

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power & Light Company for)	Case No. 16-0395-EL-SSO
Approval of Its Electric Security Plan.)	

In the Matter of the Application of The)	
Dayton Power & Light Company for)	Case No. 16-0396-EL-ATA
Approval of Revised Tariffs.)	

In the Matter of the Application of The)	
Dayton Power & Light Company for)	
Approval of Certain Accounting Authority)	Case No. 16-0397-EL-AAM
Pursuant to Ohio Rev. Code § 4905.13.)	

**JOINT REPLY BRIEF OF
INTERSTATE GAS SUPPLY, INC.
AND
THE RETAIL ENERGY SUPPLY ASSOCIATION**

May 15, 2017

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I. INTRODUCTION

The competitive retail market provisions of the Stipulation are important for the development and growth of the competitive retail electric market in Dayton Power and Light's ("DP&L") territory over its next ESP. The Retail Energy Supply Association¹ ("RESA") and Interstate Gas Supply, Inc. ("IGS") negotiated the competitive retail market provisions with other parties, including DP&L and Staff, as part of the Stipulation. All of those provisions support approval of the Stipulation under the Commission's three-prong test because they were seriously negotiated, are in the public interest and do not violate any regulatory policy or practice.

The Ohio Consumers' Counsel ("OCC") disagrees, arguing that (1) customers will not benefit from a supplier consolidated billing pilot and that they should not pay for any of its costs, (2) a non-commodity billing rule review should be delayed and only held with a full review of CRES rules and (3) the Reconciliation Rider should be charged on a non-bypassable basis versus a bypassable basis. The record, however, demonstrates that the competitive retail market provisions as presented in the Stipulation will enhance the competitive marketplace.

RESA/IGS Witness Matthew White's testimony underscores the importance of the competitive retail market provisions. Mr. White has first-hand, in-depth knowledge of competitive retail markets as a result of his work at IGS, a competitive retail electric supplier. He testified about current market issues and supplier experiences in enhancing the competitive marketplace in Ohio and in other states. His testimony establishes that (1) all customers will benefit from supplier consolidated billing; (2) all customers will benefit from a Commission rule

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

review and implementation of non-commodity billing and (3) making the Reconciliation Rider bypassable avoids an illegal subsidy that would be created by collecting utility generation charges from shopping customers.

The record in this proceeding fully supports the implementation of the competitive market provisions in DP&L's next ESP as these provisions will enhance the shopping experience for all customers. In evaluating the proposed Stipulation,² the Commission should find that enhancing the competitive market as presented in the Stipulation is important for the ESP, and that all competitive retail market provisions proposals are lawful, just, reasonable, beneficial and consistent with Ohio's electric services policy.

II. THE RECORD FULLY SUPPORTS THE STIPULATION'S COMPETITIVE RETAIL MARKET PROVISIONS

A. The supplier consolidated billing pilot will lead to more billing flexibility and a broader range of products available to customers.

The Commission has authorized CRES providers to issue supplier consolidated bills and among other things, identified the information to be included on those bills.³ Additionally, the Commission approved supplier consolidated billing in the DP&L service territory years ago.⁴ Supplier consolidated billing, however, is still not yet taking place in DP&L's service territory, inhibiting the development of innovative products and services for customers.

² In considering the reasonableness of a proposed stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 (citing *Consumers' Counsel, supra*, at 126.) The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.*)

³ Rule 4901:1-21-18, Ohio Administrative Code. OCC Witness Haugh testified that this authorization has been in effect for at least 10 years. (Tr. Vol. III at 676).

⁴ P.U.C.O. No. 17, Ninth Revised Sheet G8, page 22 of 30 at ¶11.

OCC disagrees that customers will benefit from supplier consolidated billing, claiming that there is no record evidence that customers would benefit from the supplier consolidated billing pilot.⁵ OCC, however, overlooks its own witness' testimony in this case. OCC Witness Haugh acknowledged in his sworn testimony that, for the customers who desire supplier consolidated billing, this pilot program would be a benefit.⁶

Q. And you testify that generally – you qualify your answer by saying "Generally, no." You would agree that some customers may desire consolidated billing; is that right?

A. Some may.

Q. And for those customers this would be a benefit; is that right?

A. If they desire it, then it would be a benefit to them.

Mr. Haugh's testimony on this point supports other record evidence on the benefits of a supplier consolidated billing pilot. First, many parties with differing interests, including Staff and consumer groups, have agreed to this enhancement and are recommending specific steps to move supplier consolidated billing forward in an efficient manner.⁷ Second, this pilot will be open and available for *any* CRES provider that qualifies and is interested, allowing a broader base of industry participants than other electric pilots in place today.⁸ Third, it will provide the industry with data and information on the practicality of supplier consolidated billing.⁹

Importantly, a pilot could lead to full implementation of supplier consolidated billing, a program that will allow DP&L customers to receive more innovative products and services that

⁵ OCC Initial Brief at 37.

⁶ Tr. Vol. III at 641.

⁷ Joint Ex. 1 at 21-25.

⁸ This provision contradicts the claim made by Wal-Mart Stores East, LP and Sam's East, Inc. that the Stipulation provides specific benefits to only the Signatory or Non-Opposing Parties and not available to others. (Wal-Mart Initial Brief at 9)

⁹ Jt. Ex. 1 at 21.

are attractive to customers. With supplier consolidated billing, value-added products and services can be provided in a manner that is convenient (and desired) by customers.¹⁰ As RESA/IGS Witness White testified, *all* customers benefit from the development of a more robust competitive market,¹¹ as they have greater options available to them and have the opportunity to use energy more efficiently.¹² Mr. White explained further:¹³

[H]aving the ability to offer a more diverse range of products and services enables us to offer many of the products and services that help customers use energy more efficiently.

So just as a specific example, if you are able to offer a customer -- expand your ability to offer customers a product such as time-of-use or bill a more sophisticated demand response residential product, it -- it reduces the energy consumption on the grid, and it reduces demand on the grid which would reduce the need to bill new generation which would benefit all customers, all distribution customers regardless of whether they are receiving that particular product from the CRES supplier.

In addition, there is record evidence reaffirming that, without important market enhancements, innovative products and services can be blocked or delayed. Mr. White testified, in explaining smart thermostats products offers in Ohio, that:¹⁴

[W]e are unable to offer the demand reduction. We tried to offer that in the Duke service territory -- the demand -- automatic residential demand reduction component, we tried to offer that in the Duke service territory. That was initially where we wanted to roll out that pilot program, but because we didn't get customer data from the Duke utility through their smart meters, we had to start that pilot in Illinois where they did have the customer data.

Contrary to OCC's claim, the record supports the supplier consolidated billing pilot provision of the Stipulation and it will benefit the market, the industry and customers.

¹⁰ RESA Ex. 1 at 8.

¹¹ Tr. Vol. II at 440, 450-451.

¹² *Id.* at 439, 451.

¹³ *Id.* at 451.

¹⁴ *Id.* at 431.

OCC also is wrong that none of the costs of the pilot should be recovered from customers.¹⁵ Under the Stipulation, the pilot implementation costs will be shared in a fair manner:¹⁶

- 50 percent of the pilot implementation costs will be paid by CRES providers (with a DP&L shareholder-funded credit applied)
- 50 percent of the pilot implementation costs will be DP&L's responsibility, which would be recovered from customers (subject to certain study, review and possible challenge)

DP&L's ability to collect its 50% share from ratepayers is capped at a maximum of \$1.5 million under the Stipulation. DP&L must apply to the Commission for approval to collect amounts in excess of that cap. With this cap in place, the collection and cost-sharing for the pilot under the Stipulation is a reasonable approach for implementing an important market enhancement that, as OCC witness Haugh agrees, will benefit customers. Also, the Commission has previously found that it is reasonable for customers to incur the costs of market enhancements as they develop a more robust competitive market.¹⁷ As a result, the Commission should reject OCC's arguments and approve the supplier consolidated billing pilot provisions of the Stipulation.

B. The request for a non-commodity billing rule review will initiate a process to address a lingering issue for the Ohio competitive electric markets.

The signatory parties to the Stipulation agreed that Staff will request that the Commission conduct a rule review to establish parameters for all non-commodity billing in all electric

¹⁵ OCC Initial Brief at 37.

¹⁶ Jt. Ex. 1 at 24.

¹⁷ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No., 12-426-EL-SSO et al., Opinion and Order at 37-39 (September 4, 2013) regarding various enhancements including web-based portal for accessing customer information and sync lists; *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order at 25-26, 30-31 (March 26, 2014) and Entry on Rehearing at 10-11 and 14-16 (May 21, 2014) regarding enhancements to the billing language, logos, and format.

distribution utility service territories.¹⁸ DP&L also agreed (a) to provide non-commodity billing on its utility bills after the Commission approves non-commodity billing requirements or if the Commission does not act, (b) to file an application to establish non-commodity billing within 18 months of the Stipulation's approval.¹⁹ This provision of the Stipulation and ESP will move forward a topic that the industry in Ohio has discussed in multiple contexts, with no resolution.²⁰

OCC's only argument against this provision of the Stipulation is that a separate rule review is "inappropriate at this time."²¹ Instead, OCC argues that this rule review should only take place in the Commission's upcoming review of its CRES rules in Chapter 4901:1-21, Ohio Administrative Code.²² OCC's argument is legally incorrect and factually inapplicable.

As the Supreme Court of Ohio has recognized, "the Commission is vested with broad discretion to manage its dockets, including the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business."²³ Ohio law gives the Commission discretion to decide the timing of a rule review, and nothing in the Stipulation limits the Commission's ability in that regard.

The Commission's discretion to manage its dockets is especially important in this instance because the provision of non-commodity services is not necessarily limited to CRES

¹⁸ Joint Ex. 1 at 21.

¹⁹ *Id.*

²⁰ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 14-841-EL-SSO, Opinion and Order at 82-83 (April 2, 2015); and *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, Opinion and Order at 80-82 (February 25, 2015) and Fourth Entry on Rehearing at 56-57 (November 3, 2016).

²¹ OCC Initial Brief at 53.

²² *Id.*

²³ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al, Entry on Rehearing at 36 (May 28, 2015), citing *Duff v. Pub. Util. Comm.*, 56 Ohio St. 2d 367, 384 N.E. 2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 433 N.E. 2d 212 (1982).

providers. As Mr. White testified, AEP Ohio, FirstEnergy, and Duke have already permitted non-CRES third parties to utilize the consolidated utility bill to provide non-commodity products and services.²⁴ Thus, there is sufficient justification to hold a new rulemaking on a standalone basis, given that non-commodity products are not offered solely by CRES providers.

Indeed, the record supports holding the rule review as soon as possible. Non-commodity billing is another means by which customers can receive a more diverse range of products and services to customers in an attractive manner and without the hassle of multiple bills. As Mr. White testified, “[t]his will allow a CRES provider to utilize the billing model best suited for its business model.”²⁵ Mr. White’s testimony is clear – along with supplier consolidated billing, non-commodity billing will lead to the “ability to offer a more diverse range of products and services that help customers use energy more efficiently.”²⁶ Moving forward with a non-commodity billing rule review and implementation of that program afterward will allow CRES providers access to billing functions to bill for more diverse products, including products in the DP&L service territory.

OCC has no valid reason for eliminating or delaying a rule review on non-commodity billing. This competitive retail market provision of the Stipulation is supported by the evidentiary record and should be adopted.

C. The recovery of OVEC generation costs on a bypassable basis is reasonable.

OCC argues against the Reconciliation Rider on the ground that, as a bypassable rider, it will discriminate against the standard service offer customers (nonshopping customers).²⁷ OCC

²⁴ RESA Ex. 1 at 11.

²⁵ RESA Ex. 1 at 10.

²⁶ Tr. Vol. II at 451.

²⁷ OCC Initial Brief at 55.

believes that the impact of the Reconciliation Rider on a per-customer basis will increase as more customers shop. Therefore, OCC suggests that if OVEC cost recovery is granted, it should be from all customers. OCC's concern, though, is not a reason to ignore the fact that if nonbypassable, the rider is collecting generation charges from shopping customers.

Electric utilities in Ohio cannot charge shopping customers the additional generation costs of other providers or the distribution utility:²⁸ As R.C. 4928.02 states, the policy of Ohio is to:

(A) **Ensure** the availability to consumers of adequate, reliable, safe, efficient, **nondiscriminatory**, and reasonably priced **retail electric service**;

* * *

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by **prohibiting the recovery of any generation-related costs through distribution or transmission rates**; * * * (Emphasis added.)

If DP&L recovers its net OVEC costs through a nonbypassable charge imposed on distribution customers, shopping customers would have to pay the utility for generation that they do not take from their suppliers. As Mr. White explained at hearing, a bypassable charge for recovery of DP&L's OVEC entitlement appropriately "avoids an anticompetitive subsidy that would result from collecting generation related costs through nonbypassable charges imposed on shopping customers."²⁹

²⁸ R.C. 4928.02.

²⁹ RESA Ex. 1 at 11-12.

Even OCC Witness Kahal acknowledged that the OVEC costs are generation costs.³⁰ As the record reflects on cross:³¹

Q. The collection of the OVEC net costs through the reconciliation rider, that will collect generation expenses, correct?

A. Yes.

Q. And if the revenues under that rider resulted in -- exceeded the costs, that would then also be resulting in a credit of generation revenues, correct?

A. Yes.

OCC cannot deny that retail electric generation in Ohio is a competitive service³² and generation costs have been separated from the utility's distribution service costs.³³ DP&L customers who "shop" and purchase retail electric generation from a CRES provider should only pay that provider's generation costs, not additional generation costs of other providers or the distribution utility. Indeed, OCC's own brief alleges that collecting OVEC costs from all customers would constitute an unlawful transition charge.³⁴ Thus, OCC is effectively making contradictory arguments in this proceeding – on the one hand, recommending that OVEC costs be collected from all customers, but on the other hand, claiming that result would be unlawful.

The Commission should reject OCC's arguments. Making the Reconciliation Rider a bypassable charge versus a non-bypassable charge is a pro-market recovery structure. That result is consistent with Ohio law and policy, and appropriate if DP&L is allowed to recover the net costs of its OVEC entitlement.

³⁰ Tr. Vol. IV at 755.

³¹ *Id.*

³² R.C. 4928.03.

³³ R.C. 4928.07 and 4928.141.

³⁴ OCC Initial Brief at 20, 55.

III. CONCLUSION

All of the competitive retail market provisions of the Stipulation will help develop innovative competitive products to the DP&L service territory during the ESP. They are reasonable, in the public interest, and pro-competitive. They will not violate regulatory practices or principles, and support and enhance prior Commission initiatives for the competitive marketplace. As such, these provisions support approval of the Stipulation under the Commission's three-prong test.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that this document is also being served electronically on the following parties on this 15th day of May 2017.

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Summary: Reply -- Joint Reply Brief electronically filed by Mrs. Gretchen L. Petrucci on behalf of Interstate Gas Supply Inc. and Retail Energy Supply Association