BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power & Light Company for Approval of Its Electric Security Plan.	)))	Case No. 16-0395-EL-SSO
In the Matter of the Application of The Dayton Power & Light Company for Approval of Revised Tariffs.	)))	Case No. 16-0396-EL-ATA
In the Matter of the Application of The Dayton Power & Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13.	)))))	Case No. 16-0397-EL-AAM

SUPPLEMENTAL BRIEF OF INTERSTATE GAS SUPPLY, INC.

Joseph Oliker (0086088)
Counsel of Record
joliker@igsenergy.com
Michael Nugent (0090408)
Mnugent@igsenergy.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000

Attorneys for IGS Energy

August 1, 2019

TABLE OF CONTENTS

PAGE

I. INTRODUCTION 3

II. BACKGROUND 4

A. The Nearly Identical Distribution Modernization Riders 4

B. The Supreme Court's Reversal of the FE DMR 8

III. ARGUMENT 12

A. The DMR Does Not Relate to Distribution Service 13

B. The DMR Does Not Qualify as a Financial Incentive Related to Grid Modernization 14

1. There is No Connection Between the $105 million DMR and Grid Modernization 14

2. The Proposed DMR Contains No Safeguards to Protect Customers 16

C. The DMR Does Not Reflect Sound Reasoning and Cannot be Authorized Under Any Reasonable Interpretation of R.C. 4928.143(B)(2)(h) 16

1. The DMR Fails to Align DP&L's and Customers' Interests 16

2. The DMR Would Provide Unjust and Unreasonable Rates Above the Zone of Reasonableness in Violation of R.C. 4928.143(B)(2)(h) 17

D. The DMR Would Flunk the ESP v. MRO Test 21

IV. CONCLUSION 22

I. INTRODUCTION

The Amended Stipulation and Recommendation ("Stipulation") in this proceeding proposes that the Public Utilities Commission of Ohio ("Commission") authorize the Dayton Power and Light Company ("DP&L") to implement a Distribution Modernization Rider ("DMR") to collect $105 million per year.[1] Following several days of hearings and testimony, Interstate Gas Supply, Inc's ("IGS") briefs demonstrated that the DMR is unlawful, unreasonable, and generally a bad idea for customers, the competitive market, and the state of Ohio.[2]

If IGS' briefs did not give the Commission enough pause to reject the DMR, the Supreme Court of Ohio recently sealed the rider's fate. The Court struck down the lawfulness of the rider's namesake in the Ohio Edison Company, Toledo Edison Company, and the Cleveland Electric Illuminating Company (collectively, "FirstEnergy") service territory.[3] Based upon the Court's decision, it is clear the Commission has no authority to authorize a thinly veiled bailout under the guise of distribution modernization.[4]

In the wake of the Court's order, the Commission has requested that the parties submit supplemental briefs regarding the applicability of the Court's precedent. As discussed below, the *FirstEnergy Decision* further demonstrates that Commission lacks authority to authorize the DMR.

---

[1] Joint Ex. 1.

[2] See generally IGS' Supplemental Post-Hearing Brief and Supplemental Post-Hearing Reply Brief.

[3] *In re in re Ohio Edison Co.*, 2019-Ohio-2401 (hereinafter "*FirstEnergy Decision*")

[4] *Id*. at ¶13-29.

II. BACKGROUND

A. THE NEARLY IDENTICAL DISTRIBUTION MODERNIZATION RIDERS

Rather than restate the complete history of the case, this brief will start at the point in time when DP&L jumped on the bandwagon and tied its fate to FirstEnergy's success or, in this case, failure.

On October 12, 2016, the Commission authorized FirstEnergy to establish an electric security plan ("ESP"), which included a Distribution Modernization Rider ("FE DMR") to collect $133 million per year after tax.[5] In authorizing the FE DMR, the Commission concluded that the "DMR will address a demonstrated need for credit support for the Companies in order to ensure that the Companies have access to capital markets in order to make investments in their distribution system."[6] The rider was designed to provide $133 million per year after tax "in order to improve FirstEnergy's credit position, as determined by its Cash Flow from Operations per-Working Capital (CFO) to debt ratio."[7] "The Commission concluded that the Rider DMR will provide a needed incentive to the Companies to focus innovation and resources on grid modernization."[8]

The Commission authorized the FE DMR with the following three conditions: (1) maintaining FirstEnergy's headquarters in Akron; (2) no change in control of FirstEnergy; and (3) "a demonstration of sufficient progress in the implementation and deployment of

---

[5] *In the Matter of the Application of Ohio Edison, Company, Cleveland Electric Illuminating Company, and Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security* Plan, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing at 95 (Oct. 12, 2016) (hereinafter "*FE Fifth Entry on Rehearing*").

[6] *FE Fifth Entry on Rehearing* at 87-88.

[7] *Id.*

[8] *Id.* at 87.

grid modernization programs approved by the Commission."[9] Regarding grid modernization, the Commission indicated that "the Commission will undertake a detailed policy review of grid modernization in the near future. Following such review, we will address FirstEnergy's pending grid modernization application," which FirstEnergy was required to file under the Stipulation.[10] Stated differently, while the ESP included a placeholder rider for grid modernization, no specific grid modernization investments were authorized or required in the proceeding.

Right around that same time that the Commission authorized the FE DMR, in a case of monkey see, monkey do—a familiar theme in Commission proceedings—DP&L modified its ESP application to request its own DMR.[11] The charge was proposed to support DP&L's financial integrity, with the prospect of eventual grid modernization mentioned as an afterthought.

Specifically, DP&L alleged that "[t]he DMR is necessary to allow DP&L to maintain its financial integrity and to allow DP&L to access equity and debt capital in order to finance transmission and distribution infrastructure modernization investments." Amended Application at 1-2. DP&L did not propose any specific quantity or type of grid modernization in its amended application or any timeframe in which the investment will take place.

---

[9] *Id.* at 96.

[10] *Id.* at 96-97, 107.

[11] *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, et al.,* Case No. 16-0395-EL-SSO, Amended Application of the Dayton Power and Light Company for Approval of Its Electric Security Plan (Oct. 11, 2016).

On March 14, 2017, DP&L and certain parties entered into a Stipulation.[12] The Stipulation recommended that the Commission authorize the DMR to collect $105 million in revenue for three years with the option to extend the DMR for an additional two years.[13] The Stipulation indicates that the DMR is intended to support DP&L's financial integrity by allowing for the reduction of debt at DP&L and DPL Inc.[14] The DMR was not connected or conditioned on DP&L performing any amount of investment in grid modernization.[15] Rather, the DMR is intended to "*position DP&L to make capital expenditures to modernize and/or maintain DP&L's transmission and distribution infrastructure*."[16]

Extension of the DMR is not connected to grid modernization in any fashion. Rather, "[t]he Commission will determine the amount of the Rider DMR for the two year extension period based upon the evidence presented in the separate docket, including, but not limited to evidence of DPL Inc.'s and DP&L's financial needs and evidence of the measures undertaken by DPL Inc. and DP&L, to address their financial issues."[17]

The Stipulation contemplates the potential for grid modernization at some point in the future. But not until after either February 2018 or the completion of the PowerForward initiative—unless an extension is recommended by Staff or granted by the Commission. "The costs of DP&L's grid modernization efforts as outlined in the *to-be filed*

---

[12] Joint Ex. 1.

[13] *Id.* at 4.

[14] *Id.* at 5.

[15] *See generally* Joint Ex. 1.

[16] *Id.* at 5.

[17] *Id.*

Modernization Plan, once approved by the Commission, will be recovered through a new Smart Grid Rider ("SGR").”[18]

Neither the Stipulation or supporting testimony provided any connection between smart grid investment or the level of the charge included in the DMR. Additionally, the Stipulation neither conditioned collection of DMR on the commencement or completion of grid modernization, nor did the Stipulation recommend that the DMR funds be returned to customers if certain milestones are not achieved.

To date, the Commission has not authorized any grid modernization costs. Yet, DP&L has likely collected nearly two hundred million dollars in DMR revenue from customers, with no strings attached.

DP&L has argued that the DMR is lawful although, even without the DMR, it admits that it would earn a just and reasonable rate of return for the provision of distribution service.[19] Without the DMR, its existing cash flows are sufficient to cover all of its ongoing expenses.[20]

It is not disputed that the main purpose of the DMR is to prop up the balance sheet of DP&L’s unregulated parent company, DPL Inc. Particularly, 65-70% of each dollar collected through the DMR is intended to pay off the debts of DPL Inc.[21]

---

[18] *Id.* at 7 (emphasis added).

[19] Tr. Vol. VII at 1130.

[20] Tr. Vol. VI at 990-92; Tr. Vol. VII at 1140-41, 1166 IGS Ex. 1015 at 23-24.

[21] Tr. Vo. VII at 1162.

B. The Supreme Court's Reversal of the FE DMR

While DP&L's quick maneuvering to copy FirstEnergy and request a DMR seemed clever at the time, the Supreme Court recently struck down FirstEnergy's DMR and directed the Commission to remove the rider from the ESP.[22] The Court identified two main reasons, while hinting that more may exist: (1) the rider is not an appropriate incentive; and (2) the Commission failed to establish any safeguards to protect customers.

First, the Court rejected the Commission's definition of incentive.[23] The Court determined that "The commission's finding that the DMR operates as an incentive under R.C. 4928.143(B)(2)(h) is both unlawful and unreasonable because it lacks evidence and sound reasoning."[24] The Court correctly reasoned that the FE DMR does not qualify as a grid modernization incentive because "the companies are not required to make any investments to modernize the distribution grid in exchange for DMR revenues."[25] "Although the DMR may make it possible for FirstEnergy to obtain capital for future infrastructure investment on more favorable credit terms, the evidence cited does not support the commission's finding that the DMR qualifies as an incentive under R.C. 4928.143(B)(2)(h)."[26] Notably, the Court gave no weight to the fact that FirstEnergy's

---

[22] *FirstEnergy Decision* at ¶56.

[23] *Id.* at ¶19.

[24] *Id*.

[25] *Id*. at ¶18

[26] *Id*. at ¶19.

credit rating and borrowing ability—for purposes of grid modernization—would be supported by the DMR revenues.[27]

Second, the Court determined that the rider was not just and reasonable because the conditions placed on the recovery of DMR revenue are not sufficient to protect customers.[28] To be clear, the order authorizing the FE DMR included the following conditions:

> (1) FirstEnergy Corporation keeping its corporate headquarters and nexus of operations in Akron, (2) no change in the "control" of the companies as that term is defined in R.C. 4905.402(A)(1), and (3) a demonstration of sufficient progress in implementing and deploying grid-modernization programs approved by the commission.[29]

But the Court concluded "that there are no discernable consequences or repercussions if FirstEnergy fails to comply with the conditions imposed for receiving DMR funds."[30] Moreover, FirstEnergy would be permitted to retain any DMR revenues collected prior to its failure to meet a condition because "the commission did not make the DMR subject to refund . . . ."[31]

The Court identified that the audit process was meaningless, given that "the parties will not be able to challenge Oxford's findings until well after the DMR funds have been

---

[27] *Id*. at ¶18.

[28] *Id*. at ¶23.

[29] *FE Fifth Entry on Rehearing* at 40-43.

[30] *FirstEnergy Decision* at ¶22.

[31] *Id*.

recovered and spent."[32] And "it is not clear what remedy would be available should the commission (or this court on appeal) find that FirstEnergy has misused DMR funds.[33]

The condition that FirstEnergy undertake grid modernization did not save the rider. "Because the DMR was initially approved for only three years—ending in 2019 unless extended—*it is possible, if not likely, that the companies will recover most, if not all, of the DMR revenue before the commission approves any modernization projects for the companies*."[34]

Finally, the *FirstEnergy* decision provides further guidance that the Commission cannot ignore. An ESP cannot be authorized unless it is more favorable than the otherwise applicable market-based outcome.[35] Considering the DMR, the Court held "we question the commission's interpretation of R.C. 4928.142 to exclude the DMR revenues under the ESP-versus-market-rate-offer test . . . ."[36]

Just like in *FirstEnergy*, the alleged purpose of the DMR is to position DP&L to have the financial wherewithal to invest in modernization of the distribution system. Yet, the amount of money that DP&L seeks to extract from its captive distribution customer base is almost equivalent to the entirety of the current distribution rate base.[37] There is no evidence in the record of a grid modernization plan or any requirement to implement

[32] *Id*. at ¶26.

[33] *Id*.

[34] *Id*. at ¶28 (emphasis added).

[35] *See* R.C. 4928.143(C)(1).

[36] *FirstEnergy Decision* at ¶37.

[37] IGS Ex. 1015 at 27.

any level of grid modernization prior to receiving the DMR funds. Moreover, even if a modernization plan existed that required expenditures equal to the existing distribution rate base, it would be impossible to conclude that the DMR properly aligns customers' and DP&L's expectations.

The DMR, if extended, would allow DP&L to collect from customers over a five year term close to the entire total plant investment in DP&L. Specifically, the rate base of DP&L, which represents the total investment of the company, is $643 million. Moreover, the DMR is significantly larger than the $330 million shareholder equity value on DP&L's balance sheet as of December 31, 2017.[38]

The DMR would provide DP&L with $525 million without doing anything and merely to position DP&L to then turn around and invest in grid modernization to increase customers' rates. Rather than increasing customers' rates twice, first to collect $525 million (for no investment and nothing in return), and second to increase rates again to recover the cost of grid modernization investment, there is no question that customers would rather the entirety of the $525 million be invested in grid modernization, with the caveat that DP&L should not earn a return of or on investment. Given these facts, DP&L's and customers' interests are not aligned with respect to the DMR. Therefore, the DMR cannot be authorized under R.C. 4928.143(B)(2)(h).

Finally, even the Commission can put lipstick on a pig and fit the DMR under R.C. 4928.143(B)(2)(h) (which it cannot), the ESP would still fail the MRO price test by a tune of more than 500 million dollars.

---

[38] *See* IGS Ex. 1015 at JEH-10 at 3.

Given the legal infirmities in the proposed DMR, the Commission should spare the parties—and customers that are already being charged for an unlawful rider—the appellant process and eliminate the DMR now.

III. ARGUMENT

Based upon the Court's precedent in *FirstEnergy*, as well as the remaining legal arguments which the Court declined to address, it is clear that the DMR is unlawful and unreasonable. Under R.C. 4928.143(B)(2)(h), an ESP may include (emphasis added):

> Provisions regarding the utility's *distribution service*, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding *single issue ratemaking*, a *revenue decoupling mechanism* or *any other incentive ratemaking*, and provisions regarding distribution infrastructure and ***modernization incentives*** for the electric distribution utility.

Modernization incentives "may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, ***and a just and reasonable rate of return on such infrastructure modernization.***"

Moreover, in any order authorizing a provision under section (B)(2)(h), the Commission must: (1) examine the reliability of the electric distribution utility's distribution system; and (2) **ensure that customers' and the electric distribution utility's expectations are aligned** and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.[39]

[39] *See* R.C. 4928.143(B(2)(H).

As discussed in *FirstEnergy* and further below, the DMR does not satisfy the criteria in this section. It has no tangible connection to distribution service. Moreover, the DMR has no connection to grid modernization, given that: (1) it is not conditioned upon achieving any level of grid modernization; (2) the size of the DMR is not connected to any amount of grid modernization; (3) the record lacks any evidence of any grid modernization proposal; (4) grid modernization shall not occur—if at all—until some point in time several years after the Stipulation was executed, after the Commission issues orders in another proceeding. Finally, even if there was some tenuous connection between the DMR and grid modernization, DP&L cannot demonstrate that the rider is permissible—in light of its unreasonable and unsubstantiated return—or that the rider aligns customers' and DP&L's expectations. Finally, as the Supreme Court alluded, the DMR would cause the ESP to not be more favorable than the otherwise applicable market rate offer.[40] Accordingly, the Commission should modify the ESP to eliminate the DMR.

A. The DMR does not relate to distribution service

First, and perhaps most importantly, there is nothing about the DMR that relates to *distribution service*. Although the Court declined to address this argument in the *FirstEnergy* case, the fact remains that based upon DP&L's own testimony, the DMR provides revenue to DP&L to pay down debt at DP&L and its parent DPL Inc.[41] There is no service provided—no generation, distribution, or transmission service—to customers in exchange for the rider. Rather, the DMR constitutes revenue to DP&L with nothing in return. Therefore, there is an insufficient connection to distribution service to even

[40] *FirstEnergy Decision* at ¶35-9.

[41] *See* DP&L Ex. 1 and 2.

evaluate the rider under R.C. 4928.143(B)(2)(h). The Commission's evaluation need not go further.

B. The DMR does not qualify as a financial incentive related to grid modernization

In the *FirstEnergy Decision*, the Court was troubled by the lack of causal connection between the DMR and grid modernization.[42] Simply put, the Court concluded that the DMR was awarded to FirstEnergy without requiring any tangible investment in grid modernization, and no penalties for failure to invest or reach certain milestones.[43] Here, the DMR suffers from a similar fate. Just like in *FirstEnergy Decision*, DP&L's DMR holds the "critical problem" deemed by the Court – DP&L is not "*required* to make any investments to modernize the distribution grid in exchange for DMR revenues."[44] DP&L is merely required to *file* a grid modernization plan – *the same commitment from FirstEnergy.* Additionally, like in the *FirstEnergy Decision*, the Commission did not place effective conditions or penalties on DP&L should the funds be used outside or their intended purpose. Further, DP&L's DMR contains additional flaws not even present in the *FirstEnergy* case.

1. There is no connection between the $105 million DMR and grid modernization

There is no nexus between the $105 million DMR and grid modernization. The authorized amount is not tied to investment in any level of grid modernization. DP&L

[42] *FirstEnergy Decision* at ¶27-9.

[43] *Id*.

[44] *Id*. at ¶18 (emphasis in the original).

concedes that the rider was designed to pay down the debt that resides at DP&L and DPL Inc.—mainly the latter, with 70% of the DMR directed at paying down the debt of a non-regulated entity.[45] The collection of DMR funds is not tied to grid modernization—nor could it be, given that this proceeding lacks even a shred of evidence regarding any tangible form of grid modernization. The DMR is intended to *position* DP&L to invest in grid modernization—it is not an incentive that will be provided in recognition of any investment. It's not an incentive; it's a bailout. If the DMR incentivizes anything, it is bad behavior and moral hazard, providing a policy statement that EDUs may be a conduit to extract revenues from their captive customer base to shore up the losses of unregulated entities.

Even the extension of the DMR, and the criteria the Commission will consider, has no connection to grid modernization. All of the issues related to grid modernization are proposed to be addressed in a separate proceeding without any relationship to the DMR. Indeed, any extension will be based upon "DPL Inc.'s and DP&L's financial needs and evidence of the measures undertaken by DPL Inc. and DP&L, to address their financial issues."[46]

Given these facts, the DMR cannot be authorized as a grid modernization incentive.

---

[45] Tr. Vo. VII at 1162.

[46] Joint Ex. 1. at 5.

2. The Proposed DMR contains no safeguards to protect customers

Making matters worse for customers, the Stipulation does not propose any protections for customers in the event that DP&L fails to undertake grid modernization. Should DP&L fail in that endeavor, nothing requires DP&L to return the DMR revenues to customers. Further, the audit process for DP&L's DMR is identical to the audit process the Supreme Court called "unhelpful" and insufficient to protect from the possible misuse of funds.[47] Like in the *FirstEnergy Decision*, it cannot be concluded that the DMR incents DP&L do anything. Therefore, the Stipulation runs afoul of the *FirstEnergy Decision* and the DMR should be rejected.

C. The DMR does not reflect sound reasoning and cannot be authorized under any reasonable interpretation of R.C. 4928.143(B)(2)(h)

The Court has indicated that it will closely evaluate any interpretation of R.C. 4928.143(B)(2)(h). In the *FirstEnergy Decision*, the Court ultimately held that the DMR was not the product of sound decision making and reasoning.[48] The same concerns apply here.

1. The DMR fails to align DP&L's and customers' interests

As part of the authorization of any charge under R.C. 4928.143(B)(2)(h), the Commission must "ensure that customers' and the electric distribution utility's expectations are aligned . . . ."[49] The Court did not provide guidance on this legal

[47] *FirstEnergy Decision* at ¶24.

[48] *Id.* at ¶19.

[49] *See* R.C. 4928.143(B(2)(H).

requirement, dismissing the DMR on other grounds. Here, there is no evidence to suggest that the DMR aligns DP&L's and consumers' expectations, and such a conclusion would be an abuse of discretion based upon the record evidence.

It cannot be concluded that customers and DP&L have an alignment of interest when captive customers are forced to pay hundreds of millions of dollars without receiving anything in return. Likewise, there can be no alignment of interests when the DMR revenues provide interest free-customer funded capital without anything in return. Rather, the DMR permits DP&L to raise customers' rates to *position* DP&L to undertake grid modernization at some undefined point in the future, and, if that grid modernization actually occurs, DP&L will once again be permitted to raise customers' rates to collect the cost associated with that investment.

2. The DMR would provide unjust and unreasonable rates above the zone of reasonableness in violation of R.C. 4928.143(B)(2)(h)

With the Court's reversal of FirstEnergy's DMR, the Commission has been given a directive to go back to the drawing board in its application of R.C. 4928.143(B)(2)(h). During that process, IGS suggests that the Commission adopt a reasonable interpretation of section (h) that encourages responsible grid modernization while balancing the interests of customers. The *FirstEnergy Decision* supports this conclusion.

While IGS acknowledges that the Commission has the authority to provide incentives explicitly tied to tangible grid modernization, the ultimately authorized rates must be within the zone of reasonableness. Section (B)(2)(h) identifies that grid modernization incentives may relate to "a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization." Although the law permits recovery of lost revenues, shared savings, and avoided costs—potential categories that are not at issue here—the law otherwise limits any grid modernization incentive to a just and reasonable return.

Indeed, the Federal Energy Regulatory Commission ("FERC"), one of the pioneers of incentive ratemaking mechanisms, has similarly concluded that they must provide for just and reasonable rates. For over a decade, the FERC has authorized incentives for certain transmission investments. But, as FERC identified in Order 679, "the Commission will permit incentives only if the incentive package as a whole results in a just and reasonable rate."[50] To that end, "an incentive rate of return sought by an applicant must be within a range of reasonable returns and the rate proposal as a whole must be within the zone of reasonableness before it will be approved."[51] This interpretation is supported by the plain language of the statutory section and the Court's example of what could be an appropriate incentive.[52]

Accordingly, IGS urges the Commission to reject the DMR because it does not ensure that any incentive authorized under R.C. 4928.143(B)(2)(h) be within the zone of reasonableness. In evaluating potential rates of return, the Commission has historically

[50]FERC Order 679, 116 FERC ¶ 61,057 at 2, Docket No. RM06-4-000 (Jul. 20, 2006) (18 CFR Part 35).

[51] *Id.* at 2-3.

[52] *FirstEnergy Decision* at ¶17.

considered a range of acceptable returns, based upon comparable companies.[53] For purposes of providing an incentive for grid modernization, the incentives should not result in the total authorized return on equity exceeding the high point applicable to comparable companies.

Such an approach would: (1) require actual investment in grid modernization to receive an incentive; (2) incentivize grid modernization through the potential for an enhanced rate of return; (3) ensure that captive customer rates are just and reasonable.[54] While such an incentive mechanism could be reasonable, the DMR as proposed does not satisfy these requirements.

This interpretation of the statute is supported by the *FirstEnergy Decision.* The Court provided an example of what *could* have been an acceptable incentive mechanism, noting that the Commission previously authorized FirstEnergy's AMI Rider to include a 50 basis point adder to the otherwise applicable return on equity in the rate of return.[55] In other words, if FirstEnergy's authorized return on equity was 9.75%, for purposes of actual grid modernization investments, they may apply a 10.25% return on equity in the rate of return calculation of the rider for purpose of actual grid modernization investment. The 50 basis point adder would have ensured that FirstEnergy's incentive compensation remained within the zone of reasonableness.

---

[53] *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, *et al.*, Opinion and Order at 92-93 (Dec. 19, 2018); *see Cleveland Electric Illum. Co. v. Pub. Util. Comm'n of Ohio*, 4 Ohio St. 3d 107 (1983).

[54] IGS also suggests that any rider be established subject to refund to ensure that customers are protected.

[55] *FirstEnergy Decision* at ¶17.

Because the cost of equity is only a portion—around half—of the rate of return equation (less for DP&L), that means that FirstEnergy would have received an incentive of .25% multiplied by the investment in grid modernization. For purposes of a $500 million investment, FirstEnergy would have been entitled to an incentive of $1.25 million per year after it makes the investment ($500 million x .5 x .005=$1.25 million). In light of this example, it is clear that the DMR is unlawful and unreasonable.

The magnitude of the DMR charge itself illustrates that it lacks sound reasoning and would provide unjust and unreasonable rates. DP&L's total distribution rate base at the time of the ESP was approximately $643 million. Based upon DP&L's authorized rate of return of 7.27%, DP&L receives an annual rate of return of $46.7 million—less than half of the total amount of the DMR.

Moreover, the DMR would lead to DP&L's total rate of return exceeding the zone of reasonableness. As testified by IGS witness Hess, the DMR coupled with DP&L's existing distribution rates would permit DP&L to earn a rate of return in excess of 20% on the existing rate base without performing any investment whatsoever.[56] This return is conservative, given that it is watered down by the entirety of DP&L's rate base and is not focused on the revenue impact of the DMR relative to any potential unquantified and yet-to-be authorized grid modernization.

Even if DP&L's investment in grid modernization doubled the rate base—a quantity the Commission has not evaluated or authorized in this record—the DMR would provide

[56] IGS Ex. 1015 at 27.

an alleged incentive that is equal to any grid modernization investment on nearly a dollar for dollar basis without even accounting for the fact that DP&L's capital structure is weighted heavily toward debt. In fact, the DMR reflects revenue that far exceeds the existing equity investment in DP&L itself. Thus, the DMR would provide an alleged incentive that is greater than AES' equity interest in DP&L.[57]

The amount of compensation provided to DP&L through the DMR sounds absurd because the DMR was never designed to provide a grid modernization incentive, rather the rider was based upon the level of debt at DPL Inc. Providing $105 million in additional revenue above and beyond DP&L's cost of providing distribution service would lack sound reasoning and be an abuse of discretion.

D. The DMR would flunk the ESP vs. MRO test

Finally, as the Commission is evaluating supplemental briefs, it should not overlook other important findings from the Court. While the Court is not fond of providing advisory opinions, it went out of its way to warn the Commission that the DMR may have failed on other grounds. Indeed, the Court stated "although we question the commission's interpretation of R.C. 4928.142 to exclude the DMR revenues under the ESP-versus-market-rate-offer test, our decision holding that the DMR is unlawful renders this issue moot."[58] Thus, if by some legal wizardry, the Commission twists Ohio law to permit authorization of the DMR under R.C. 4928.143(B)(2)(h), the ESP still cannot be

---

[57] As of December 31, 2017, the shareholders common equity for DP&L was only $330 million. *See* IGS Ex. 1015 at JEH-10 at 3.

[58] *FirstEnergy Decision* at ¶37.

authorized as it would cause the ESP to fail the MRO price test. Accordingly, the Commission should remove the DMR from DP&L's ESP.

IV. CONCLUSION

For the reasons stated herein, the Commission should modify DP&L's ESP to eliminate the DMR. It simply has no connection to distribution service. It is not an incentive—it is a customer-funded gift that would provide DP&L with unjust and unreasonable compensation for doing nothing whatsoever. Given its uncurable legal infirmities, IGS urges the Commission to reject the DMR.

Respectfully,

/s/ Joseph Oliker____
Joseph Oliker (0086088)
Counsel of Record
joliker@igsenergy.com
Michael Nugent (0090408)
mnugent@igsenergy.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000

Attorneys for IGS Energy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Supplemental Post-Brief of Interstate Gas Supply, Inc. was served this 1st day of August 2019 via electronic mail upon the following:

djireland@ficlaw.com
jsharkey@ficlaw.com
mfleisher@elpc.org
fdarr@mwncmh.com
mpritchard@mwncmh.com
jeffrey.mayes@monitoringanalytics.com
evelyn.robinson@pjm.com
schmidt@sppgrp.com
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
william.wright@ohioattorneygeneral.gov
Michelle.d.grant@dynegy.com
rsahli@columbus.rr.com
slesser@calfee.com
jlang@calfee.com
talexander@calfee.com
lhawrot@spilmanlaw.com
dwilliamson@spilmanlaw.com
charris@spilmanlaw.com
gthomas@gtpowergroup.com
laurac@chappelleconsulting.net
stheodore@epsa.org
todonnell@dickinsonwright.com
rseiler@dickinsonwright.com
jeanne.kingery@duke-energy.com
kristin.henry@sierraclub.org
thomas.mcnamee@ohioattorneygeneral.gov
joliker@igsenergy.com
bojko@carpenterlipps.com
ghiloni@carpenterlipps.com
mjsettineri@vorys.com
smhoward@vorys.com
glpetrucci@vorys.com
ibatikov@vorys.com
wasieck@vorys.com
william.michael@occ.ohio.gov
kevin.moore@occ.ohio.gov
mdortch@kravitzllc.com
tdougherty@theOEC.org
cmooney@ohiopartners.org
sechler@carpenterlipps.com
gpoulos@enernoc.com
rick.sites@ohiohospitals.org
elizabeth.watts@duke-energy.com
stephen.chriss@walmart.com
greg.tillman@walmart.com
mwarnock@bricker.com
dborchers@bricker.com
ejacobs@ablelaw.org
tony.mendoza@sierraclub.org
chris@envlaw.com
jdoll@djflawfirm.com
mcrawford@djflawfirm.com
dparram@bricker.com
paul@carpenterlipps.com

/s/ _Joseph Oliker_
Attorney for IGS Energy