BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for an Increase in Electric Distribution Rates.	: :	Case No. 15-1830-EL-AIR
In the Matter of the Application of The Dayton Power and Light Company for Approval to Change Accounting Methods.	: :	Case No. 15-1831-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Tariff Approval.	: :	Case No. 15-1832-EL-ATA

THE DAYTON POWER AND LIGHT COMPANY'S POST-HEARING REPLY BRIEF

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I. INTRODUCTION AND SUMMARY

The purpose of a distribution rate case is to establish the rates that DP&L's customers will pay for distribution service, and all of DP&L's customers who intervened in the case have signed the Stipulation and Recommendation. The marketers' arguments regarding allocation of costs to the Standard Service Offer are badly flawed, and the other issues they raise simply do not belong in this case. The Commission should reject the marketers' arguments, conclude that the Stipulation passes the Commission's three-prong test, and approve the Stipulation without modification.

II. THE STIPULATION SATISFIES THE COMMISSION'S THREE-PART TEST

A. THE STIPULATION IS THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE PARTIES

DP&L's Post-Hearing Brief (pp. 3-4) demonstrated that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. The marketers concede (RESA, p. 2) or do not contest (IGS, pp. 32-33) that element. The Commission should thus conclude that the element is satisfied.

B. THE STIPULATION BENEFITS CUSTOMERS AND THE PUBLIC INTEREST

DP&L's Post-Hearing Brief (pp. 4-6) also demonstrated that the Stipulation benefits customers and the public interest. In particular, IGS/RESA witness Hess admitted that his testimony regarding the allocation of costs to the SSO does not address whether the Stipulation benefits ratepayers and the public interest. Trans., p. 118. The Commission should thus conclude that this element is satisfied.

C. THE STIPULATION DOES NOT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE

DP&L's Post-Hearing Brief (pp. 6-14) also demonstrated that the Stipulation does not violate any important regulatory principle or practice. The marketers make a number of arguments on this issue, which the Commission should reject for the reasons stated below.

1. The Commission Should Not Shift Costs to the SSO

IGS/RESA witness Hess submitted testimony recommending that certain administrative costs be allocated to SSO customers. Hess Test., p. 13. DP&L's Initial Post-Hearing Brief (pp. 7-11) demonstrated that the Commission should reject Mr. Hess' recommendation for the following reasons:

1. Mr. Hess conceded that SSO service is "a distribution company function" that "does benefit the customers who have shopped." Trans., pp. 153-54. It is thus reasonable that all customers pay those costs.
2. Mr. Hess has performed a one-sided calculation, in that he has ignored costs that DP&L incurs to support shopping customers. Staff concluded that costs that DP&L incurs to support shopping are "similar if not greater" than the costs that DP&L incurs to support the SSO. Smith Test., p. 13.
3. Mr. Hess' methodology is littered with flaws, and is unreliable.
4. No customer representative has raised the issue, and all of the customer representatives in the case signed the Stipulation. The marketers' argument is simply a self-serving attempt to inflate the cost of the SSO so more customers will shop.

The marketers make a number of arguments in their post-hearing briefs on the issue, which DP&L addresses below.

1. Allocation Not Required: The marketers assert that the ESP Stipulation required that costs be allocated to the SSO. For example, IGS (p. 9) describes the ESP

Stipulation as an "agreement to refunctionalize costs to the SSO in this case." This is not an accurate characterization of the Stipulation. The ESP Stipulation provides only that there would be an evaluation of whether those costs "may" need to be reallocated. March 13, 2017 Amended Stipulation and Recommendation, p. 9 (Case No. 16-395-EL-SSO). There was no requirement in the ESP Stipulation that any costs ultimately be allocated to the SSO.

2. Evaluation: The marketers (IGS Brief, pp. 9, 11-12, 24, 26; RESA Brief, p. 4) criticize Staff and DP&L for failing to perform the "evaluation" provided for in the ESP Stipulation. There are two significant defects with that argument.

First, IGS (p. 12) seemingly believes that the "evaluation" required in the ESP Stipulation would require a "cost of service study" or the hiring of an "independent auditor." That is not what the ESP Stipulation requires. The ESP Stipulation could have been written to require the type of procedures that IGS desires, but those additional processes are not required by the ESP Stipulation; instead, the ESP Stipulation requires an "evaluation." Staff did perform an "evaluation" of whether costs should be allocated to the SSO, and concluded that they should not. Smith Test., pp. 3-14.

Second, the ESP Stipulation does not identify who would perform the evaluation, and the marketers were free to perform an evaluation on their own, which they attempted to do. Neither RESA nor IGS sent a single discovery request to DP&L after receiving the Staff Report, despite having over three months to do so before the Stipulation was filed and over seven months after the Company's response to DR 187. Even after the Stipulation was filed, the marketers issued no discovery. Instead, the marketers rely upon the testimony of Mr. Hess. However, as DP&L's Post-Hearing Brief demonstrates (pp. 10-11), his calculation was badly flawed.

3. Customer Benefits: IGS (p. 4) tells the Commission that: "The proposal before the Commission is equivalent to heads SSO customers wins; tails choice customers lose." However IGS ignores the fact that all of DP&L's customer representatives in the case signed the Stipulation. Further, in post-hearing briefs, customer representatives opposed the marketers' proposal. OCC Post-Hearing Brief, p. 6 ("The reallocation approach would have harmed customers by increasing the price of the standard offer for customers."); OPAE/Edgemont Post-Hearing Brief, p. 5 ("Edgemont-OPAE strongly oppose the RESA-IGS proposal and assert that the Stipulation's omission of such a proposal is an important factor in Edgemont-OPAE's support of the Stipulation . . . ."). The marketers' goal is not to benefit customers; instead, the marketers' goal is to increase the SSO price so more customers will shop. The fact that the marketers goal is to increase their own profits is further demonstrated by the marketers' multiple references to their own costs, which are entirely irrelevant to the issues in this case. See infra, Section C.1.7.

4. CRES Fees: Staff witness Smith explained that an allocation of costs to the SSO was not appropriate, because there is a "similar if not greater" amount of costs that DP&L incurs to support shopping customers. Smith Test., p. 13. IGS (pp. 18-19, 25) attempts to undermine Smith's testimony by asserting that marketers pay fees to DP&L for the costs that the marketers cause DP&L to incur. That argument is misleading.

As an initial matter, it is true that certain costs that are directly assignable are charged to marketers (e.g., fees for interval data information, switching fees) and to SSO customers (e.g., costs of engaging an auction manager). Witness Smith's testimony identifies a number of costs that DP&L incurs to support shopping customers that cannot be directly assigned -- interacting with competitive suppliers, calculating and collecting collateral, providing bill-ready and rate-ready billing, and administering the TCRR-N opt-out pilot program. Smith Test., p. 6. The full costs of providing those services are not recovered through fees charged to marketers, and the Commission should thus reject IGS' criticism of witness Smith's testimony on this issue.

5. Distribution Related: IGS (pp. 35-38) argues that distribution rates cannot recover competitive generation costs. IGS (p. 13) also tells the Commission that: "Mr. Hess testified it is unlawful and unreasonable to consider these costs distribution related." However, at the hearing, Mr. Hess conceded that "a distribution company is required to provide SSO service" and "that SSO service is therefore a distribution company function." Trans., p. 153. Since SSO service is a distribution company function, it is reasonable that administrative costs of providing the SSO be recovered through distribution rates.

6. Customers Double Pay Fees: IGS (pp. 3, 18-19, 25) asserts that shopping customers are paying the same fees twice, once to DP&L and once to their generation supplier. That is not true. For example, DP&L's call center answers questions about both the competitive market and the SSO (Trans., p. 220) (Parke), and it is thus reasonable that costs associated with the call center be recovered through distribution rates from all customers. The fact that marketers may also need to have a call center does not change the fact that shopping customers call DP&L with questions and complaints relating to the competitive market, and the costs of responding to those calls should be recoverable from shopping customers through distribution rates.

7. Double Standard: IGS (p. 36) makes the following puzzling assertion:

> "[W]hen DP&L's call center educates one of its customers regarding the general existence of the choice market, DP&L is not in fact providing a competitive retail electric service. It is acting as a distribution utility to facilitate choice as required by Ohio's restructuring legislation. Conversely, when DP&L's call center provides customer support regarding DP&L's SSO product, it is incurring cost directly related to the provision of a competitive generation service."

IGS does not explain why administrative costs that DP&L incurs related to shopping are distribution costs, while administrative costs that DP&L incurs related to the SSO are not distribution costs. This assertion is another attempt by the marketers to maximize their bottom line at the expense of customers by once again looking only at one side of the equation, instead of the balanced approach represented in the Staff Report and the Stipulation.

8. Uncollectible Expense: IGS (p. 16) says that "the Staff Report failed to complete the unbundling of uncollectible expenses agreed to in the ESP Stipulation." To support this argument, IGS once again reads words into the ESP Stipulation that do not exist by stating "an additional allocation [was] to occur in this proceeding to remove any additional SSO-related costs uncollectible expenses embedded in distribution rates." IGS (pp. 7, 16). That contention should be rejected because the plain words of the Amended Stipulation state "DP&L will address any uncollectible expense included in base distribution rates <u>in the annual true-up filing of [the Uncollectible] rider</u>." March 13, 2017 Amended Stipulation and Recommendation, p. 20 (emphasis added) (Case No. 16-395-EL-SSO).

9. Statutory Arguments: IGS (pp. 34-36) argues that R.C. 4928.143(B)(2)(g) requires a reallocation of costs related to the SSO. The Commission should reject that argument

for three reasons. First, as previously discussed in detail, the evidence in the record shows the SSO is a distribution company function. Trans., p. 153 (Hess). Second, R.C. 4928.143(B)(2)(g) is predicated with the language that an ESP "may provide for or include, without limitation, any of the following:" R.C. 4928.143(B)(2) (emphasis added). Thus, contrary to IGS' argument, there is nothing in that section that requires any costs to be reallocated. Third, under R.C. 4928.143(B)(2), a utility may include a number of other provisions in its ESP that may be bypassable or non-bypassable. For example, R.C. 4928.143(B)(2)(g) permits the utility to seek recovery of certain costs not necessarily through the SSO itself, but through a non-bypassable recovery mechanism. Just as "a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility," (R.C. 42928.143(B)(2)(c)), "distribution infrastructure and modernization incentives," (R.C. 4928.143(B)(2)(h)), and "energy efficiency programs," (R.C. 42982.1413(B)(2)(i)) are not recovered through a bypassable SSO, it is not required that costs recovered under 4928.143(B)(2)(g) be recovered through the bypassable SSO.

The marketers also cite to the Elyria Foundry Co. v. Pub. Util. Comm'n, case to support their legal argument as some sort of support for trying to reallocate core distribution company costs to the SSO under the guise of "unbundling." (IGS, p. 38; RESA, p. 5). However, their reliance on this case is misplaced as that case involved a finite issue related to the allocation of fuel cost, which the Court expressly found to be an "incremental cost component of generation service." 114 Ohio St.3d 305, 315 (2007). Certainly, fuel costs to provide generation service is not a distribution function like general support services required to support the distribution company such as maintaining a call-center, printing and postage, office space, and professional services.

2. <u>The Commission Should Not Alter Marketer Fees</u>

DP&L's Post-Hearing Brief (pp. 11-14) demonstrated that the Commission should reject the marketers' arguments relating to collateral requirements and fees for data, because: (1) the ESP Stipulation bars the marketers from making those arguments; and (2) the marketers failed to provide calculations showing that their recommendations were reasonable; and (3) this is a distribution rate case.

The Commission should reject the marketers' arguments about fees for the following reasons.

1. <u>ESP Stipulation</u>: IGS selectively quotes the ESP Stipulation to argue that it has the right to challenge supplier charges in this case. Specifically, IGS (p. 41 & n.114) tells the Commission that "[w]hile DP&L did not propose any changes to its Supplier Tariff in the Application, the Amended [ESP] Stipulation preserved the right of RESA and IGS to propose additional changes in this proceeding: 'IGS and RESA are not prohibited from advocating for unbundling or changes to SSO rate or supplier tariffs in that proceeding or any other distribution rate case.'" (Quoting Amended ESP Stipulation, p. 38 n.10.) However, IGS failed to quote the entirety of the applicable sentence from footnote 10 to the ESP Stipulation. In full, that footnote states: "For avoidance of doubt, resolution of DP&L's current distribution rate case in Case No. 15-1830-EL-AIR may result in allocation of costs to the SSO rate and therefore, IGS and RESA are not prohibited from advocating for unbundling or changes to SSO rate or supplier tariffs in that proceeding or any other distribution rate case." March 13, 2017 Amended Stipulation and Recommendation, p. 38 n.10 (Case No. 16-395-EL-SSO). The full footnote thus demonstrates that IGS' right to litigate items from the ESP case in this case is limited to the "allocation of costs to the SSO rate" and not to other items established in DP&L's Supplier Tariffs. Moreover, the

ESP Stipulation, to which IGS and RESA were parties, expressly addressed the very tariffs that they now seek to collaterally attack in this proceeding[1] despite the commitment that "the Signatory Parties and Non-Opposing Parties agree that in DP&L's pending Electric Rate Case, Nos. 15-1830-EL-AIR, 15-1831-EL-AAM, 15-1832-EL-ATA, no party will seek to support any attempt to withdraw, curtail, or revise any provision of this settlement or to revise the provisions or benefits of this Stipulation." pp. 37-38 (Case No. 16-395-EL-SSO).

2. Costs for Interval Data: RESA (pp. 9-10) tells the Commission "[a]ccording to DP&L, this [$150 interval data] charge was derived not based on any actual cost or expense incurred by the Company to collect or provide this data, but was part of a settlement package in Case No. 11-3002-EL-MER." Not true. In the discovery response that RESA cites in footnote 22, DP&L stated that the $150 charge was established in the case that RESA cited, but DP&L never stated that it was "not based on any actual cost or expense incurred by the Company" as RESA claims. RESA/IGS Ex. 1, Ex. TR-2, INT. 4-2(a) and (b).

3. Collateral: IGS (p. 31) argues that DP&L's collateral process discriminates against private companies because public companies with credit ratings are not required to post collateral. Contrary to the marketers' assertions, there is nothing in DP&L's collateral requirement that draws a distinction between public companies and private companies. Crist Test., Ex. 2, pp. 23-24. While DP&L's tariff provides that a company with a strong credit rating need not post collateral, IGS witness Crist conceded that IGS could obtain a credit rating and that he did not know the cost. Trans., p. 183. Nevertheless, IGS (pp. 30-31) asks that DP&L

[1] DP&L proposed edits to the G8 tariff as part of its Application in ESP III. Certain amendments were made pursuant to the Amended Stipulation; otherwise, "[e]xcept as modified by this Stipulation, DP&L's Application in these matters is approved." Amended Stipulation and Recommendation, p. 37 (Case No. 16-395-EL-SSO). That clause was approved without modification by the Commission in its October 20, 2017 Opinion and Order in that case.

step into the shoes of a credit rating agency and subjectively apply the collateral requirements, which proposal is fraught with the potential of the collateral tariff being applied inequitably amongst different marketers. DP&L's G8 tariff provides a reasonable objective alternative for those marketers that choose not to get rated and should be left unchanged.

4. Switching Fees: RESA (pp. 8-9) did not submit any testimony on switching fees, but argues (pp. 8-9) that switching fees should be eliminated or changed when a customer defaults to SSO service. The switching fee was proposed in DP&L's Amended Application in the ESP case. October 11, 2016 Tariffs Proposed in the October 11, 2016 Amended Application, Original Sheet No. G8, p. 29 (Case No. 16-395-EL-SSO). The Commission should reject RESA's argument regarding switching fees for the three reasons discussed in DP&L's Post-Hearing Brief (pp. 11-14), i.e., this is a distribution rate case, the ESP Stipulation bars the argument, and RESA filed no supporting calculations.

3. The Commission Should Not Alter the Customer Charge Established in the Stipulation

IGS (p. 39) argues that the Commission should decrease the $7 customer charge established in the Stipulation. IGS does not assert that the $7 charge violates the principle that costs should be allocated based on cost-causation principles or that there was an error in calculating the charge; instead, IGS wants the charge decreased because the charge "negatively impact[s] the economic value of deploying distributed generation resources." The Commission should reject that argument because the $7 customer charge established in Stipulation, § V.2 is a negotiated number that is lower than the $13.73 current customer charge proposed by DP&L. Lipthratt Test., p. 5. That $7 charge is also lower than the $7.88 proposed in the Staff Report. Staff Report, p. 36.

4. **The Commission Should Not Alter the Demand Charges Established in the Stipulation**

IGS (pp. 29-30, 39-40) also challenges the way demand charges are established in the Stipulation. IGS does not claim that the demand charges violate the principle that costs should be allocated based on cost-causation principles or that there was an error in the way the charge was calculated; instead, IGS wants the demand charges changed to promote distributed energy resources. The Commission should reject IGS' argument because the undisputed evidence establishes that the demand charges in the Stipulation were "reasonable" and "based on cost causation." Goins Test., p. 2.

III. CONCLUSION

Every customer group that intervened in this case signed the Stipulation. The Commission should reject the marketers' arguments because those arguments are not in the best interest of customers and should conclude that the Stipulation satisfies the Commission's three-prong test.

Respectfully submitted,

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