BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of The Dayton Power and Light Company for a Finding That Its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and More Favorable in the Aggregate Test in R.C. 4928.143(E). | ))))))) | Case No. 20-0680-EL-UNC |

**MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT**

**OF INTERSTATE GAS SUPPLY, INC.**

Bethany Allen (0093732)

Counsel of Record

bethany.allen@igs.com

Joseph Oliker (0086088)

joe.oliker@igs.com

Michael Nugent (0090408)

michael.nugent@igs.com

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

Telephone: (614) 659-5000

Frank P. Darr (0025469)

fdarr2019@gmail.com

6800 Linbrook Blvd.

Columbus, Ohio 43235

Telephone: (614) 390-6750

***Attorneys for IGS Energy***

*(willing to accept service via email)*

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**MOTION TO INTERVENE**

Pursuant to R.C. 4903.221 and Ohio Adm.Code 4901-1-11, Interstate Gas Supply, Inc. (“IGS” or “IGS Energy”) moves to intervene in the above captioned case. In this proceeding, The Dayton Power and Light Company (“DP&L”) submits its application (“Application”) regarding whether its current Electric Security Plan ("ESP") passes the significantly excessive earnings test ("SEET") and the more favorable in the aggregate than the market rate offer (“MRO”) test in R.C. 4928.143.

As set forth in the attached Memorandum in Support, IGS submits that it has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceeding, and that it is so situated that the disposition of the proceeding without IGS’ participation may, as a practical matter, impair or impede IGS’ ability to protect that interest. IGS further submits that its participation in this proceeding will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the thorough consideration of the issues raised in the proceeding.

IGS’ interests will not be adequately represented by other parties to these proceedings and therefore, IGS is entitled to intervene in this proceeding with the full powers and rights granted to intervening parties.

Respectfully submitted,

*/s/ Bethany Allen\_\_\_\_\_\_\_\_\_*

Bethany Allen (0093732)

Counsel of Record

bethany.allen@igs.com

Joseph Oliker (0086088)

joe.oliker@igs.com

Michael Nugent (0090408)

michael.nugent@igs.com

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**MEMORANDUM IN SUPPORT**

As a retail energy supplier, IGS Energy has over 30 years of experience serving customers in Ohio’s competitive gas and electric markets. Currently, IGS serves customers across 20 states, including electric customers of various sizes throughout the DP&L service territory. Additionally, the IGS family of companies, which includes IGS Solar, IGS Generation, IGS Home Services, and IGS CNG Services, provides customer focused energy solutions that complement IGS Energy’s core commodity business, including distributed generation, demand response, compressed natural gas refueling, and back-up generation.

In this proceeding, DP&L seeks a finding from the Commission that its current Electric Security Plan ("ESP") passes the significantly excessive earnings test ("SEET") and the more favorable in the aggregate than the market rate offer (“MRO”) test in R.C. 4928.143.

IGS respectfully submits that it is entitled to intervene in this proceeding because IGS has a real and substantial interest in this proceeding, the disposition of which may impair or impede its ability to protect that interest.

For purposes of considering requests to intervene in Commission proceedings, the Commission’s rules provide that:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that: (1) A statute of this state or the United States confers a right to intervene. (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.[[1]](#footnote-2)

Further, R.C. 4903.221(B) and Ohio Adm.Code 4901-1-11(B), provide that the Commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

(1) The nature and extent of the prospective intervener’s interest;

(2) The legal position advanced by the prospective intervener and its probable relation to the merits of the case;

(3) Whether the intervention by the prospective intervener will unduly prolong or delay the proceedings; and

(4) Whether the prospective intervener will significantly contribute to full development and equitable resolution of the factual issues.

As a certified retail electric service provider, IGS has a direct, real, and substantial interest in this proceeding. In its Application, DP&L seeks a determination from the Commission that its current ESP is more beneficial to customers than a hypothetical MRO, which would include a bypassable financial integrity charge in the place of DP&L’s current nonbypassable Retail Stability Charge (“RSC”).[[2]](#footnote-3) If DP&L’s ESP fails the test, the Commission may impose reasonable and necessary conditions to accommodate the transition to an alternative plan.[[3]](#footnote-4) Thus, the outcome of this proceeding will have an impact on the rates charged to IGS’ current and prospective customers, and potentially impact the competitive playing field through changes to DP&L’s standard service offer rates.

In addition, DP&L seeks the continuation of its ratepayer funded subsidy even if the Commission concludes that DP&L has failed the SEET and MRO tests.[[4]](#footnote-5) IGS has an interest in this outcome because the benefit of this cash subsidy flows to DP&L’s unregulated parent company, DPL Inc., and its parent, AES Corp. By paying off DPL Inc.’s debts, DPL Inc. and AES Corp. are better positioned to compete against IGS in the competitive retail and wholesale electric markets. The subsidy also preserves AES Corp.’s capital that would otherwise be required to support DPL Inc. and DP&L, allowing AES Corp. to deploy its resources to the competitive disadvantage of IGS and its family of companies. Indeed, in its Application, DP&L avers that its ultimate parent company, AES Corp., intends to inject $300 million of capital into DP&L.[[5]](#footnote-6) To the extent that the Commission eliminates DP&L’s existing RSC subsidy, the capital contribution required from AES Corp. will be greater.

Further, according to DP&L, the outcome of this proceeding may have an impact on its ability to make investments in grid modernization.[[6]](#footnote-7) Any delays or impediments to grid modernization, especially the deployment of smart meters, will impact IGS’ ability to offer innovative products and services to customers within the DP&L territory. Therefore, IGS has a real and substantial interest in this proceeding.

Additionally, it would be inappropriate to determine this proceeding without IGS’ participation, as the other parties in the case cannot adequately represent and protect the interests of IGS and its customers in this proceeding.

Further, IGS and its counsel have substantial experience appearing and practicing before the Commission; thus IGS intervention will not unduly prolong or delay this proceeding. In fact, IGS’ involvement in this proceeding will assist in development and resolution of factual issues before the Commission.

 Finally, the Supreme Court of Ohio has held that intervention should be liberally allowed for those with an interest in the proceeding.[[7]](#footnote-8) In light of the liberal interpretation of the intervention rules, IGS clearly meets the standards for intervention in this proceeding.

For the reasons set forth above, IGS respectfully requests the Commission grant this Motion to Intervene.

Respectfully submitted,

*/s/ Bethany Allen\_\_\_\_\_\_\_\_\_*

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Counsel of Record

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***Attorneys for IGS Energy***

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**CERTIFICATE OF SERVICE**

 I certify that this *Motion to Intervene and Memorandum in Support of* *Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on May 21, 2020. The PUCO’s e-filing system will electronically serve notice of the filing of this document on the parties subscribed to this proceeding. Additionally, notice was provided to the parties listed below.

*/s/ Bethany Allen\_\_\_\_\_\_\_\_\_*

Bethany Allen

**SERVICE LIST**

william.michael@occ.ohio.gov

amy.botschner.obrien@occ.ohio.gov

jsharkey@ficlaw.com

djireland@ficlaw.com

chollon@ficlaw.com

michael.schuler@aes.com

mkurtz@bkllawfirm.com

kboehm@bkllawfirm.com

jklercohn@bkllawfirm.com

dparram@bricker.com

dstinson@bricker.com

jspottswood@bricker.com

slesser@calfee.com

alexander@calfee.com

mkeaney@calfee.com

khehmeyer@calfee.com

mpritchard@mcneeslaw.com

rglover@mcneeslaw.com

patricia.schabo@puco.ohio.gov

michael.williams@puco.ohio.gov

Bojko@carpenterlipps.com

1. Ohio Adm.Code 4901-1-11(A). [↑](#footnote-ref-2)
2. Application at 2. [↑](#footnote-ref-3)
3. *See* R.C. 4928.143(E). [↑](#footnote-ref-4)
4. App. at 3. [↑](#footnote-ref-5)
5. Direct Testimony of Gustavo Garavaglia (Apr. 1, 2020) at 4. [↑](#footnote-ref-6)
6. *See* Direct Testimony of Jeffrey Malinak (Apr. 1, 2020) at 8, 13, and 47. [↑](#footnote-ref-7)
7. *Ohio Consumers' Counsel v. Pub. Util. Comm.,* 111 Ohio St.3d 384, 2006-Ohio-5853. [↑](#footnote-ref-8)