modify the bond form without due process.

IV. CONCLUSION

For the reasons stated herein, IGS urges the Commission to modify the Stipulation. It is unjust, unreasonable, discriminatory on multiple fronts, contrary to the public interest, and would violate Ohio law. The Commission should modify to the Stipulation and ensure that customers are not penalized for exercising their right to shop. Further, the Commission should modify DP&L's backward rate design proposal and adopt a forward-thinking approach that promotes the development of distributed generation.

Respectfully submitted,

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¹¹⁶ IGS Ex. 3 at 8-10.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Initial Brief of Interstate Gas Supply, Inc.* was served this 17th day of August 2018 via electronic mail upon the following:

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