

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)
)
)

REPLY BRIEF OF INTERSTATE GAS SUPPLY, INC.

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I. INTRODUCTION

In its Initial Brief, Interstate Gas Supply, Inc. (“IGS”) and the Retail Energy Supply Association (“RESA”) demonstrated that, as proposed, the Stipulation and Recommendation (“Stipulation”) is unjust, unreasonable, and would violate Ohio law because it allows Dayton Power and Light (“DP&L”) to recover standard service offer (“SSO”) related costs through distribution rates. Further, in its Initial Brief, and in pre-filed testimony, IGS outline a proposal that would remedy this unlawful situation by unbundling approximately \$11 million in SSO related costs from distribution rates to the SSO. If adopted, IGS’ proposal would decrease residential distribution rates by approximately 2% and appropriately reallocate this amount on a revenue neutral basis to SSO customers.¹

No party, other than IGS and RESA, has provided a meaningful analysis of SSO related costs proposed for recovery through distribution rates, despite the Commission identifying that this issue should be addressed in this case. Further, no party has denied that DP&L has proposed to recover costs required to support the SSO through distribution rates. Rather, proponents in favor of subsidizing the SSO—mainly Commission Staff (“Staff”), DP&L, and the Ohio Partners for Affordable Energy² (“OPAE”)—have made three main arguments opposing a proper unbundling of SSO related costs from distribution rates. Specifically, they argue 1) DP&L can lawfully recover SSO related

¹ According to the Testimony of Sharon Schroder, a typical residential customer that utilizes 1000 kWh would receive a monthly bill of \$109.43. DP&L Ex. 1 at Ex. A at 1 of 11. The monthly impact of the proposed bypassable charge of \$0.0038 and non-bypassable credit of \$0.002 is an increase of approximately \$1.80 for a SSO customer. JEH 1.

² OPAE’s initial brief sets forth more succinct versions of the positions taken by Staff and DP&L; therefore, IGS’ responses below are equally applicable to OPAE’s arguments.

costs through distribution rates; 2) its too hard to quantify SSO related costs in distribution rates and; 3) regardless, SSO costs are being off-set by Choice costs in distribution rates.

IGS' Initial Brief anticipated and addressed many of the arguments submitted by proponents of the Stipulation. Specifically, IGS and RESA have demonstrated that 1) the Commission lacks authority under Chapter 4909 to authorize the recovery of SSO-related costs through distribution rates; 2) IGS/RESA witness Hess identified, and quantified, the SSO-related costs that should be unbundled from distribution rates; and 3) other than the mere conjecture, neither Staff nor DP&L have put forth any evidence to support the notion that Choice costs off-set SSO costs in distribution rates, particularly since CRES providers are required to pay significant fees to support any costs DP&L may incur to support the Choice program.

Despite the record evidence, Staff and DP&L in their initial brief continue to support subsidization of the SSO. In doing so they—rely on incorrect and misleading facts, red herrings and flawed legal arguments. Notwithstanding, it could not be more clear that Ohio law prohibits the relief recommended by the Stipulation and doing so would be detrimental to the public interest.

Finally, as noted in IGS' initial brief, the Stipulation continues to support an unlawful Alternative Generation Supplier Coordination Tariff ("Supplier Tariff") that arbitrarily requires non-public companies to post higher collateral requirements, irrespective of their actual credit risk. DP&L is the only entity that challenges IGS' recommended changes to the supplier tariff. "Staff takes no position regarding this issue."³ DP&L's opposition is

³ Staff Brief at 6.

based upon an incorrect procedural argument that defies basic rules of contractual interpretation that any practitioner knows to be true without even resorting to case law. Moreover, DP&L fails to explain why it fails to follow its Commission-authorized tariff, which states that “security required must be and remain commensurate with the financial risks placed on the Company by that supplier, *including recognition of that supplier’s performance.*”⁴

II. ARGUMENT

A. No party Contests that the Stipulation Proposes to Subsidize the SSO; Rather they Attempt to Justify the Subsidization Through False Facts and Incorrect Legal Conclusions

No party denied that the Stipulation would permit DP&L to recover SSO-related costs through distribution rates. Instead, they sought to justify that collection. First, DP&L and Staff argue that the SSO is function that must be provided by the distribution company, therefore the cost of providing the SSO should be socialized.⁵ Second, in reliance on their first argument, Staff claims that choice customers cannot possibly be paying for costs twice.⁶ Third, DP&L and Staff claim that it is appropriate to socialize SSO-related costs because DP&L incurs costs to facilitate customers’ right to switch.⁷ Each argument is unavailing.

1. The Commission may not regulate competitive services under Chapter 4909

⁴ DP&L Alternative Generation Supplier Coordination Tariff, sheet G8, page 24 of 30 (emphasis added).

⁵ Staff Brief at 8-10; DP&L Brief at 8.

⁶ Staff Brief at 9-10.

⁷ Staff Brief at 7-8; DP&L Brief at 8-9.

A great example of the Staff’s and DP&L’s flawed reasoning is the inaccurate claim that the SSO is a distribution company function. And, as such, the cost of providing the SSO should be recovered through distribution rates.⁸ These statements illustrate a fundamental misunderstanding of the basic tenants of restructuring and Ohio law as enumerated in Chapter 4928.

While DP&L is an electric distribution utility (“EDU”), that doesn’t entitle DP&L to recover all its costs through distribution rates. For purposes of determining the scope of permissible regulation, it doesn’t matter *what type of entity* provides a service, it is irrelevant whether that entity is an EDU or competitive retail electric service (“CRES”) provider. The deciding factor *is the type of service* the entity provides. There are competitive services, non-competitive services, and products and services other than retail electric services—there is nothing in between. Only non-competitive services may be regulated under Chapter 4909. Therefore, when an EDU provides a competitive service (e.g. SSO generation service), the law does not allow the recovery of associated costs through distribution rates.

The SSO is a competitive retail electric service that happens to be provided by an EDU. This point is critical. When the EDU provides a competitive service, it must recover the cost of said services through bypassable charges authorized under Chapter 4928.⁹ SB 3 removed the Commission’s jurisdiction to regulate competitive retail electric service under Chapter 4909. Further, if you accept DP&Ls argument on its face, it would

⁸ Staff Brief at 8-9; DP&L Brief at 8.

⁹ R.C. 4928.05(A)(1).

produce absurd results, which violates rules of statutory interpretation.¹⁰ DP&L's logic could justify recovering any SSO costs, including capacity and energy costs, through distribution rates. This notion is squarely contrary to Ohio law and defeats the purpose of making generation competitive in the first instance.

The General Assembly prohibited the Commission from recovering competitive services through distribution rates for a simple reason—customers have the right to choose the competitive services that they want and need. Making shopping customers pay for SSO-related competitive services that they do not use or want is fundamentally unfair and contrary to the purpose of restructuring.

Interestingly, the Staff Report agreed with the scope of the Commission's jurisdiction on Chapter 4909. Specifically, the Staff Report disallowed recovery of ESP litigation expenses. "Staff determined these costs are inappropriate for ratemaking purposes."¹¹ It defies reason and simple logic that ESP litigation expenses are outside the scope of the Commission's ratemaking authority while other SSO-related expenses may be authorized under the same authority.

2. The Commission should not force customers to pay for comparable costs twice

Staff claims that the Stipulation would not require shopping customers to pay for costs twice.¹² Staff's argument is based upon the same flawed assumption that all costs incurred by an EDU are appropriately functionalized to providing non-competitive

¹⁰ *State v. Cabrales*, 118 Ohio St. 3d 54, 59 (2008) ("Courts must avoid statutory interpretations that create absurd or unreasonable results.").

¹¹ Staff Report at 15.

¹² Staff Brief at 9-10.

distribution service. Saying that, however, doesn't make it so. And, as discussed below, Staff itself concedes that there are SSO-related costs proposed for recovery in distribution rates.

These costs are comparable to the costs that CRES providers must incur. For example, as discussed at length in the testimony of Ed Hess¹³ and the hearing, both DP&L and CRES providers incur the following comparable expenses:

- Call center infrastructure and employees to maintain appropriate customer service and customer complaints for SSO customers;
- Printing and postage to communicate with SSO customers;
- Accounting infrastructure and employees to establish and maintain records and data sufficient to verify compliance with any Commission rules for SSO customers;
- IT employees, infrastructure, and software;
- Administrative and general salaries and infrastructure to comply with the regulatory rule requirements for the SSO service and oversee minimum standards for service quality, safety and reliability and to manage the risks of providing the service;
- Outside and inside legal, regulatory, and compliance personnel to comply with the regulatory rule requirements for the SSO;
- Administrative and processing costs for uncollectible;
- Office space for employees to provide these services;
- The regulatory assessments for the PUCO and the Ohio Consumers' Counsel (OCC) that are based on SSO generation revenue, but are recovered through distribution rates;

¹³ RESA/IGS Ex. 2 at 8-15.

- Taxes Other than Income Taxes such as labor taxes, property taxes and excise taxes associated with other costs to support SSO service.¹⁴

Therefore, shopping customers would be required to pay for these costs twice. This result is barred by Ohio law, contrary to state policy and the public interest.

In some instances, Staff acknowledges that there is disparate treatment of comparable costs, such as with respect to uncollectible expense. But Staff attempts to claim CRES providers are put on a level playing field by the payment priority.¹⁵ This is not true.

Initially, the payment priority does not put CRES providers on level footing with DP&L because it doesn't make CRES providers whole for uncollected generation-related expenses or overhead expenses associated with the collection of said expense. In other words, any time a customer does not pay their CRES charges, the CRES provider will lose revenue and incur overhead expenses related to the recovery of the lost revenue.

DP&L, however, faces no such risk—it is made whole for both its “charge offs” and overhead expenses. While the “charge offs” associated with SSO receivables have been allocated to a bypassable rider, the Stipulation fails to address the overhead component

¹⁴ RESA/IGS Ex. 2 at 14-15. Tr. Vol. I at 50 L 10 to 51 L 12 (uncollectible expense overhead); Tr. Vol. I at 86 L 18-25 (call center expense); Tr. Vol. II at 220 L 9-19 (call center expense); Tr. Vol. II at 223 L 7-25 (regulatory expenses); Tr. Vol. II at 231 (unrecovered SSO litigation expenses); Tr. Vol. II at 236 (unrecovered SSO-related cash working capital requirements); Tr. Vol. II at 305 L 4-22 (SSO-related legal, regulatory, IT, and call center expenses); Tr. Vol. I at 51 L 9-12 (accounting and tracking costs); Tr. Vol. II at 321-323 (CRES call center expense, CRES EDI expense, CRES switching fees, CRES usage fees).

¹⁵ Staff Brief at 8.

(comparable to CRES providers overhead) proposed for recovery through distribution rates.¹⁶

Moreover, the payment priority is appropriate because CRES providers have no authority to disconnect for non-payment.¹⁷ Given this fact, CRES providers have an uphill battle from the start to collect relative to the EDU. Regardless, Staff ignores that the EDU has second and third place in the payment priority. Thus, charges are paid to CRES for past due, then to EDU for past due, then EDU current, then finally CRES current. Thus, what CRES providers gain in the first leg of the payment priority, they give up in the second and third priority to the EDU. So the playing field is not as level as Staff alleges, and Staff's argument does not justify double charging CRES customers for comparable SSO-related costs.

3. DP&L's occurrence of choice-related costs pursuant to its role as a non-competitive distribution utility does not justify subsidizing the competitive SSO product

As what appears to be an affirmative defense to the SSO-subsidization they propose, Staff and DP&L claim that no unbundling should occur because DP&L incurs costs related to the facilitation of the choice market.¹⁸ Thus, they claim all of the services that DP&L provides to the SSO and choice market are a "distribution function."¹⁹ DP&L

¹⁶ Uncollectible expense is another example where a revenue allocation factor may be appropriate, given the proportion of SSO revenue to distribution revenue provides a close approximation to the origin of each uncollected receivable. Moreover, the weight of SSO receivables to total EDU receivables provides an approximation of the amount of overhead associated with the collection of each.

¹⁷ 4901:1-21-03(B).

¹⁸ Staff Brief 7-8; DP&L Brief 8-9.

¹⁹ *Id.*

further claims that, if additional costs are unbundled, all admin associated with choice should be directly allocated to shopping customers.²⁰ This attempt to mitigate their proposed subsidization is based upon a weak legal foundation that collapses under weight of the record.

First, unlike SSO customers, ***shopping customers are already paying fees to DP&L for services rendered.*** These fees have added up to ***millions of dollars.***²¹ Despite RESA's and IGS' attempt to obtain data to support the basis for these fees, DP&L and Staff failed to even attempt to substantiate the basis for them.²² Yet, DP&L is more than willing to count these fees as money-in-the-bank for purposes of developing its revenue requirement in this case.²³ In other words, in an interesting twist, these fees reduce the amount of distribution revenue that would otherwise be required from all customers, including SSO customers. Given this reality, Staff's and DP&L's justification for subsidizing the SSO is based upon a factual fantasy.

Second, the services DP&L provides to shopping customer cannot be classified as non-competitive distribution services collected from all customers when in fact they are actually allocated to CRES providers and their customers. But that is exactly what Staff and DP&L are proposing. If the services DP&L provided to the choice market were truly a "distribution function" the fees and shopping penalties should be eliminated.

²⁰ DP&L Brief at 8-9.

²¹ RESA/IGS Ex. 2 at 10-11.

²² RESA/IGS Ex. 1 at 2; Tr. Vol. II at 322.

²³ See Tr. Vol. II at 345 (for purposes of the Stipulation, the fees were contemplated as a component of the total revenue DP&L will collect).

Regardless, as discussed below, it is only the Choice-related functionality that DP&L provides that can be appropriately classified as a component of “distribution service.”

Third—even if there were no fees—Staff’s and DP&L’s comparison of SSO-related costs to Choice costs contained in distribution rates is apples to oranges. As discussed at length above, DP&L provides only one competitive service—the SSO. The services that DP&L provides to shopping customers are in fact related to the provision of non-competitive distribution services. The services—like EDI, meter reading and interacting with CRES providers to facilitate shopping relate to instances where DP&L is acting as the sole provider of the services. Thus, the Stipulation proposes a paradigm that turns Ohio law upside down: the cost of monopoly-based noncompetitive services are recovered only from shopping customers, and competitive-based SSO services are socialized.

For example, a CRES provider can obtain a customer’s billing information only from DP&L because DP&L reads the meter and validates the usage information. It is for this reason that Mr. Hess excluded meter reading from his allocation methodology—it is a non-competitive service.²⁴ Yet, CRES providers pay for the cost of obtaining this information. Another example is switching a customer from SSO to a CRES or CRES to CRES or CRES to the SSO. IGS has no authority or ability to perform this action. Only DP&L can provide the service. There is no ability to “shop” around for some other entity to provide the service. Therefore, the activity pertains to non-competitive service. Yet, DP&L charges shopping customers for this service while customers switching to the SSO pay nothing. That is discrimination and subsidization. If there are any costs for this

²⁴ RESA/IGS Ex. 2 at JEH 2, L 6 (Meter Reading).

service, the fees must be assessed in a non-discriminatory manner between SSO and shopping customers.

Moreover, it is important to keep in mind, when DP&L provides any type of service related to facilitating shopping, it is not actually the provider of the competitive retail electric service. Rather DP&L is facilitating a platform that allows customers to change generation providers, but CRES providers are actually providing generation service to shopping customers.

Conversely, DP&L does provide generation service only to SSO customers. In doing so, DP&L leverages distribution assets for the sole benefit SSO customers (i.e. in-house employees, legal and compliance, customer care etc.). CRES providers incur their own costs to serve competitive shopping customers. For example, CRES providers must construct their own IT, customer service and collection systems simply to offer a product in the market. But CRES providers do not have the luxury of having these services performed by the distribution utility, or the costs recovered through distribution rates.

Third, many of the examples of services that DP&L allegedly provides to shopping customers are outlandish and do not even relate to shopping. Take the transmission cost recovery rider-nonbypassable ("TCRR-N") pilot which DP&L categorizes as an alleged Choice cost. The TCRR-N has nothing to do with generation; it is a non-bypassable rider related to transmission service for only the largest customers. The pilot has no relationship to any CRES service. Moreover, the only reason why the pilot was even requested is because DP&L deviated from the PJM transmission cost assignment methodology, to the detriment of some of its commercial and industrial customers, potentially in violation of tariffs approved by the FERC.

Finally, the TCRR-N resulted from a settlement that was a give and take that allowed parties to let go of their litigation positions. Reliance upon the provisions contained in the Stipulation, for any purpose other than enforcement, is a violation of the Stipulation.²⁵ If the TCRR-N is going to be discussed, it opens the door to discussion of several DP&L-specific provisions that parties would never agree to outside the settlement.

Accordingly, the Stipulation unreasonably and unlawfully proposes that the Commission increase DP&L's recovery of SSO-related costs through distribution rates. Therefore, the Commission cannot authorize the Stipulation without addressing the legal shortcomings discussed herein.

B. RESA and IGS Provided the Only Credible Analysis to Rectify the Stipulation's Unlawful Proposal

Rather than working productively and collaboratively to quantify the SSO subsidy and without offering any quantitative analysis of their own, Staff and DP&L try to shoot holes in RESA's and IGS' proposed methodology. As discussed below, these challenges lack merit.

Staff argues that the only manner to identify the SSO subsidy is based upon a class cost of service study.²⁶ First, this is simply false, given that the uncontroverted evidence demonstrates that the Stipulation would permit DP&L to recover SSO-related costs through distribution rates. A class cost of service study is simply not needed to confirm the obvious—that SSO costs are proposed for recovery through distribution rates.

²⁵ IGS Ex. 2 at 37.

²⁶ Staff Brief at 7.

Second, it is illogical to conclude that a class cost of service study is needed to show the presence of a subsidy, given that Staff concluded without a study that there is no subsidy.²⁷ If a study is needed to show the existence of the subsidy, it is equally needed to disprove its existence.

Third, Staff's reasoning implies that it agreed to an evaluation in this proceeding with full knowledge that it would be an exercise in futility. While there was a study filed in this case docket several years ago, it did not address this issue.²⁸ Moreover, that study was performed *before* Staff agreed to evaluate the SSO subsidy in the Amended ESP Stipulation.²⁹ Rather than complaining about the lack of a study of this issue after the time to complete one had elapsed, Staff should have requested a cost of service study pursuant to its obligations under the Amended Stipulation. It had an entire year to request a cost of service study between the filing of the Amended Stipulation and the Staff Report. Since it failed to do so, it should not be permitted to raise the argument here.

DP&L and Staff further argue that Mr. Hess' methodology is flawed because DP&L does not directly track SSO-related costs. This is an irrelevant point. As Mr. Hess testified:

We agree that tracking these costs individually could be expensive, although Dayton has not identified how expensive that process would be. Regardless, that is why we are recommending a cost of service allocation methodology that approximates the costs incurred by Dayton in providing this service. It is the industry's acceptable methodology to identify costs

²⁷ Staff Brief at 8.

²⁸ The Study was not entered into evidence.

²⁹ The Application was filed on October 30, 2015. The Amended ESP Stipulation was filed on March 13, 2017. The Staff Report was issued on March 12, 2018.

between different types of customers when tracking costs is prohibitively expensive.³⁰

During cross-examination, DP&L and Staff confirmed Mr. Hess' conclusion that it is common industry practice to use allocation factors to assign costs when it is determined that it would be cost prohibitive to directly track and assign costs.³¹

DP&L and Staff argue that Mr. Hess' allocation factor-based methodology is flawed because Mr. Hess "arbitrarily" applied allocation factors to accounts that "might" contain SSO-related costs.³² They further argue that "without any analysis of embedded costs, they assumed costs were different."³³ Both DP&L and Staff also allege that Mr. Hess erred "by basing his allocation methodology based upon revenue."³⁴ These claims lack merit.

There is nothing arbitrary about Mr. Hess' detailed, thoughtful allocation process. Indeed, Mr. Hess performed an in depth review of DP&L's accounts and isolated specific accounts that contained SSO-related costs:

I reviewed the Schedule C-2.1 and have identified several accounts included in distribution expenses that would include the type of expenses I discussed earlier. These accounts are included in the FERC categories Customer Accounts Expense, Customer Service and Information Expense, Sales Expense, Administrative and General Expenses and Taxes Other Than Income Taxes. I reviewed these categories by specific FERC account to identify the accounts that would include costs that should be allocated to SSO customers. These accounts include costs such as PUCO and OCC assessments, legal and regulatory expenses, payroll taxes, call center costs, accounting costs, infrastructure costs, and several other categories

³⁰ *Id.* at 7.

³¹ Tr. Vol. II at 218 L 6-10; Tr. Vol. II at 326 L 25 to 327 L 3.

³² DP&L Brief at 10; Staff Brief at 8-9.

³³ *Id.*

³⁴ *Id.*

of costs I have identified throughout my testimony. These accounts, which I have identified, contain costs that are being incurred to process or administer to the SSO. For instance, Customer Account Expense contains costs for receiving, recording, and handling of inquiries, complaints, and requests for investigations from customers, including SSO customers. Dayton also recovers items such as the PUCO and OCC assessment, legal and compliance and other costs required to support the SSO service through the General and Administrative account. These are items that directly support SSO customers. The accounts that I selected are identified on JEH-2.³⁵

Moreover, the claim that Mr. Hess' allocation methodology is based upon revenue is not even factually correct—this argument perpetuates a mistake contained in Witness Smith's testimony that carries over into the briefs of both DP&L and Staff.³⁶ Indeed, Mr. Smith conceded at the hearing that he failed to review the testimony Mr. Hess presented at the hearing—his testimony was based upon an earlier version of Mr. Hess' Testimony that is not even part of the record.³⁷

Regardless,³⁵ as the prefiled testimony and the record shows, Mr. Hess developed two different allocation factors, one based upon weighted customer count, and a second based upon the proportion of SSO revenue to distribution revenue.³⁸ Based upon his several decades of experience, Mr. Hess further explained the instances that necessitated the use of each allocation factor to the specific identified accounts containing SSO-related costs:

The Customer Accounts Expenses and the Customer Service and Information Expenses that I allocated are customer related expenses. These expenses vary by numbers of customers. I applied a weighted customer allocation ratio to these expenses consistent with that relationship. The ratio was weighed to account for the costs to support

³⁵ RESA/IGS Ex. 2 at 16.

³⁶ Tr. Vol. II at 318.

³⁷ *Id.*

³⁸ RESA/IGS Ex. 2 at 17-18.

distribution service for CRES customers and distribution and generation service for SSO customers.

I chose to allocate Administrative and General Expenses and Rate Base based on the amount of SSO revenue Dayton receives from customers. A utility company's revenues provide a proxy for and generally mirror the costs that are required to provide the utility service to various customer categories.³⁹

Interestingly, although Staff challenges the use of a revenue allocation factor, the one item that the Staff Report recommended be unbundled—the PUCO and OCC assessment—is one of the most appropriate costs to allocate based upon revenue.⁴⁰ The Staff Report alludes to the use of a revenue allocation factor in its recommendation, stating: “*Staff recommends that **the SSO generation revenue percentage** of the PUCO/OCC assessment expense be recovered through an appropriate bypassable rider.*”⁴¹ The most logical way to implement this recommendation is to divide SSO revenue by total DP&L revenue; then multiply the SSO percentage by the total assessment to determine the amount that should be unbundled and refunctionalized to the SSO.

DP&L also claims that Mr. Hess' methodology is flawed because it is based upon the revenue requirement included in the Staff Report.⁴² DP&L misses the point. Mr. Hess proposed a *methodology*. As he stated during the hearing, the Stipulation has no bearing

³⁹ *Id.* at 17-18.

⁴⁰ DP&L's PUCO and OCC assessments are determined based upon revenue collected (with a portion of that revenue being SSO revenue). All else being equal, if DP&L's SSO revenue decreases, so does its assessment.

⁴¹ Staff Report at 28.

⁴² DP&L Brief at 10.

on his methodology. The methodology is easily applicable to the proposal contained in the Stipulation.⁴³

Moving away from Mr. Hess' methodology itself, DP&L throws up red herrings regarding Mr. Hess' general knowledge of legal and factual matters. For example, DP&L argues that Mr. Hess was not aware of any case in which his methodology has been adopted.⁴⁴ This should not be a surprise, given that this is the first electric distribution rate case in which the issue been squarely addressed.

DP&L makes much of the fact that Mr. Hess was not aware whether a CRES providers could refuse to serve a customer.⁴⁵ That legal conclusion is irrelevant to whether the Commission may regulate competitive services under Chapter 4909 and whether the Commission should require shopping customers to pay for services twice.

Further, DP&L argues that Mr. Hess does not know the exact amount of postage that DP&L incurred to communicate with SSO customers compared to CRES customers. As Mr. Hess stated, there is no basis to focus on services provided to CRES customers at all, the focus of his methodology is to eliminate SSO-related costs from distribution rates.⁴⁶ Following industry standard, he developed an allocation factor to approximate the SSO-related subsidy, which includes postage to communicate with SSO customers.⁴⁷

⁴³ Tr. Vol. I at 157-158. "The numbers would change, the methodology wouldn't." Tr. Vol. I at 157 L. 14-25.

⁴⁴ DP&L Brief at 10.

⁴⁵ *Id.*

⁴⁶ RESA/IGS Ex. 2 at 7-8; Tr. Vol. I at 118, 131, 146.

⁴⁷ RESA/IGS Ex. 2 at 17-18.

DP&L states, in three of its most fallacious claims, that Mr. Hess did not know whether DP&L had a call center for SSO issues only, whether DP&L has accounting employees who work exclusively on SSO issues, or whether employees whose job is limited to SSO regulatory compliance. These questions are irrelevant. It doesn't matter whether an individual works solely on competitive services or non-competitive services. What matters is that an individual provides services, in wholly or in part, to support the SSO. DP&L has many employees that provide services to different entities. For example, Mr. Bentley splits time between IPL and DP&L.⁴⁸ Mr. Hess developed a methodology for allocating the costs related to these employees between competitive and non-competitive services.

DP&L complains that Mr. Hess was not aware how auction costs are treated.⁴⁹ The fact that DP&L may have unbundled a small amount of costs provides little relevance to Mr. Hess' evaluation of a separate range of costs which have been demonstrated to relate to the provision of the SSO. The fact that DP&L has unbundled a small set of costs doesn't excuse DP&L from fully unbundling costs associated with the SSO.

Whether customers call into the call center to ask about choice is also irrelevant. Such calls do not relate to DP&L's provision of competitive retail electric service.

The claim about CRES customers calling into DP&L about complaints about their supply service is misleading.⁵⁰ Mr. Hess indicated that DP&L lacks the knowledge to

⁴⁸ Tr. Vol. I at 18-20, 57-58.

⁴⁹ DP&L Brief at 11.

⁵⁰ DP&L Brief at 11.

answer those questions, so the calls should be short.⁵¹ In any event, he testified that he anticipated that CRES customers are more likely to call their CRES if they have a concern about their competitive services.⁵²

C. Any Attack on RESA's and IGS' Cost Allocation Methodology is Rendered Moot Because No Other Party Has Put Forth a Meaningful Analysis of SSO Related Costs

DP&L's previously approved ESP Stipulation specifically directed that the issue of SSO related costs recovered through its distribution rates be considered in DP&L's next rate case.⁵³ For its part, Staff reviewed DP&L's uncollectible expense and OCC related expense but went no further, claiming any additional analysis would be too burdensome. DP&L simply declined to analyze SSO related costs, stating it is too burdensome.

Now, in their initial briefs, both DP&L and Staff claim that a proper allocation of SSO related costs cannot be done without additional studies. Further, both DP&L and Staff allege that "Choice" costs are being recovered through distribution rates, which should off-set SSO related costs, without doing any quantitative analysis or studies.

Conversely, RESA and IGS provided a quantitative analysis of the SSO cost proposed for recovery in distribution rates and proposed a reasonable and conservative methodology for unbundling those costs. Mr. Hess is a veteran of utility rate making with decades of experience performing cost allocation studies such as the one he did in this proceeding. The very fact that Mr. Hess was able to provide a detailed analysis of SSO

⁵¹ Tr. Vol. I at 128.

⁵² Tr. Vol. I at 128 L 15 to 129 L 15.

⁵³ IGS Ex. 2 at 9.

related costs in distribution rates, and come up with a cost allocation methodology, is indicative of the fact that a proper cost allocation to the SSO can be done.

Staff's and DP&L's argument that Mr. Hess analysis is inaccurate or incomplete should be rejected outright, given that DP&L and Staff were unwilling do their own analysis of SSO-related costs. Absent any quantitative analysis or studies, the crux of DP&L's and Staff's argument is mere conjecture.

Further, if Staff and DP&L believes that alleged Choice costs off-set the SSO costs recovered through distribution rates, they should have at least attempted to provide a quantitative analysis of those costs (and explained why there are Choice fees). Staff and DP&L did not. For these reasons, the only actual data on record regarding the SSO costs proposed for recovery in distribution rates is the data produced by Mr. Hess. Staff and DP&L had every opportunity to produce contravening data, but they did not—likely because such contravening data does not exist.

D. DP&L's Credit and Collateral Practices are Discriminatory and Violate its Own Tariff

DP&L claims that the Commission should reject IGS' credit and collateral recommendations. First, DP&L argues that the current credit and collateral requirements were approved as part of the ESP Stipulation. DP&L claims that the following provision of the Stipulation bars IGS from contesting matters in the Supplier Tariff, including credit and collateral requirements, "Parties agree that in DP&L's pending Electric Rate Case...no party will seek to support any attempt to withdraw, curtail, or revise any

provision of this settlement”⁵⁴ This argument cannot stand under basic laws of contractual interpretation.

While DP&L correctly cites to the Stipulation, it cherry picked a general provision applicable to all parties. DP&L, however, conveniently provided no citation to another section of the Stipulation which controls this issue. Specifically, the Amended Stipulation preserved the right of RESA and IGS to propose additional changes to the Supplier Tariff 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.*”⁵⁵ It is a basic principle of contract law 101 that a specific provision in a contracts controls over a general provision.⁵⁶ Because the provision relating to IGS’ and RESA’s right to advocate for changes to the Supplier Tariff *in this case* is more specific then the provision relied upon by DP&L, the ESP Stipulation provides no bar here. While other parties may be prohibited from advocating for changes to the Supplier tariff, IGS and RESA are not.

Moreover, contrary to DP&L’s claim, it is DP&L that is contractually prohibited from opposing IGS from proposing changes to the Supplier Tariff in this proceeding. While

⁵⁴ DP&L Brief at 13.

⁵⁵ IGS Ex. 2, Amended Stipulation at 38, FN 10 (emphasis added).

⁵⁶ “[S]pecific terms and exact terms are given greater weight than general language” Restatement (Second) of Contracts § 203(c); “if a specific provision found in the [contract] conflicts with a general provision, the specific provision should control.” *Saltzman v. Independence Blue Cross*, 384 F. App’x 107, 114 (3d Cir. 2010); “general principle[] of contract interpretation” that “if both a general and a specific provision apply to the subject at hand, the specific provision controls” *Young v. Verizon’s Bell Atl. Cash Balance Plan*, 615 F.3d 808, 823 (7th Cir. 2010)

DP&L may raise substantive arguments in response, it cannot seek to preclude IGS from raising the issue.

Regardless, DP&L's substantive arguments fair no better. DP&L claims that Mr. Crist provided no calculations to show the impact of his recommendation.⁵⁷ DP&L misses the point, Mr. Crist provides examples of the methodologies used by similarly situated EDUs in Ohio and concluded that DP&L's collateral calculation was by far the most restrictive and should therefore be brought into line with other EDUs in Ohio.

DP&L further tries to dismiss Mr. Crist' claim that its tariff doesn't explicitly mention privately held companies, therefore the tariff cannot possibly discriminate against them. Again, DP&L's literal out-of-context argument misses the point.⁵⁸ Mr. Crist testified that DP&L requires no collateral from CRES providers with a qualifying credit rating. But "[I]n general, public companies would obtain a credit rating more often than privately held companies, so as far as is there a difference between public and private in the tariff having a credit rating, giving advantage to a public company over a private company."⁵⁹ Moreover, "private companies would not necessarily need to [get a credit rating], especially one with strong balance sheets, since credit ratings are used Proceedings primarily for long-term debt."⁶⁰ Thus, DP&L's tariff places privately held companies at a disadvantage relative to publicly-held companies.

⁵⁷ DP&L Brief at 13.

⁵⁸ *Id.*

⁵⁹ Tr. Vol. I at 196.

⁶⁰ Tr. Vol. II at 196-197.

Finally, there are two critical issues that DP&L fails to even address. DP&L fails to explain why it is not following its Commission-authorized tariff, which states that “security required must be and remain commensurate with the financial risks placed on the Company by that supplier, *including recognition of that supplier’s performance.*”⁶¹ Likewise, DP&L fails to explain why it continues to unilaterally modify its bond form without Commission oversight. DP&L’s silence speaks volumes. DP&L’s existing collateral process is out of hand and patently unfair. Therefore, the Commission should direct DP&L to follow its tariff obligations, reform DP&L’s methodology into line with other Ohio EDUs, and require DP&L to file its bond form with Commission for approval.

III. CONCLUSION

For the reasons stated herein, IGS urges the Commission to modify the Stipulation. It is unjust, unreasonable, discriminatory on multiple fronts, contrary to the public interest, and would violate Ohio law. The Commission should modify to the Stipulation and ensure that customers are not penalized for exercising their right to shop.

Respectfully submitted,

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⁶¹ DP&L Alternative Generation Supplier Coordination Tariff, sheet G8, page 24 of 30 (emphasis added).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Reply Brief of Interstate Gas Supply, Inc.* was served this 27th day of August 2018 via electronic mail upon the following:

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