

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan.)	Case No. 08-1094-EL-SSO
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.)	Case No. 08-1095-EL-ATA
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code §4905.13.)	Case No. 08-1096-EL-AAM
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.)	Case No. 08-1097-EL-UNC
)	

COMMENTS OF INTERSTATE GAS SUPPLY, INC.

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COMMENTS

I. INTRODUCTION

Following the Supreme Court of Ohio’s decision in Case No. 2014-1505, the Dayton Power and Light Company (“DP&L”) requested Public Utilities Commission of Ohio (“Commission”) authorization to withdraw from its second electric security plan (“ESP”) (Case Nos. 12-426-EL-SSO, *et al.*) and to implement rates that are consistent with its first ESP (Case Nos. 08-1094-EL-SSO, *et al.*). While parties may raise legitimate legal arguments to DP&L’s request to withdraw from its ESP, IGS files these comments—to the extent that the Commission entertains DP&L’s request—to urge the Commission to ensure that DP&L’s successor tariffs are just and reasonable and do not undermine the competitive conditions in the retail electric market. Specifically, IGS urges the

Commission maintain DP&L's non-bypassable transmission rider in order to avoid harm to the retail electric service market.

II. BACKGROUND AND COMMENTS

A. DP&L's request to withdraw its ESP

On June 20, 2016, the Supreme Court of Ohio issued a decision in Case No. 2014-1505 reversing DP&L's second ESP. That appeal was largely focused on the Commission's approval of a non-bypassable Service Stability Rider ("SSR"), which many parties argued allowed DP&L to recover unlawful transition revenue in violation of R.C. 4928.38. The Court's order merely stated that the case is reversed, relying upon the authority stemming from the Court's order reversing and remanding Ohio Power Company's second ESP (*Ohio Power Decision*). That decision reversed the authorization of untimely transition revenue. Although the decision issued by the Court in Case No. 2014-1505 did not contain a written opinion, it is quite clear that the decision relied upon the portion of the Ohio Power decision relating to transition revenue. Indeed, DP&L and the Commission relied upon the order reversed by the *Ohio Power Decision* to defend and support the SSR at issue Case No. 2014-1505.

Following the Court's decision in Case No. 2014-1505, on July 27, 2016, the DP&L filed in its existing ESP docket (Case Nos. 12-426-EL-SSO, *et al.*) a Motion to Withdraw its Applications, as well as Motion to Implement Previously Authorized Rates. On that same day, DP&L filed in its first ESP Case, a Motion to Implement Previously Authorized Rates. Throughout its three motions, DP&L asserts two arguments in favor of its request to withdraw from its ESP. First, that DP&L has the right to withdraw under R.C. 4928.143(C)(2)(a), alleging that the Commission's implementation of the Court's

decision results in a modification of its ESP Application. In the alternative, DP&L alleges it would be appropriate to approve rates consistent with its first ESP because DP&L is only permitted to provide an SSO that has been lawfully approved under R.C. 4928.143. DP&L alleges that its existing ESP has been determined to be unlawful in its entirety; therefore, it would be appropriate to approve rates consistent with its prior ESP.

B. DP&L's proposed rates

On August 1, 2016, DP&L filed in this proceeding a Notice of Filing Proposed Tariffs in this proceeding (“Proposed Tariffs”). According to DP&L, the Proposed Tariffs are “consistent with the tariffs that the Commission approved in its June 24, 2009 Opinion and Order in this matter (“ESP I”) and that were in effect before the Commission's Order in ESP II.” Among other things, DP&L has proposed to retain its existing transmission rates, which are currently non-bypassable for customers that select a competitive retail electric service (“CRES”) provider. Moreover, DP&L proposed to continue to, in part, establish the price of SSO rates through the auction-based process utilized in Case Nos. 12-426-EL-SSO, *et al.* DP&L further requests that the Proposed Tariffs remain in effect until the Commission issues a ruling on its pending ESP proposal in Case Nos. 16-395-EL-SSO, *et al.*

To the extent that DP&L is permitted to put into effect rates consistent with its first ESP, IGS urges the Commission to approve DP&L's proposed non-bypassable transmission rider.¹ Transmission costs are not reflected in existing customer contracts in the DP&L service territory—nor have they been included in contracts for nearly three

¹ IGS takes no position regarding the balance of DP&L's filing.

years. Authorization of a bypassable transmission rider for any period of time would reek havoc on the retail electric service market and have the potential to open the floodgates to collateral litigation.

Regardless of the Commission's treatment of DP&L's proposal to withdraw from its second ESP and proposal to reinstate prior rates, the Commission has ample authority under Ohio law to direct DP&L to collect transmission rider costs on a non-bypassable basis. Specifically, R.C. 4928.05(A)(2) states,

Notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

Accordingly, the Commission may, as part of any order authorizing DP&L to implement successor tariffs, authorize DP&L to collect its transmission costs through a non-bypassable rider. Such an order would maintain existing rates and rate structures and further mitigate the undoubted confusion and surprise that will result to both customers and suppliers to the extent that the Commission permits DP&L to implement rates consistent with its first ESP.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Motion to Intervene and Memorandum in Support of Interstate Gas Supply, Inc.* was served this 11th day of August 2016 via electronic mail upon the following:

/s/ Matthew White
Matthew White

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Summary: Comments electronically filed by Helen Sweeney on behalf of Interstate Gas Supply, Inc.