BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates.	)))	Case No. 20-1651-EL-AIR
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority.	))))	Case No. 20-1652-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	)))	Case No. 20-1653-EL-ATA

POST HEARING REPLY BRIEF OF
DIRECT ENERGY BUSINESS LLC AND DIRECT ENERGY SERVICES LLC

Direct Energy Business, LLC and Direct Energy Services, LLC (collectively, Direct)[1] submit this Initial Post-Hearing Reply Brief in accordance with the schedule established at the conclusion of the evidentiary hearing.

I. INTRODUCTION

Anyone in tune with current events knows that people are desperate for ways to save on fuel and energy costs. Rising electricity costs create an incentive for consumers to shop for a better deal for generation service. "Better" could mean a lower rate, or it could mean energy management plans not available through the standard service offer (SSO). Now more than ever, consumers should be encouraged to shop for generation service. But rather than encourage shopping, AES and Staff recommend penalizing shopping customers with a $5 switching fee—not because AES needs the money, but because switching fees are "typical" for Ohio utilities.

[1] NRG Energy Inc. acquired the North American assets of Centrica on January 4, 2021, including Direct Energy Business, LLC and Direct Energy Services, LLC.

Regardless of whether this is true, neither AES nor Staff explain how this comparison meets the applicable legal standard.

Direct has no problem with the company recovering reasonable and prudent costs incurred to facilitate shopping. The question is whether these costs should be recovered through base rates or through a separate switching fee. A switching fee would make sense if switching-related costs were segregated from the other expenses recovered through base rates. In that case, switching fee revenue would be matched to switching fee costs. But here, no one has the faintest clue what costs AES incurs to manage switching. Those costs are "baked in" to the schedules supporting AES's overall test year revenue requirements. Staff's adjustment simply subtracts $228,000 from the revenue requirement so that this sliver of revenue is recovered through switching fees instead of base rates.[2] The problem is not about mathematics, but policy.

AES is legally required to facilitate shopping, and all customers (with few exceptions) are eligible to shop. It stands to reason that because everyone is eligible to shop, everyone should bear some portion of the expense AES incurs to manage shopping. The fairest and most efficient way to recover these costs is through base rates. Again, the question is how AES should recover these costs, not whether it should recover them. The Commission should order the switching fee removed from the compliance tariffs and adjust base rates to recover an additional $228,000. In the end, no revenue would be lost; it would merely be shifted from one recovery mechanism to another.

Eliminating the switching fee would also eliminate the need to address whether the fee should be charged customers returning to the SSO. The applicable tariff (Schedule D34) states that returning customers are subject to the fee. AES, however, has admitted that it has not

[2] Tr. at 1147.

charged the fee to returning customers in the past, and Staff has suggested that this practice would be acceptable in the future. But Staff does not have the authority to waive a tariff provision. If the tariff is approved as submitted, AES no discretion—all customers migrating to or from the SSO would be subject to the switching fee.

II. ARGUMENT

A. There is no evidence supporting a $5 switching fee.

Staff has recommended increasing the fixed customer charge to $9.75 per month.[3] This figure is not pulled from thin air. It is based on the "minimum compensatory method" of evaluating "costs that vary directly with the number of customers, such as meter cost, service drop, line transformer, and customer billing."[4] In other words, the recommended customer charge is based on identified costs and set at an amount intended to recover those costs. Staff did not "back in" to its recommended customer charge by examining the fixed customer charge "typical" of other electric utilities.

Regarding the switching fee, however, any notion of tying the fee to specific costs went out the door. Staff did not "comment on the necessity of, or the policy associated with, CRES provider fees."[5] Staff merely accepted the $5 switching fee on its face and *assumed* this amount was supported by underlying costs that, mathematically, worked out to $5 per customer. Based on historical amounts recorded under FERC Account 456, Staff subtracted $228,000 from the income portion of the revenue requirement.[6] This adjustment recognizes that switching-related

---

[3] Staff Init. Br. at 35.

[4] *Id*.

[5] *Id.* at 12.

[6] *Id.* citing Staff Ex. 6 at 6.

costs are embedded in test year expenses; the adjustment is necessary to prevent double-recovery of those costs. Recognizing the Switching Fee revenue without reviewing the underlying cost is a job half finished.

Direct does not dispute that there is "a cost" associated with customer switches due to recission letters, cancellation notices, and so forth, but the question is, what is *the* cost.[7] Absent a complete accounting of all switching-related costs, it is impossible to know whether $1 or $3 or $7 per switch is an appropriate charge, let alone $5. To say that $5 is "typical amongst Ohio utilities" answers nothing.[8] If typicality were the test, then the recent approval of AEP Ohio's $10 customer charge would be reason alone for raising AES's charge to the same amount.[9] Supplier charges are not subject to different legal standards that charges levied directly upon end-use consumers.

B. If the switching fee tariff is approved, it must be applied.

Schedule D34 states in relevant part: "A customer may at any time return to the Company's applicable Standard Offer Tariff for Generation Service. However, the Company will charge the Customer a switching fee of five dollars ($5) for returning to the Standard Offer Tariff." This language, drafted by AES, leaves nothing to the imagination: customers should be charged for switches both to *and* from the SSO.

AES has admitted, however, that historically it has not charged the switching fee to customers returning to the SSO.[10] AES says it is "not reasonable" to charge the fee to returning

---

[7] *Id.* at 40.

[8] AES Init. Br. at 86, citing Staff Ex. 8 at 9.

[9] Case No. 20-0585-EL-AIR, et al., Order (Nov. 17, 2021) ¶ 162.

[10] Tr. at 1240.

customers, and Staff agrees.[11] Yet neither AES nor Staff have proposed to modify Schedule D34.

R.C. 4905.30, .33 and .35 positively forbid waiving fees or charges set forth in a tariff. AES and Staff are trying to have it both ways by asking for approval of a tariff applicable to all customers, but with a reservation of rights to enforce the tariff only against shopping customers. That would be discriminatory on its face, and unlawful.

Having failed to support the switching fee, AES should be ordered for file compliance tariffs with fee stricken as follows:

- Sheet No. G8, pages 29 and 30, Schedule of Fees and Charges:

~~SCHEDULE OF FEES AND CHARGES~~

~~A. AGS Fees~~
~~1. Manual Historical Customer Energy Usage Data: The Company requires Customer authorization for providing historical customer usage data. The Company will only provide customer usage data manually if it is unavailable electronically. For historical customer energy usage data, the following charges will apply:~~

> ~~Up to twelve (12) months of monthly kW and/or kWh data - No Charge~~
> ~~Thirteen through thirty-six (13-36) months of monthly kW and/or kWh data - $16.50 per account per request~~
> ~~Greater than thirty-six (36) months of monthly kW and/or kWh data – $32.25 per account per request~~
> ~~One (1) month of Hourly Load Data (where available) - $25.00 per account per request~~
> ~~One (1) month of 30 minute Load Data (where available) - $25.00 per account per request~~
> ~~Twelve (12) months of Hourly Load Data (where available) - $150.00 per account per request~~

~~2. Electronic Interval Meter Data:~~

> ~~One (1) month of Hourly Load Data (where available) - $25.00 per account per request~~
> ~~One (1) month of 30 minute Load Data (where available) - $25.00 per account per request~~

[11] Staff Init. Br. at 39-40.

~~Twelve (12) months of Hourly Load Data (where available) - $150.00 per account per request~~

~~3. Switching Fee:~~

~~The Company will be entitled to impose a Switching Fee on the End-Use Customer in accordance with Tariff Sheet No. D34 for any changes made by either a Customer or an authorized agent to a different AGS. The AGS will be required to pay the Switching Fees on behalf of the Customer.~~

- Sheet No. D34 (Switching Fee Rider), page 2 of 2:

AUTHORIZATION TO SWITCH TO AN ALTERNATE GENERATION SUPPLIER

The AGS shall coordinate Customer enrollment with the Company in accordance with the procedures set forth in the Alternate Generation Supplier Coordination Tariff, Sheet No. G8. The AGS shall provide notification of the switch request to the Company utilizing standard business protocols before the switch is effectuated. ~~Prior to the switching level reaching twenty percent (20%), each Customer will receive one free switch during the Rate Stabilization Period. Then the Company will charge a switching fee of five dollars ($5) for every switch to an AGS.~~

RETURNING TO THE STANDARD OFFER

A Customer may at any time return to the Company's applicable Standard Offer Tariff for Generation Service. ~~However, the Company will charge the Customer a switching fee of five dollars ($5) for returning to the Standard Offer Tariff.~~ In the event that a Customer returns to Standard Offer due to default, abandonment, slamming or certification rescission of their AGS, the Customer will be automatically returned to the applicable Standard Offer Tariff~~, and will not be charged the switching fee~~.

III. CONCLUSION

The switching fee is unsupported and unlawful. The Commission should order that compliance tariffs be filed accordingly.

Dated: March 30, 2022

Respectfully submitted,

/s/ *Mark A. Whitt*

Mark A. Whitt (0067996)
Lucas A. Fykes (0098471)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com

Attorneys for Direct Energy Business, LLC and Direct Energy Services, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post Hearing Brief was served by electronic mail this 30th day of March, 2022 to the following:

/s/ *Lucas A. Fykes*
One of the Attorneys for Direct Energy Services, LLC, Direct Energy Business, LLC

SERVICE LIST

sharkey@ficlaw.com
djireland@ficlaw.com
chollon@ficlaw.com
michael.schuler@aes.com
mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com
bojko@carpenterlipps.com
paul@carpenterlipps.com
christopher.healey@occ.ohio.gov
ambrosia.wilson@occ.ohio.gov
john.finnigan@occ.ohio.gov
jodi.bair@ohioago.gov
kyle.kern@ohioago.gov
chelsea.fletcher@ohioago.gov
stephanie.chmiel@thompsonhine.com
Kevin.Oles@thompsonhine.com
ccox@elpc.org
cgrundmann@spilmanlaw.com
Donadio@carpenterlipps.com
wygonski@carpenterlipps.com

mwatt@ficlaw.com
dwilliamson@spilmanlaw.com
khernstein@bricker.com
rdove@keglerbrown.com
fdarr2019@gmail.com
bethany.allen@igs.com
Joe.oliker@igs.com
michael.nugent@igs.com
evan.betterton@igs.com
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com
bmckenney@mcneeslaw.com
dparram@bricker.com
rmains@bricker.com
little@litohio.com
hogan@litohio.com
mwarnock@bricker.com
ktreadway@oneenergyllc.com
jdunn@oneenergyllc.com
dcraig@fbtlaw.com
cwieg@fbtlaw.com
rhartley@fbtlaw.com

Attorney Examiners:
Patricia.Schabo@puco.ohio.gov
Michael.Williams@puco.ohio.gov