

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The	)	
Dayton Power and Light Company for an	)	Case No. 15-1830-EL-AIR
Increase in its Electric Distribution Rates	)	
	)	
In the Matter of the Application of The	)	
Dayton Power and Light Company for	)	Case No. 15-1831-EL-AAM
Accounting Authority	)	
	)	
In the Matter of the Application of Dayton	)	
Power and Light Company for Approval of	)	Case No. 15-1832-EL-UNC
Revised Tariffs	)	

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**MEMORANDUM CONTRA MOTION TO STRIKE OF INTERSTATE GAS SUPPLY,  
INC. AND RETAIL ENERGY SUPPLY ASSOCIATION**

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**BEFORE  
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In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates	)	Case No. 15-1830-EL-AIR
	)	
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority	)	Case No. 15-1831-EL-AAM
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In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs	)	Case No. 15-1832-EL-UNC
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**MEMORANDUM CONTRA MOTION TO STRIKE OF INTERSTATE GAS SUPPLY, INC. AND RETAIL ENERGY SUPPLY ASSOCIATION**

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**I. INTRODUCTION**

On October 30, 2015, the Dayton Power and Light Company ("DP&L") filed an application to increase in distribution rates, for tariff approval, and to change its accounting methods ("Application"). The Staff Report of Investigation ("Staff Report") was filed with the Public Utilities Commission of Ohio ("Commission") on March 12, 2018, setting forth the Commission Staff's ("Staff") findings regarding the Application.

On April 11, 2018, IGS and RESA filed objections to the Staff Report and the Direct Testimony of J. Edward Hess to ensure that DP&L appropriately unbundled distribution costs required to process and administer the standard service offer ("SSO") and allocated those costs to SSO customers.

On May 2, 2018, the Office of Ohio Consumers' Counsel moved to strike Mr. Hess' testimony in its entirety. In its motion, OCC alleged that Mr. Hess' recommendation constitutes single issue ratemaking outside the Commission's jurisdiction and is otherwise not relevant under the rules of evidence. As discussed below, the Commission should deny OCC's motion, which is substantively incorrect and inconsistent with OCC's prior advocacy.

## **II. BACKGROUND**

In various proceedings—mainly SSO proceedings—IGS and RESA have identified and demonstrated that many costs related to provision of the SSO are collected in distribution rates. Eliminating this subsidy has not been easy, given the chicken and the egg nature of finding the appropriate starting place for the evaluation. In DP&L's electric security plan case, however, the Commission took an important first step, authorizing a stipulation and recommendation to address the issue in this case:

In DP&L's distribution rate case (Case No. 15-1830-EL-AIR), there will be an evaluation of costs contained in distribution rates that may be necessary to provide standard service offer service. Any reallocation of costs to the standard service offer as a result of this evaluation will be revenue neutral to DP&L.<sup>1</sup>

To that end, the Staff Report identified a small amount of costs that it determined were undeniably related to the provision of default service.<sup>2</sup>

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<sup>1</sup> *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 16-395-EL-SSO, *et al.*, Opinion and Order at 8 (Oct. 20, 2017) (hereinafter "DP&L ESP Case").

<sup>2</sup> Staff Report at 28 (Mar. 12, 2018).

IGS and RESA, however, disagreed with categories of costs in distribution rates that were identified and the total amount of costs identified in the Staff Report.<sup>3</sup> Thus, they submitted objections to the Staff Report and filed the Direct Testimony of Edward Hess identifying additional costs, as well a specific rate design and methodology for allocating the cost and credits necessary to ensure this issue was resolved on a revenue neutral basis as ordered by the Commission.

OCC's Motion to Strike does not necessarily challenge Mr. Hess' evaluation of distribution cost related to the provision of SSO service. Rather, OCC's motion is based exclusively on Mr. Hess' proposed revenue neutral cost reallocation rider. OCC states that "Mr. Hess does not propose any adjustment allowing SSO customers to avoid distribution costs that support Choice administrative and processing costs. Nor does he propose an avoidable rider that collects those costs directly from shopping customers."<sup>4</sup> Further, OCC alleges that Mr. Hess' non-bypassable credit and bypassable reallocation of costs runs afoul of the prohibition against single issue ratemaking.<sup>5</sup> Consequently, OCC claims that Mr. Hess' proposal is not relevant to the matters at issue in this proceeding. Finally, OCC alleges that Mr. Hess' recommendation would be more

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<sup>3</sup> Objections to the Staff Report and Summary of Major Issues of Retail Energy Supply Association at 1-3 (Apr. 11, 2018); Objections to the Staff Report and Summary of Major Issues of Interstate Gas Supply, Inc. at 4-8. It is noteworthy that OCC did not object to the Staff Report's proposed allocation of portions of the OCC and PUCO assessment to the standard service offer. Moreover, OCC did not seek to strike IGS or RESA's objections related to this issue.

<sup>4</sup> Motion at 1-2 (all citations refers to memorandum in support). This statement is a red herring that IGS and RESA shall not address further, given that Mr. Hess' recommendation achieves the exact same result through a non-bypassable credit to all customers and a bypassable rider to SSO customers to ensure revenue neutrality.

<sup>5</sup> Motion at 3-5.

appropriate in an electric security plan case, where matters related to single issue ratemaking are permitted. As discussed below, OCC's motion lacks merit.

### III. ARGUMENT

#### **A. The Commission explicitly delegated the issue addressed by Mr. Hess to this case and OCC has recommended issues of this nature be addressed in distribution cases**

Contrary to OCC's claim, Mr. Hess' testimony is proper in a distribution case. While IGS and RESA also raised the issues addressed by Mr. Hess in DP&L's ESP case (OCC's currently favored forum), the Commission explicitly delegated these issues to this case when it authorized the Stipulation containing the following language: "In DP&L's distribution rate case (Case No. 15-1830-EL-AIR), *there will be an evaluation of costs contained in distribution rates that may be necessary to provide standard service offer service.*"<sup>6</sup> While OCC takes issue with Mr. Hess' proposed rider structure to resolve this issue, it is required to ensure that "[a]ny reallocation of costs to the standard service offer as a result of this evaluation will be revenue neutral to DP&L."<sup>7</sup> By simply reducing the distribution rates of shopping customers without reallocating costs to SSO customers, Mr. Hess' unbundling proposal would not be revenue neutral.

Further, OCC's argument against Mr. Hess' testimony directly contradicts its legal position in Ohio Power Company's electric security plan. In that case, OCC argued that "The CIR, along with the SSOCR, should be addressed in a distribution rate case."<sup>8</sup> OCC cannot have it both ways—the Commission should not indulge OCC's shell game tactics.

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<sup>6</sup> *DP&L ESP Case*, Opinion and Order at 8 (Oct. 20, 2017) (emphasis added).

<sup>7</sup> *Id.*

<sup>8</sup> *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*, OCC Initial Brief at 48 (Nov. 29, 2017).

Accordingly, Mr. Hess' testimony is relevant—pursuant to IGS and RESA's properly filed objections, the Commission's own delegation, and OCC's recommendation in parallel cases—to the matters at issue in this distribution case. As such, Mr. Hess' testimony should be considered by the Commission and the motion should be denied.

**B. Mr. Hess' testimony does not propose single issue ratemaking**

OCC's contradictory recommendations and the Stipulation aside, Mr. Hess' Testimony does not propose unlawful single issue ratemaking. In the regulatory process, single issue ratemaking entails the authorization of cost recovery related to a single source without a holistic evaluation of all costs and revenues. An example illustrates this point. A utility may experience an increase in operating costs as the result of a new tax or regulatory burden. It may be improper to establish a rider to compensate the utility for the newly imposed cost without looking at all existing expenses relative to total revenues. As textbooks on this subject indicate, in the absence of a pass-through clause that permits single issue ratemaking, "a firm that formally requests rate relief solely because its fuel costs have risen nevertheless must open its accounts for a complete and time-consuming review."<sup>9</sup> Without performing this holistic evaluation, there is no way to determine whether the imposition of the new cost has any material impact on the utility's opportunity to earn a fair and reasonable return.

The precedent cited by OCC further demonstrates that Mr. Hess does not propose single issue ratemaking. In *Pike Natural Gas Company v. PUCO*, 68 Ohio St. 2d 181, 183 (1981), the Court denied a utility's appeal of a Commission decision to deny recovery of excise taxes through the purchase gas adjustment clause (a gas fuel rider). The PGA

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<sup>9</sup> *Lesser and Giacchino*, Fundamentals of Energy Regulation at 270, 2<sup>nd</sup> Edition (2013).

provided "(a) A provision in a schedule of a gas company or natural gas company that requires or allows the company to, *without adherence to section 4909.18 or 4909.19* of the Revised Code, adjust the rates that it charges to its customers in accordance with any fluctuation in the cost to the company of obtaining the gas that it sells stating."<sup>10</sup> The Court held that "[i]t is apparent from the quoted language that R.C. 4905.302 provides solely for adjustment clauses that reflect fluctuations in the price of gas to a utility."<sup>11</sup> As the court noted in rejecting Pike's request for single issue cost recovery, "[t]his could eliminate the regulatory framework, contained in R. C. 4909.15, that rates are to be based upon historic costs."<sup>12</sup> Thus, the utility was required to seek cost recovery in a distribution case rather than through a single issue ratemaking proceeding.<sup>13</sup>

Turning to Mr. Hess' testimony, it is important to keep in mind that it was filed *in a distribution case*, which entails a holistic evaluation of all costs and revenues. Thus, Mr. Hess does not recommend increasing DP&L's cost recovery in a vacuum. Indeed, Mr. Hess' proposed rider structure does not recommend an increase in distribution rates—it is a revenue neutral approach more akin to rate design to ensure that DP&L's rates better reflect cost causation.

Further, OCC is incorrect that the authorization of riders in a distribution case constitutes unlawful single issue ratemaking. The Commission has historically authorized such cost recovery mechanisms. For example, in an application to increase rates filed under 4909.18 by the Cincinnati Gas & Electric Company, the Commission established

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<sup>10</sup> *Id.* at 184 (quoting R.C. 4905.302(A)(1)(a)) (emphasis added).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 186.

<sup>13</sup> *See id.*

three riders: (1) the Interruptible Residential Service Rider; (2) Curtailment Power Rider; and (3) Auxiliary Power Service Rider.<sup>14</sup> Nothing prohibits the Commission from authorizing such recovery mechanisms within the context of a distribution case. The issue of single issue ratemaking arises when an entity seeks such cost recovery outside of an evaluation of all costs and revenues collected under existing rates. Because Mr. Hess' testimony was filed within the context of a base distribution rate case, it does not recommend that the Commission partake in single issue ratemaking.

Finally, it is important to identify that OCC's motion is based upon Mr. Hess' proposed rider structure rather than Mr. Hess' conclusions regarding the total amount of SSO-related costs embedded in distribution rates or specific allocation of costs and credits to customer classes. Yet, OCC seeks to strike Mr. Hess' testimony in its entirety. OCC thus takes a shotgun approach where a rifle would be more appropriate if there was any legitimacy to OCC's claim—which there is none.

OCC is obligated by statute to represent all residential customers. But OCC's position in the motion clearly favors SSO customers at the expense of shopping customers. Current switch rates show that approximately half of the residential customers are shopping and half are on the SSO. Shopping customers should not be forced to pay for the cost of services provided to other customers.

#### **IV. CONCLUSION**

For the reasons stated herein, IGS and RESA recommend that the Commission deny the motion to strike.

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<sup>14</sup> *In the Matter of the Application of The Cincinnati Gas & Electric Company for an increase in Electric Rates in its Service Area*, Opinion and Order at 102-103; 106-107 (May 12, 1992).



Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that this *Memorandum Contra Motion to Strike* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 9<sup>th</sup> day of May 2018. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Memorandum Contra Motion to Strike electronically filed by Mr. Joseph E. Oliker on behalf of IGS Energy and Retail Energy Supply Association