

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power & Light Company to)	Case No. 20-1651-EL-AIR
Increase its Rates for Electric)	
Distribution.)	

In the Matter of the Application of The)	
Dayton Power & Light Company for)	Case No. 20-1652-EL-AAM
Accounting Authority.)	

In the Matter of the Application of The)	
Dayton Power & Light Company for)	Case No. 20-1653-EL-ATA
Approval of Revised Tariffs.)	

**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF
INTERSTATE GAS SUPPLY, INC.**

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**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF
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Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Interstate Gas Supply, Inc. ("IGS Energy" or "IGS") respectfully submits this Application for Rehearing of the Opinion and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission") on December 14, 2022 for the following reasons:

- A. The Opinion and Order (§ 47) unlawfully and unreasonably authorized AES Ohio's \$5 switching fee. The Opinion and Order impermissibly authorized the fee without rendering findings of fact and conclusions of law based upon the record in violation of R.C. 4903.09. *Tongren v. Pub. Util. Comm.*, 85 Ohio St. 3d 87 (1998). The fee is discriminatory, violates state policy, and precedent inasmuch as AES Ohio assesses the fee to shopping customers while providing the same service for free to customers that take service under the SSO. R.C. 4928.02(A); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St. 3d 328, 2006-Ohio-2110).**

- B. The Opinion and Order (¶ 172) is unlawful and unreasonable inasmuch as it failed to allocate AES-Ohio's generation-related uncollectible expense to the default generation product. The Order: (1) unlawfully and unreasonably applied Chapter 4909 to authorize recovery of competitive retail electric service costs through non-competitive service rate structures in violation of R.C. 4928.03 and R.C. 4928.05; (2) unlawfully and unreasonably provided a subsidy to AES Ohio's competitive retail electric service rates in violation of R.C. 4928.02(H); and; (3) unlawfully and unreasonably authorized AES Ohio to rebundle generation-related costs into distribution rates in violation of R.C. 4928.02(B); (4) the Order violated R.C. 4903.09 by failing to state findings of fact and reasons prompting the Commission's decisions. *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512,519, 526-27 (2011).**
- C. The Opinion and Order (¶ 164) is unlawful and unreasonable inasmuch as it failed to implement a tariff design for commercial or industrial customers that better aligns the costs and benefits of renewable generation with AES Ohio's Distribution rates and costs in furtherance of state policy under R.C. 4928.02(C) and (K).**

As discussed further in the Memorandum in Support, IGS respectfully requests that the Commission grant this Application for Rehearing and correct the errors identified herein.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

On December 14, 2022, the Commission issued an Opinion and Order approving, with various changes and alterations, Dayton Power & Light's ("AES Ohio") application to increase base distribution rates ("Application"). IGS asks the Commission to reconsider three issues where a clear and obvious error has occurred.

On rehearing, the Commission should reverse their approval and remove the unsubstantiated switching fee, fairly allocate AES Ohio uncollectible expenses, and implement a tariff design for commercial or industrial customers for distributed generation. Initially, the failure to end the unlawful switching fee for which there is no cost basis in evidence permits the continuation of a clearly discriminatory rate or charge in violation of Ohio law and long held state energy policy. On rehearing, the Commission should direct

AES Ohio to file a new tariff sheet that removes the switching fee currently only being applied to shopping customers.

Second, the Commission's unwillingness to allocate the appropriate portion of AES Ohio's uncollectible expense through a bypassable rider against the weight of the evidence creates an unfair and unbalanced playing field that clearly picks a favored generation product, in this case the SSO, and requires shopping customers to pay for uncollectible expenses twice. On rehearing, the Commission should fully consider and ensure that unlawful subsidies are not harming the competitive generation market within AES Ohio's service territory.

Lastly, the Commission failed to require AES Ohio to offer a specialized distributed generation distribution rate for general service commercial and industrial customers that advances state policy under R.C. 4928.02 (C) and (K) and also better aligns their demand costs with the demand on AES Ohio's distribution grid. On rehearing, the Commission should direct AES Ohio to file a new tariff sheet that implements a new rate for distributed generation.

II. BACKGROUND

On November 30, 2020, AES Ohio filed an application to increase its distribution rates, for tariff approval, and to change its accounting methods ("Application"). The Staff Report was filed with the Commission on July 26, 2021, setting forth the Commission Staff's ("Staff") findings regarding the Application.

Pursuant to R.C. 4909.19 and Ohio Adm. Code 4901-1-28, IGS Energy and multiple other parties filed Objections to the Staff Report and Summary of Major Issues in the above-captioned matters on August 25, 2021.

Despite prolonged settlement negotiations, no stipulation was reached between the parties to resolve any of the issues in the case. A multi-week virtual proceeding commenced on January 24, 2022 via WebEx. All parties were given the opportunity to cross-examine witnesses and establish their case within the record. At the conclusion of the initial hearing, a single day rebuttal session was held on February 7, 2022.

On March 4, 2022, initial post-hearing briefs were filed by AES Ohio, Staff, and 11 intervenors. Further, post-hearing reply briefs were filed by AES Ohio, Staff, and ten intervenors on March 30, 2022.

On May 18, 2022, the Commission heard oral arguments from AES Ohio, OCC, Kroger, and OMAEG, as those parties either participated in the briefing of OCC's earlier motion to dismiss or raised the rate freeze issue in objections to the Staff Report and initial post-hearing briefs.

On December 14, 2022, the Commission issued an Opinion and Order approving, with changes and alterations, Dayton Power & Light's ("AES Ohio") application to increase base distribution rates ("Application"). To resolve the issues presented in the Application, a full evidentiary hearing was conducted with a full briefing schedule that followed. Among the numerous issues raised in the Application, Interstate Gas Supply, Inc. ("IGS Energy") sought to end an unsubstantiated legacy switching fee, to incorporate appropriate uncollectible expense into the Standard Service Offer ("SSO"), and have AES Ohio implement a Distributed Energy Resources ("DER") tariff in compliance with state policy.

While the Commission partially and briefly addressed these issues within its Opinion and Order, in the end, the switching fee was permitted to remain; the overall

uncollectible expense was not appropriately allocated to the SSO through a bypassable rider, against the weight of the record evidence in the proceeding; and no tariff was implemented to accommodate commercial or industrial customers for distributed generation.

III. ARGUMENT

- A. The Opinion and Order (¶ 47) unlawfully and unreasonably authorized AES Ohio's \$5 switching fee. The Opinion and Order impermissibly authorized the fee without rendering findings of fact and conclusions of law based upon the record in violation of R.C. 4903.09. *Tongren v. Pub. Util. Comm.*, 85 Ohio St. 3d 87 (1998). The fee is discriminatory, violates state policy, and precedent inasmuch as AES Ohio assesses the fee to shopping customers while providing the same service for free to customers that take service under the SSO. R.C. 4928.02(A); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St. 3d 328, 2006-Ohio-2110.**

It is uncontested that AES Ohio assesses customers a \$5 fee to switch from the SSO to a CRES provider or to switch from one CRES provider to another.¹ It is also uncontested that customers do not pay a switching fee to return to the SSO.² Over the objection of IGS, the switching fee was allowed to remain in place despite a lack of support for the fee in the record of the case. The determination that the fee should be kept in place should be reversed on rehearing. As a result of the lack of evidence, the Order does not comply with the requirements of R.C.4903.09.

IGS challenged the switching fee, arguing that it should be eliminated, or, at a minimum, applied equally to all customers whether they switch to the SSO or a CRES provider. Generally, customers have the option of taking competitive electric generation

¹ Opinion and Order ¶44 and Tr. 1238-44..

² Tr. at 1238.

service from competitive retail electric service (“CRES”) suppliers or through a product provided by the distribution utility known as the standard service offer (“SSO”). Customers are permitted to switch their generation service from the SSO to a CRES or vice versa as dictated by any supply contract they have signed.³

As demonstrated at the hearing and in post hearing briefs, the overarching process of switching between CRES suppliers and switching to or from the SSO is not technically different.⁴ The financial impact however is vastly different. The SSO bears no costs to switch customers to that service. CRES suppliers are forced to recoup the switching fee through rates/fees to customers or flatly eat the cost. AES Ohio, however, is currently electing not to charge the same fee to customers or to itself when a customer elects to take service under the SSO.⁵ Overall, the record in this case is nearly devoid of any justification for the switching fee to not be applied uniformly to all customer switches in contradiction with AES Ohio’s tariff language.

AES Ohio provided no evidence to support the fee, and Staff witness Smith acknowledged that the fee was not analyzed as part of the case.⁶ The entire case for allowing the fee to stand is that it has been approved in the past.⁷ Pursuant to R.C. 4909.15(C)(1), the “revenues and expenses of the utility shall be determined during a test period.” In a distribution rate case, “the burden of proof to show that the increased rates

³ Under Ohio law, a customer may be returned to default service because of a supplier default as well. R.C. 4928.14.

⁴ Tr. 1238.

⁵ Tr. at 1238.

⁶ Tr. at 1238.

⁷ Opinion and Order at ¶ 43.

or charges are just and reasonable shall be on the public utility.” R.C. 4909.18 and R.C. 4909.19(C). Thus, the burden of demonstrating that charges are/remain just and reasonable falls with AES Ohio.⁸ The required burden was clearly not met through the evidence presented in this case. It was an error to determine that the switching fee is reasonable without evidence to justify that the cost is lawful according to R.C. 4903.09 and 4909.18.⁹

Despite AES Ohio’s unmet burden of proof, the Order authorized the switching fee without a demonstration that the fee is just and reasonable. The Opinion and Order cited to no record evidence that can support the calculation of the \$5 switching fee or support that discriminatory application of the fee in contrast to AES Ohio’s tariff. “A legion of cases establish that the commission abuses its discretion if it renders an opinion on an issue without record support.” *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 76 Ohio St.3d 163, 166 (1996).¹⁰

Not only is the switching fee unjustified, it is also an unreasonable undue preference to the SSO. R.C. 4905.35 states that “[n]o public utility shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.” If the Order stands, customers switching to the SSO are

⁸ *Ohio Edison Co. v. Pub. Util. Comm.*, 63 Ohio St.3d 555 (1992); *Cincinnati Bell Tel. Co. v. Pub. Util. Comm.*, 12 Ohio St.3d 280, 287 (1984) (Cincinnati Bell “failed to sustain its burden of proof when it offered no testimony before the commission on the issue of its requested budget adjustment.”)

⁹ IGS is aware that the Commission has permitted other utilities to continue these fees over the objections of intervenors. Those decisions, however, are incorrect because they permit, over objections properly before the Commission, an electric distribution utility to evade the requirement to justify its rate levels. R.C. 4909.18 and 4909.19.

¹⁰ See *Westside Cellular, Inc. v. Pub. Util. Comm.*, 98 Ohio St.3d 165, 2002-Ohio-7119, ¶ 9-10.

provided an advantage over customers electing to proactively shop for their generation service within the competitive market. Having a single product in the market that receives an advantage that no other firm can access clearly creates an “undue or unreasonable preference” which is prohibited by R.C. 4905.35.¹¹

While the Order tacitly addressed IGS’ discrimination argument, the Order’s reasoning lacks a reasoned basis. The Order in this case relies on a single staff witness insinuating that the process of switching to the SSO is fundamentally different than the process of switching to a supplier.¹² No technical evidence or analysis was conducted to determine what, if any, differences exists between customers switching onto or off of the SSO.¹³ In the Opinion and Order, the Commission states that the process is “not comparable in process” without evidence to make such a conclusion.¹⁴ Reliance on the assertion that the process is different without an analysis of the costs or technical testimony is not a sound basis for the determination that the switching fee does not run afoul of an important regulatory principle. Indeed, it further violates R.C. 4903.09 inasmuch as it presents a baseless conclusion without record support.

Regardless, the record is clear that there was not investigation into whether the switching fee had cost basis. Without any investigation into the cost of switching a customer from SSO to a CRES or vice versa, there is no record to justify disparate treatment. Staff did not investigate whether any cost exists at all to switch a customer

¹¹ *Ameritech Ohio v. Pub. Util.Comm.*, 86 Ohio St.3d 78, 81 (1999).

¹² Opinion and Order ¶ 47.

¹³ Tr. 1238-40.

¹⁴ Opinion and Order at ¶47.

either from or to the SSO.¹⁵ Similarly, AES Ohio provided no justification as to why the switching fee only incurred costs when switching a customer to a supplier but not when switching a customer to the SSO. In its Opinion and Order, the Commission relied on the fact that these fees have been approved in the past in other utility base rate cases.¹⁶ That does not excuse the Commission from providing evidence to support its determination.

Basing a finding on unsupported assumptions and past precedent is not a lawful use of the Commission's authority. In a contested matter, the Commission "shall file, with the records of such cases, finding of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." R.C. 4903.09. Inherent within the rules is the requirement that the Commission "explain its rationale, respond to contrary positions, and support its decision with appropriate evidence."¹⁷

The statute requires more than a good faith effort that costs are justifiable. The Commission "can adopt reports prepared by its staff and incorporate them into its order, but these reports must satisfy the requirements of the statute; that is, they must contain sufficient factual findings and conclusions of law."¹⁸

Allowing the switching fee to remain in the tariff without the requirement that it be applied to both switches to and from the SSO does not meet the requirements laid out in R.C. 4903.09. The record, or lack thereof, regarding switching fees demonstrates that Staff did not investigate switching fees when preparing its Application, and the testimony

¹⁵ Tr. 1239.

¹⁶ Opinion and Order ¶ 45.

¹⁷ *In re Columbus S. Power Co.*, 128 Ohio St. 3d 512, ¶ 30 (2011).

¹⁸ *In re Application of Suvon, LLC*, 2021 Ohio 3630 ¶ 22 (Ohio Sup. Ct. 2021).

provided at hearing did not address any potential underlying costs associated with the switching fee. Additionally, AES Ohio provided no evidence to support the switching fee and how it is applied to different customers based on the product they choose.

Because the Commission erred when it refused to remove or uniformly apply the discriminatory switching fees applicable to competitive suppliers, it should grant rehearing and reverse its decisions to permit the unsupported switching fee. The Commission should order AES Ohio to amend its tariff to remove the unlawful switching fee since there is no cost-based justification for the unduly discriminatory charge.

B. The Opinion and Order (¶ 172) is unlawful and unreasonable inasmuch as it failed to allocate AES-Ohio's generation-related uncollectible expense to the default generation product. The Order: (1) unlawfully and unreasonably applied Chapter 4909 to authorize recovery of competitive retail electric service costs through non-competitive service rate structures in violation of R.C. 4928.03 and R.C. 4928.05; (2) unlawfully and unreasonably provided a subsidy to AES Ohio's competitive retail electric service rates in violation of R.C. 4928.02(H); and; (3) unlawfully and unreasonably authorized AES Ohio to rebundle generation-related costs into distribution rates in violation of R.C. 4928.02(B); (4) the Order violated R.C. 4903.09 by failing to state findings of fact and reasons prompting the Commission's decisions. *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512,519, 526-27 (2011).

As part of its proposal to increase distribution rates, AES Ohio sought authority to recover all of its uncollectible expenses through distribution rates. AES Ohio previously recovered uncollectible expenses related to the SSO from SSO customers. Over IGS objection, the Commission approved AES Ohio's proposal. The Commission acknowledges that the costs should be fully examined in a future proceeding.¹⁹ However, allowing them to remain in distribution rates violates important Ohio laws and state policy

¹⁹ Opinion and Order ¶ 172.

and should be corrected based on the weight of the evidence. While IGS appreciates the Commission's willingness to investigate the expenses, allowing them to remain in AES Ohio's distribution rates is a clear and obvious error that needs to be corrected through rehearing. The Commission erred when it allowed AES Ohio to recover the entirety of these costs through base distribution rates because the collection of SSO-related uncollectible rates is a competitive service.

Until the implementation of Amended Substitute Senate Bill 3 ("S.B. 3"), Ohioans received electric service from a monopoly supplier. In 1999, S.B. 3 "restructured Ohio's electric-utility industry to foster retail competition in the generation component of electric service." *Industrial Energy Users-Ohio*, 117 Ohio St.3d 486, 487 (2008). The foundation for competition was established by requiring "the three components of electric service — generation, transmission, and distribution — to be separated." *Id.* Initially in a transition step, Senate Bill 3 required the monopoly electric utilities to separate their business lines by function, i.e., distribution, transmission, and generation, and adopt corporate separation plans to prevent cross-subsidies across those functions. R.C. 4928.31(A). "In short, each service component was required to stand on its own." *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 452-53 (2004).

The purpose of unbundling was to separate the competitive and noncompetitive functions so that customers could "shop" for their competitive retail electric service. As the Supreme Court has noted, the General Assembly "restructured Ohio's electric-utility industry to foster retail competition in the generation component of electric service." *Industrial Energy Users-Ohio* at 487. This goal is explicitly stated in Ohio law: "Beginning on the starting date of competitive retail electric service, retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers

within the certified territory of an electric utility are competitive retail electric services that the consumers may obtain subject to this chapter from any supplier or suppliers.” R.C. 4928.03(A). Further, retail electric generation and other services declared competitive were no longer subject to Commission jurisdiction under Chapter 4909 of the Revised Code. To that end, R.C. 4928.05(A)(1) provides, “[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.*” (Emphasis added). 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 R.C. 4909.18.

It is uncontested that AES Ohio provides a competitive service offering (the SSO) and has expenses related to uncollectible charges incurred through the course of doing business.²⁰ Indeed, CRES providers must incur the exact same collection costs and recover them through their own rates and charges.²¹ State policy directs the Commission to ensure that competitive services are not subsidized by noncompetitive services.²² However, under the current Opinion and Order, costs are permitted to flow between the different business arms that are supposed to “stand on their own.” The SSO clearly generates uncollectible expense, but that expense is being socialized across customers not receiving SSO service. This socialization results in a competitive product, the SSO, that cannot stand on its own and cover the costs it takes to provide.

²⁰ Opinion and Order ¶ 170, IGS Br. at 5-10).

²¹ IGS Post Hearing Brief at 7.

²² R.C. 4928.02(H).

Under R.C. 4903.09, the Commission must base its findings on the record and address arguments submitting in post-hearing briefs with findings of fact and conclusions of law. The Order is bereft of such analysis. There is nothing in the Commission's analysis to indicate how uncollectible expense related to SSO uncollected generation revenue is a "distribution cost." Indeed, such a conclusion is contradicted by the record. Because AES Ohio has failed to demonstrate that all of its uncollectible test year expense relates to non-competitive distribution service, AES Ohio has not demonstrated that the expense was properly included in the test year and eligible for recovery from distribution customers. Thus, the Order is unlawful and unreasonable.²³

Because the Opinion and Order permits the recovery of costs to provide a competitive service within AES Ohio's non-competitive distribution rates pursuant to the Commission's traditional regulatory authority under Chapter 4909, the Commission should grant rehearing and appropriately allocate a portion of AES Ohio's uncollectible expense to the SSO.

C. The Opinion and Order (§ 164) is unlawful and unreasonable inasmuch as it failed to implement a tariff design for commercial or industrial customers that better aligns the costs and benefits of renewable generation with AES Ohio's Distribution rates and costs in furtherance of state policy under R.C. 4928.02(C) and (K).

It is the current state policy of Ohio to promote the deployment of distributed generation across the state.²⁴ The approved rate does not provide a beneficial demand charge calculation for General Service customers looking to invest in distributed generation. The demand charge for General Service customers automatically sets a

²³ R.C. 4909.15, 4928.05.

²⁴ R.C. 4928.02(C) and (K).

customer's demand charge based solely on their single highest 30 minutes of peak demand, regardless of time or system load.

One of the primary benefits of distributed generation, such as solar, is that it often operates at the highest levels during times when the grid can be at its peak.²⁵ By not having a tariff that would allow customers to better align their demand charge with their demand during system peak times, customers could be getting high demand charges based on usage in the middle of the night.²⁶ Despite the longstanding state policy of promoting distributed generation, no new rate designs were implemented in this case, not even on a select or pilot basis.²⁷ Staff witness Schaefer correctly pointed out that AES currently supports Qualified Facility ("QF") and Net Metering tariffs but also admits that these tariffs only support the generation costs of distributed generation and do not impact the distribution demand charges.²⁸ Creating a rate design that would allow customers to reduce their demand charges in accordance with their contribution to AES Ohio's system peak as opposed to the customer's individual peak is key in unlocking the full potential of distributed generation projects.²⁹ It is not a new or novel concept to create a rate design that meets the needs of specific customers or promotes current state policy. AES Ohio currently has both a Maximum Charge Provision and a County Fair and Agricultural

²⁵ IGS Ex. 1 at 15.

²⁶ Tr. at 1096-7.

²⁷ *Id.* at 734.

²⁸ *Id.* at 1095.

²⁹ IGS Ex. 1 at 16.

Societies rate to better align costs with two very specific use cases. The County Fair rate was created specifically for compliance with a different Ohio Policy.³⁰

Given that AES Ohio offers specialized rates to meet the needs of certain customers and comply with state policy, there is no reason that AES Ohio cannot provide a rate to properly promote distributed generation within its service territory. On rehearing, the Commission should require AES Ohio to offer a specialized demand charge rate for general service commercial and industrial customers that advances state policy and also better aligns their demand costs with the demand on AES Ohio's distribution grid.

IV. CONCLUSION

IGS urges the Commission to grant this Application for Rehearing and reconsider three issues where a clear and obvious error has occurred.

On rehearing, the Commission should reverse their approval and remove the unsubstantiated switching fee, fairly allocate AES Ohio uncollectible expenses, and implement a tariff design for commercial or industrial customers for distributed generation.

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³⁰ R.C. 4928.80.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Interstate Gas Supply, Inc.* was served this 13th day of January 2023 via electronic mail upon the following:

/s/ Evan Betterton

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Case No(s). 20-1651-EL-AIR, 20-1652-EL-AAM, 20-1653-EL-ATA

Summary: Application for Rehearing and Memorandum in Support electronically
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