BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution	)))	Case No. 15-1830-EL-AIR
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority	)))	Case No. 15-1831-EL-AAM
In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs	)))	Case No. 15-1832-EL-ATA

REPLY BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION

Mark A. Whitt (0067996)
Rebekah J. Glover (0088798)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
glover@whitt-sturtevant.com

August 27, 2018

TABLE OF CONTENTS

I. INTRODUCTION

In their initial briefs, several signatory parties attempt to marginalize the remaining issues in this proceeding by claiming that these are merely "marketer" issues, and that by raising them, RESA and IGS are "self-serving" and are somehow harming customers by raising these issues. Not only does this characterization undermine the litigation process, but it also misrepresents the parties potentially affected by these issues. Shopping customers are harmed by each bill that contains charges for distribution service that are more appropriately allocated to SSO customers, and every time a supplier has to pay a fee for which there is no cost justification, shopping customers are further harmed as suppliers have no choice but to embed these costs in their generation rates. The Commission must ensure that all customers are protected from unjust rates, not just the customers certain signatory parties choose to represent.

II. ARGUMENT

Instead of repeating arguments that have been thoroughly explained both in testimony and in RESA and IGS's initial briefs, RESA will simply address a number of misconceptions and problematic arguments made by several of the signatory parties.

A. DP&L has not and cannot justify its failure to determine how much it spends to provide SSO service.

It is undisputed that in the Amended Stipulation signed and approved in DP&L's last ESP case (16-395 Stipulation), DP&L agreed to perform an evaluation of its costs contained in distribution rates that may be necessary to provide SSO service. [1] Despite this clear directive, no such evaluation took place in this proceeding. As a result, distribution prices will continue to recover costs associated with the provision of SSO service in contravention of state law and

[1] 1 *In re Application of the Dayton Power & Light Company. To Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 16-395-EL-SSO, et al, Opinion & Order at 8, 60 (Oct. 20, 2017).

shopping customers will continue to receive discriminatory treatment as they pay this inflated distribution price for services they do not take.

DP&L states that in accordance with the 16-395 Stipulation, "an evaluation was done by DP&L as well as the PUCO Staff."[2] DP&L provides no support for this statement, but one assumes any "evaluation" performed by DP&L refers to the Cost of Service Study it submitted with its original application in that case, which was filed almost two years before the 16-395 Stipulation was approved; and likewise, any such evaluation by Staff would have been, by Staff's own admission, based solely on the same study provided by DP&L. It is irrational to presume that a proper evaluation of costs can be based on a study performed years before the evaluation was even ordered. Staff admits as much in its brief: "To make such a determination one would need a class cost of service study and none was performed in this case."[3]

A secondary argument made by both DP&L and Staff is that a study of the costs associated with providing SSO service is "simply impossible."[4] If that is the case, one must question why DP&L previously agreed to provide such a study. Not only is such a study possible; Staff witness Craig Smith testified that "[i]n order to evaluate the costs contained in DP&L's distribution rates that may be necessary to provide SSO service," one need only "identify those costs related to servicing SSO customers that had not already been identified in bypassable riders. . ."[5] While both Staff and DP&L may argue that there is a cost associated with such an evaluation, it is clearly not "impossible."

Having performed no evaluation of their own, the best Staff and DP&L can do is attempt to poke holes in RESA/IGS witness Ed Hess's allocation methodology. Characterizing his

[2] DP&L Brief at 7.
[3] Staff Brief at 7.
[4] *Id*.
[5] Staff Ex. 5 at 3.

methodology as "flawed" does not change this simple fact: Mr. Hess is the *only* witness who analyzed DP&L's costs and allocated them to shopping and non-shopping customers. The issue is not whether he could have performed an even more in-depth analysis if DP&L had provided adequate discovery responses (DP&L did not). The issue is whether the analysis that was performed adequately supports Mr. Hess's conclusions. Any allocation methodology will necessarily rely on judgments and assumptions, and no evidence has been offered to suggest that the judgments and assumptions Mr. Hess employed are unreasonable or unreliable.

Fundamentally, however, Staff and DP&L's assertion that all costs it incurs are necessarily distribution costs simply by virtue of DP&L being a distribution utility is dangerous and absurd. One does not have to connect too many dots to use this argument to combat the supplier fees discussed below: if all costs DP&L incurs are distribution costs, then any costs incurred to switch customers or provide historical usage data ought to be recovered through distribution rates as DP&L must perform these services as part of its distribution service. It is obvious, however, that this is not the case. There is no reason to believe that just because distribution utilities are required to maintain an SSO function, that function is somehow a distribution service. In fact, state law makes this distinction clear: "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. of the Revised Code . . ."[6] As a competitively bid service, the SSO is specifically prohibited from being regulated as a distribution service, including in how its costs are recovered. As such, any costs associated with it must be removed from distribution rates or be in contravention of state law.

[6] R.C. 4928.05(A)(1) (emphasis added).

B. The Staff Report recommendation regarding OCC and PUCO assessment fees is binding on the Signatory Parties.

Only Staff and OCC's briefs address the issue of the Staff Report recommendation that a portion of DP&L's OCC and PUCO assessment fees relative to SSO revenue should be allocated to the SSO and recovered through a bypassable rider. OCC attempts to take advantage of Staff witness Smith's hearing testimony and state that this recommendation is "withdrawn"[7]; however, as is made clear by Staff's brief, the recommendation still stands. Unfortunately, Staff's brief attempts to undermine the entire rate case process by stating that it "no longer supports" its own recommendation, with literally no explanation or attempt to justify why it should be permitted to walk away from its own Report.[8] As Staff admits in its brief, by virtue of the Stipulation's adoption of the Staff Report, this recommendation is incorporated into the Stipulation.[9]

C. There is no cost justification for supplier fees and those fees should be eliminated.

As mentioned in its Initial Brief, RESA objected to continued existence of certain supplier fees, namely the switching fee and historical usage data fees.[10] These fees have not been justified at any point in this proceeding, and in fact Staff has admitted that because no change to these fees was proposed, it did not even bother to review the fees in its investigation.[11] Absent a demonstration of need by the Company, any such fee imposed on CRES suppliers, and therefore on shopping customers, is unjust and unreasonable and must be eliminated.

Of all the parties to file post-hearing briefs, only DP&L even attempts to address the issue of supplier fees. At the outset, DP&L's attempt to bar RESA from arguing against the legality or appropriateness of its supplier fees falls short.[12] While DP&L correctly cites a

[7] OCC Brief at 6.
[8] Staff Brief at 5.
[9] *Id*.
[10] RESA Brief at 8.
[11] Staff Ex. 1 at 3.
[12] DP&L Brief at 13.

particular provision from the 16-395 Stipulation, it ignores the very next sentence that directly contradicts the point it is trying to make: according to the 16-395 Stipulation, parties were not prohibited "from contesting issues in the distribution rate case" that were not otherwise addressed in the Stipulation, and specifically, "IGS and RESA [were] not prohibited from advocating for unbundling or changes to SSO rate or supplier tariffs in [15-1830-EL-AIR et al] or any other distribution rate case."[13] DP&L's blatant attempt to mislead the Commission here is ridiculous and should be ignored.

Beyond that, DP&L barely addresses the issue of supplier fees, merely stating that because RESA and IGS witnesses did not provide calculations regarding historical usage data, there is no support for eliminating these fees.[14] But RESA and IGS do not bear this burden. As RESA stated in its initial brief, DP&L itself has provided no cost justification, nor did it respond to discovery requests for demonstration of costs. As DP&L states, this is a distribution rate case. It is not intervening parties' responsibility to prove or disprove costs that DP&L claims exist; it is the Company's responsibility to demonstrate costs and justify the recovery thereof. DP&L has not even made a cursory attempt to do so in this case for either the switching fees or the historical usage data fees to which RESA objects. These fees should be eliminated from DP&L's tariffs.

III. CONCLUSION

The Commission has a duty to evaluate the costs and expenses actually incurred by public utilities and assign rates accordingly. When that evaluation process is circumvented in favor of a quick settlement, customers suffer. Suppliers and their customers should not be

[13] 16-395 Stipulation at 38; *id.* fn 10.
[14] DP&L Brief at 13.

penalized for seeking transparency and a true accounting of costs. The Commission should adopt RESA's recommendations and modify the Stipulation accordingly.

Dated: August 27, 2018

Respectfully submitted,
/s/ Rebekah J. Glover

Mark A. Whitt (0067996)
Rebekah J. Glover (0088798)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
glover@whitt-sturtevant.com

ATTORNEYS FOR THE RETAIL ENERGY SUPPLY ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that a copy the foregoing Reply Brief was served by electronic mail this 27th day of August, 2018 to the following:

michael.schuler@aes.com
cfaruki@ficlaw.com
djireland@ficlaw.com
jsharkey@ficlaw.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
christopher.healey@occ.ohio.gov
terry.etter@occ.ohio.gov
bojko@carpenterlipps.com
perko@carpenterlipps.com
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkylercohn@bkllawfirm.com
paul@carpenterlipps.com
sechler@carpenterlipps.com
mfleisher@elpc.org
jvickers@elpc.org
rkelter@elpc.org
kurt.helfrich@thompsonhine.com
stephanie.chmiel@thompsonhine.com
michael.austin@thompsonhine.com
dwilliamson@spilmanlaw.com
lhawrot@spilmanlaw.com
charris@spilmanlaw.com
stephen.chriss@walmart.com
greg.tillman@walmart.com
rdove@attorneydove.com
swilliams@nrdc.org
slesser@calfee.com
jlang@calfee.com
talexander@calfee.com
tdougherty@theoec.org
jfinnigan@edf.org
cmooney@ohiopartners.org
ejacobs@ablelaw.org
joliker@igsenergy.com
mnugent@igsenergy.com
dborchers@bricker.com
mwarnock@bricker.com
jdoll@djflawfirm.com
mcrawford@djflawfirm.com
thomas.mcnamee@ohioattorneygeneral.gov
gregory.price@puco.ohio.gov
patricia.schabo@puco.ohio.gov

/s/ Rebekah J. Glover
Attorney for the Retail Energy Supply Association

Summary: Text Reply Brief electronically filed by Ms. Rebekah J. Glover on behalf of Retail Energy Supply Association