BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S REVIEW OF CHAPTER 4901:1-10 OF THE OHIO ADMINISTRATIVE CODE	))))	CASE NO. 17-1842-EL-ORD

MEMORANDUM CONTRA SECOND APPLICATION FOR REHEARING OF THE DAYTON POWER AND LIGHT COMPANY BY THE RETAIL ENERGY SUPPLY ASSOCIATION, DIRECT ENERGY BUSINESS, LLC AND DIRECT ENERGY SERVICES, LLC

The Retail Energy Supply Association (RESA), Direct Energy Business, LLC, and Direct Energy Services, LLC (collectively, "Direct") jointly respond to the Second Application for Rehearing by The Dayton Power & Light Company d/b/a AES Ohio (AES), filed on February 26, 2021. The Application should be denied for the reasons that follow.

INTRODUCTION

AES Ohio has filed a second application for rehearing of an order approving modifications to the Electric Service and Safety Standards contained in O.A.C. Chapter 4901:1-10 (ESSS). One of these rules, O.A.C. 4901:1-33, has always required electric utilities to offer consolidated billing (*i.e.,* inclusion of supplier charges on the electric utility's bill for distribution service). The revised rule extends consolidated billing beyond energy charges to include CRES supplier "non-commodity" charges. Section (A) of the rule now reads as follows, with a new sentence italicized:

> This rule applies to an electric utility that issues customers a consolidated electric bill that includes both electric utility and competitive retail electric service (CRES) provider charges for electric services. Nothing in this rule affects the obligations of the electric utility to provide disconnection notices. *An electric*

> *utility cannot discriminate or unduly restrict a customer's CRES provider from including non-jurisdictional charges on a consolidated electric bill.* (Emphasis added.)

AES Ohio's first application for rehearing took issue with this new sentence because it "require[s] utilities to bill for non-jurisdictional services without cost-recovery and/or parameters/limitations."[1] According to AES Ohio, "utilities should not be forced to bill for non-jurisdictional charges [.]"[2] The Commission acknowledged that the new rule may in fact impose costs, but that "this rule review docket is not the appropriate venue to determine the manner and extent of such possible cost recovery."[3]

The amendments to the rule do nothing more than prohibit undue or unreasonable disadvantages, as already required in R.C. 4905.35(A), with regards to the use of the utility consolidated bill for non-jurisdictional charges.[4] As stated at paragraph 242 of the February 26 Order:

> The EDU must allow the customer's CRES provider, on an open and nondiscriminatory basis, access to the consolidated bill to list the newly termed, "non-jurisdictional services" charges. While this provision does not force the EDU to place the customer's CRES provider's non-jurisdictional service on the consolidated bill, the Commission believes its amendment strikes a middle ground whereby fairness to the CRES provider is accounted for as is the EDU's freedom to contract is respected.

There is no need to "clarify" the February 26 Order or to change the rule to address an alleged inconsistency. The rule means what it says, and the time for arguing about what the rule says has passed.

[1] AES RH App. at 2.
[2] *Id.*
[3] Finding and Order at 33.
[4] Second Entry on Rehearing at ¶ 57.

ARGUMENT

A. AES Ohio's Second Application for Rehearing is Procedurally Barred.

R.C. 4903.10 requires an application for rehearing to "set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." The first assignment of error in AES Ohio's first and second applications for rehearing are virtually identical:

- Assignment of Error 1: The Commission's Amendments to O.A.C. 4901:1-10-33 are unreasonable to the extent they require utilities to bill for non-jurisdictional services without cost-recovery and/or parameters/limitations. (First Application)

- Assignment of Error 1: The Commission's Amendments to O.A.C. 4901:1-10-33 are unreasonable to the extent they require utilities to bill for non-jurisdictional services without parameters, limitations, or specific filings. (Second application)

The Supreme Court of Ohio has recognized that it is inappropriate to seek rehearing twice over the same issue.[5] To the extent AES Ohio claims the rule revision is unlawful or unreasonable, it was obligated to explain all the reasons this is allegedly so in its first application for rehearing. The belated attempted to re-argue this issue in a second application for rehearing is improper.

B. AES's Ohio's Proposed Revisions are Inconsistent with the Approved Revisions to Rule 4901:1-10-33(A).

AES Ohio asks the Commission to re-word O.A.C. 4901:1-10-33(A) as follows:

> This rule applies to an electric utility that issues customers a consolidated electric bill that includes both electric utility and competitive retail electric service (CRES) provider charges for electric services. Nothing in this rule affects the obligations of the electric utility to provide disconnection notices. Absent a

[5] *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, at ¶ 66.

> Commission ruling to the contrary, an electric utility is not required to include CRES non-jurisdictional charges on a consolidated bill, but ~~cannot discriminate or unduly restrict a~~ if the EDU issues a consolidated bill including non jurisdictional services on behalf of a customer's CRES provider ~~from including nonjurisdictional charges on a consolidated electric bill~~, it must do so in a non-discriminatory manner. [6]

There are several obvious problems with this language. Initially, the February 26, 2021 Order is "a Commission ruling to the contrary" on the subject of whether a utility is required to include non-jurisdictional charges on a consolidated billing. An electric utility *is* "required to include CRES non-jurisdictional charges on a consolidated bill" if access to the bill has been granted to any other service provider, including the utility's affiliates.[7]

Additionally, AES Ohio's proposed language transforms a clearly stated requirement into a word-salad, adding unnecessary words for "clarity" while removing a key phrase: "cannot discriminate or unduly restrict." Indeed, the Commission explicitly reaffirmed the language in the new rule in the February 26, 2021 Order, because it expresses the Commission's authority to review and remedy discriminatory and unduly restrictive behavior.[8] These changes must be rejected.

CONCLUSION

AES Ohio sought rehearing and lost. It is not entitled to a second bite at the apple. The second application for rehearing should be denied.

[6] AES 2d RH App. at 2-3.
[7] *See* Finding and Order at ¶ 213.
[8] Second Entry on Rehearing at ¶ 55.

Date: March 8, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was electronically filed this 8th day of March, 2021. Parties subscribed to DIS will receive automatic notification of this filing. A courtesy copy was also served via email to the following:

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Summary: Memorandum Memorandum Contra Second Application for Rehearing of The Dayton Power and Light Company electronically filed by Ms. Valerie A Cahill on behalf of Retail Energy Supply Association and Direct Energy Business, LLC and Direct Energy Services, LLC