

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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
)	
In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs)	
)	Case No. 15-1832-EL-UNC
)	

**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF
INTERSTATE GAS SUPPLY, INC.**

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APPLICATION FOR REHEARING

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Interstate Gas Supply, Inc. ("IGS Energy" or "IGS") respectfully submits this Application for Rehearing of the Opinion and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission") on September 26, 2018 for the following reasons:

- A. The Order is unlawful and unreasonable inasmuch as it authorized DP&L to recover the cost of competitive retail electric service through non-competitive service rates. 4928.05(A)(1) prohibits the Commission from exercising Chapter 4909 to regulate or provide compensation to competitive retail electric services; therefore, the Order exceeded the scope of the Commission's jurisdiction.**

- B. The Order authorized an anticompetitive, unlawful, and unreasonable subsidy to DP&L's competitive retail electric service in violation of precedent and State policy enumerated in R.C. 4928.02. *Elyria Foundry Co. v. Pub. Util. Comm'n*, 14 Ohio St.3d 305, 315 (2007).
- C. The Order is unlawful and unreasonable because it violated R.C. 4903.09 by failing to state findings of fact and reasons prompting the Commission's decisions. *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512,519, 526-27 (2011). The Order failed to appropriately consider or address IGS' arguments that the Stipulation recommended that the Commission: (1) unlawfully and unreasonably apply Chapter 4909 to authorize recovery of competitive retail electric service costs through non-competitive service rate structures; (2) unlawfully and unreasonably provided a subsidy to DP&L's competitive retail electric service rates in violation of R.C. 4928.02; and (3) the Order further failed to evaluate and address IGS' analysis and quantification of competitive retail electric service costs proposed for recovery in distribution rates.
- D. The Order is unlawful and unreasonable inasmuch as it rejected IGS' proposed rider recommendation without otherwise eliminating DP&L's recovery of standard service offer-related ("SSO") costs through non-competitive service rates. The Order should have allocated all competitive retail electric service costs to the SSO.
- E. The Order is unlawful and unreasonable inasmuch as it concluded the existence of costs related to DP&L's facilitation of the choice market may justify subsidizing SSO service. The Order's reasoning circumvents the statutory limitation against regulation of competitive retail electric services under Chapter 4909. The Order is also arbitrary, capricious, and an abuse of discretion given that choice-related costs are already directly assigned to CRES providers. *Forest Hills Utility Co. v. Pub. Util. Comm'n Ohio*, 31 Ohio St. 2d 46, 55-56 (1972).
- F. The Order's determination that choice costs may justify subsidizing the SSO is against the manifest weight of the evidence. The record reflects \$11 million in SSO-related costs proposed for recovery in non-competitive service rates; substantial CRES provider fees to cover choice-related costs; thus, the record demonstrates that additional costs should be allocated to the SSO even under the Order's unlawful reasoning. *Westside Cellular, Inc. v. Pub. Util. Comm'n*, 98 Ohio St. 3d 165, 168 (2002); *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n*, 76 Ohio St.3d 163, 166 (1996).

G. The Order is unlawful, unreasonable, and discriminatory inasmuch as it authorized DP&L to impose switching fees and historical usage fees on CRES providers without evidentiary support in violation of R.C. 4909.15 and R.C. 4909.18. The application of these fees to CRES providers is discriminatory in violation of R.C. 4905.35 and 4928.02.

As discussed further in the Memorandum in Support, IGS respectfully requests that the Commission to grant this Application for Rehearing and correct the errors identified herein.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

When the General Assembly restructured the Ohio electric market, it required incumbent electric distribution utilities (“EDUs”) to separate and unbundle their competitive and non-competitive services. Restructuring gave customers the right to choose the competitive services that they want and need. In order to preserve this right, EDUs were prohibited from rebundling their competitive services into non-competitive services. Each service was required to stand on its own. This paradigm protected customers from EDU abuses and ensured a level playing field for providers of competitive services.

On September 26, 2018, the Public Utilities Commission of Ohio (“Commission”) issued an Opinion and Order authorizing Dayton Power & Light Company (“DP&L”) to increase its non-competitive service rates, commonly referred to as base distribution rates. The Order represents the first instance in which the Commission has increased DP&L’s base distribution rates since the inception of competitive retail electric service in this state.

The Order permitted DP&L to recover costs related to its provision of standard service offer (“SSO” or “default service”) service through its non-competitive service rates. The Order requires shopping customers to pay for SSO services they do not receive in addition to the charges they pay to their CRES providers for the same services. This outcome is not only inequitable, but it also unlawful.

Under Ohio law, the Commission lacks the authority to allow the utility to recover costs to provide SSO generation service through distribution rates. Thus, the Order violated bedrock principles of Ohio law.

Making matters worse, the Order authorized the continuation of significant fees on CRES providers. The Order requires CRES providers to pay these fees—for non-competitive services that CRES providers cannot obtain from any other source other than the EDU—just to be able offer competitive services in DP&L’s services area. These fees are in addition to the costs that CRES providers must incur to provide generation service to their customers. At the same time, the Order permits DP&L to provide the same non-competitive services for free to customers taking service on the SSO.

The Order is equivalent to heads SSO customers wins; tails choice customers lose. It is unjust, unreasonable, unlawful, and fundamentally unfair to make CRES

customers pay for their own costs whenever they shop in addition to paying for the cost related to SSO service. Costs associated with the SSO must be allocated to that service—not distribution rates. And, while the Order is particularly egregious for shopping customers, at the end of the day, it is harmful to all customers. Continued favoritism to default rate service stifles a true market for competitive retail competition from ever developing in Ohio.

II. BACKGROUND

A. Restructuring and Unbundling

In 1999, Amended Substitute Senate Bill (“S.B. 3”) restructured the Ohio electric market. S.B. 3 “restructured Ohio's electric-utility industry to foster retail competition in the generation component of electric service.”¹ “In short, each service component was required to stand on its own.”² The foundation for competition was established by requiring “the three components of electric service — generation, transmission, and distribution — to be separated.”³ This process was initially implemented through the electric transition plans filed by the investor owned utilities to implement the mandate in S.B. 3. The Commission took a hatchet to separate the existing pancaked rates into distribution, transmission, and generation. While this first step was important, as it laid the initial foundation for customers to evaluate differing competitive retail electric service options from different suppliers, the Commission has not finished the job as the legislature intended.

¹ *Industrial Energy Users-Ohio v. Pub. Util. Comm’n*, 117 Ohio St. 3d 486, 487 (2008).

² *Migden-Ostrander v. Pub. Util. Comm’n*, 102 Ohio St. 3d 451, 452-53 (2004).

³ *Industrial Energy Users-Ohio v. Pub. Util. Comm’n*, 117 Ohio St. 3d 486, 487 (2008).

Through restructuring, the General Assembly eliminated the Commission's authority over competitive retail electric services, except for certain limited areas such as regulating the establishment of the SSO. But the Commission has no authority to regulate or provide compensation for competitive retail electric services through distribution rates. Indeed, "a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963."⁴ Since restructuring occurred, the Commission has not exercised its traditional regulatory authority to increase DP&L's base distribution rates under Chapter 4909.18, that is until this proceeding.

B. The Application to Increase Distribution Rates and the ESP

Pursuant to R.C. 4909.18, on November 30, 2015, DP&L filed an application to increase its base electric distribution rates ("Application"). DP&L's last base rate case was in 1991, at a time when DP&L was vertically integrated. The current application proposed to increase rates for non-competitive services by approximately \$65.8 million. As discussed further below, DP&L's proposed rate increase was, in part, based upon costs related to the provision of SSO generation service.

In DP&L's electric security plan case, on January 30, 2017, a diverse group of parties submitted a Stipulation and Recommendation⁵ to resolve the contested issues in

⁴ R.C. 4928.05(A)(1).

⁵ *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 2 (Oct. 20, 2017) (hereinafter "ESP Order").

the ESP proceeding.⁶ As part of that settlement, DP&L agreed to establish a component of the SSO rate to recognize costs related to but avoided by default service.

On March 14, 2017, following additional negotiations and bargaining, the parties to the initial ESP Stipulation, the Commission Staff, and other parties executed an Amended Stipulation⁷ to resolve the outstanding issues in the ESP proceeding.⁸ Among other things, the ESP Amended Stipulation acknowledged the existence of SSO-related costs embedded in distribution rates. While the ESP Amended Stipulation allowed for a relatively small allocation of SSO uncollectible expense to SSO service, the lion's share of the evaluation and reallocation was delegated to DP&L's pending distribution rate 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.*⁹

The ESP Amended Stipulation also deferred to this proceeding issues related to supplier fees and the supplier tariff.¹⁰

On March 12, 2018, the Commission Staff issued the Staff Report of Investigation ("Staff Report") in this proceeding detailing its investigation of DP&L's proposed rate increase. In evaluating the application, the Staff Report must functionalize costs between

⁶ IGS has since withdrawn from the Stipulation and Recommendation in that case based upon the Commission's material modification.

⁷ IGS Ex. 2 (hereinafter referred to as "ESP Amended Stipulation").

⁸ ESP Order at 2-3 (Oct. 20, 2017).

⁹ ESP Amended Stipulation at 9.

¹⁰ "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." ESP Amended Stipulation at 38, FN 10.

distribution, transmission, and production to ensure the proposed rate increase relates solely to the provision of non-competitive services.¹¹

Among other things, the Staff Report largely side-stepped its obligation to evaluate SSO-related costs proposed for recovery through distribution rates, noting that Staff was “unable to quantify” such costs at this time.¹² The practical consequence of the Staff’s failure is to permit the recovery of SSO-related costs through non-competitive service rates.

The Staff Report identified only one cost proposed for recovery through distribution rates that was undeniably related to the SSO and therefore appropriate for refunctionalization to the SSO:

Nevertheless, Staff has identified one potential area, the cost associated with Regulatory Expense (FERC 928), which contains the PUCO/OCC assessment expense. Staff recommends that the SSO generation revenue percentage of the PUCO/OCC assessment expense be recovered through an appropriate bypassable rider.¹³

Adding insult to injury, the Staff Report made no recommendations regarding DP&L’s proposed switching fees applicable to CRES providers and their customers (\$5 per switch) and historical usage fee (\$150 per usage request).

Given the Staff Report’s failure to recommend any material removal from distribution rate recovery SSO-related costs and acquiescence to directly charging fees to CRES providers and customers for services they cannot attain through any means, IGS submitted objections to the Staff Report. Among other things, IGS objected to the

¹¹ Staff Report at 29.

¹² Staff Report at 28.

¹³ *Id.*

Staff Report's failure to unbundle from distribution rates all costs related to the provision of the SSO, as well as the imposition of unsubstantiated fees for non-competitive services.¹⁴

On June 18, 2018, certain intervenors entered into a Stipulation and Recommendation ("Stipulation"). On the eve of trial, DP&L and the City of Dayton entered into a Supplemental Stipulation. Neither the Stipulation nor Supplemental Stipulation addressed any of the objections submitted by IGS or the Retail Energy Supply Association ("RESA").

In opposition to the Stipulation, IGS and RESA submitted the testimony of Edward Hess, which identified a comprehensive list of SSO-related costs proposed for recovery in this case that should be refunctionalized to SSO service:

- Call center infrastructure and employees to maintain appropriate customer service 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 expenses;
- Office space for employees to provide these services;

¹⁴ Objections to Staff Report of Interstate Gas Supply, Inc. at 3-9.

- 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;
- Taxes Other than Income Taxes such as labor taxes, property taxes and excise taxes associated with other costs to support SSO service.¹⁵

To quantify the distribution rate subsidy the Staff Report acknowledged but declined to address, Mr. Hess relied upon standard industry ratemaking practices to develop a methodology to eliminate SSO-related costs from distribution rates.¹⁶ In total, Mr. Hess identified that the Stipulation would permit DP&L to recover over \$11 million related to competitive services through its non-competitive rate structures.¹⁷

The record reflects that the SSO-related costs proposed for recovery through distribution rates “are like the costs that are required of the CRES providers to administer and process shopping customers generation service,”¹⁸ yet CRES providers do not have the luxury of making all distribution customers pay for these costs.

Some of these costs are detailed by the Commission's own rules. For example, like DP&L, CRES providers must have resources to investigate customer inquiries, complaints, protections against misleading practices, administration and overhead costs associated with contracts, record retention requirements, compliance with Commission rules, and customer billing.¹⁹

¹⁵ RESA/IGS Ex. 2 at 14-15.

¹⁶ *Id.* at 16-18 and JEH-1-4.

¹⁷ *Id.* at JEH-1.

¹⁸ RESA/IGS Ex. 2 at 8.

¹⁹ *Id.* at 8-9.

Through the testimony of witness Hess, IGS recommended that DP&L unbundle costs required to process and administer the standard service offer (SSO) and allocate those costs to SSO customers directly rather than allocating those costs to all customers including shopping customers.²⁰ Mr. Hess identified that it is unlawful and unreasonable to consider these costs distribution-service related.²¹ Mr. Hess determined that “the SSO rate is artificially low because it is only a wholesale pass-through of commodity costs. It does not include all other additional costs incurred by Dayton necessary to process and administer SSO service.”²² Mr. Hess determined that this has a negative impact, because “[s]hopping customers are subsidizing the costs of non-shopping customers through the distribution rates.”²³ Moreover, “[a]rtificially low SSO rates have a negative effect on competition.”²⁴ “[S]ubsidizing the SSO leads to less competition in the Dayton service territory and fewer products being available to customers.”²⁵

To rectify the unlawful recovery of SSO-related costs through distribution rates, IGS recommended that the Commission refunctionalize SSO-related costs to SSO service through a rider mechanism. This “ensures that non-shopping customers pay for all the services that they receive.”²⁶ And “it ensures that shopping customers are not

²⁰ *Id.* at 4.

²¹ *Id.* at 4-13.

²² RESA/IGS Ex. 2 at 11.

²³ *Id.* at 12.

²⁴ *Id.* at 12.

²⁵ *Id.*

²⁶ RESA/IGS Ex. 2 at 4.

charged for services that they do not receive.”²⁷ The ultimate goal is to provide eliminate a subsidy to the SSO and provide a level playing field for the competitive market.²⁸

IGS proposed a non-bypassable credit and avoidable charge rider to achieve this result. The net impact is revenue neutral to DP&L. The purpose of the non-bypassable rider is to eliminate the recovery of SSO-related costs through distribution rates. “The costs first need to be excluded from the Staff’s proposed rates by calculating a volumetric credit rider that will be applied to all customers.”²⁹ Mr. Hess recommended that the rider be calculated “by customer class by dividing the total amount per class by the total sales (shopping and non-shopping customers) per class.”³⁰

To ensure that SSO customers pay for the cost of their own service, Mr. Hess recommended that “[t]hese same costs will then be charged to the SSO customer by creating an avoidable rider by customer class. The amount per kWh would be calculated by dividing the identified costs by the SSO sales by customer class.”³¹

Based upon the Staff Report, IGS’ methodology would require the following kilowatt hour charges and credits to refunctionalize approximately \$11.3 million³² in costs to the SSO:

²⁷ *Id.*

²⁸ *Id.* at 5.

²⁹ RESA/IGS Ex. 2 at 18.

³⁰ *Id.* at 18.

³¹ *Id.* at 18.

³² *Id.* at JEH-1.

	Residential	Comercial	Industrial and Other
Credit Rate to All Customers	\$ (0.0020050)	\$ (0.0003035)	\$ (0.0000076)
Avoidable Rider to Non-Shoppers	\$ 0.003804	\$ 0.001332	\$ 0.000035

Because the Stipulation and Recommendation³³ recommended a higher total revenue requirement, IGS' analysis based upon the Staff Report is conservative.

The net impact of IGS' recommendation "provides a revenue-neutral mechanism for Dayton while also allocating costs more equitably, it provides a better comparison for shopping customers furthering the Commission's desires to provide shopping incentives to customers, and it would eliminate the subsidization that the distribution company is currently providing the SSO customers."³⁴

In addition to subsidizing the cost of providing competitive services, DP&L proposed to continue charging millions of dollars in switching fees and interval data fees to CRES providers just to serve customers.³⁵ Indeed:

In the test year alone, CRES suppliers and their customers paid Dayton \$247,120 in switching fees. These fees likely exceeded \$1 million since 2012. Customers are not required to pay switching fees to return to the SSO. Moreover, Dayton charges CRES providers \$150 for each interval data request. During the test year, CRES providers paid Dayton \$339,300 in interval data fees. The historical usage fees amounted to over \$500,000 in 2016 alone, and approximately \$2.7 million since 2012. Each of the fees discussed above are separate and apart from internal costs that CRES

³³ The Stipulated Revenue Requirement is \$247,951,788. The upper bound revenue requirement proposed in the Staff Report was \$247,778,307. See Joint Ex. 1 at 3 and Ex. 1; see also Staff Report at Schedule A-1. Therefore, application of IGS' unbundling methodology to the higher revenue requirement recommended in the Stipulation would require a slightly higher than \$11.3 million reduction to base rates.

³⁴ RESA/IGS Ex. 2 at 18.

³⁵ *Id.* at 10-11.

providers must incur to make a competitive product available and must recover these costs through their rates.³⁶

As RESA/IGS witness Ringenbach testified, services such as access to historical usage information “remains a monopoly service . . . because neither suppliers nor our customers can receive this in any other form or from anywhere else.”³⁷ Likewise, if a customer has a desire to switch from the SSO to a CRES provider (or vice versa), the only entity that can effectuate that service is DP&L. Therefore, IGS also recommended that the Commission eliminate switching fees and historical usage fees, given that they relate to non-competitive services that can only be provided by DP&L.

C. The Commission Order

On September 26, 2018, the Commission issued an order approving the Stipulation and authorizing DP&L to increase its distribution rates by nearly \$30 million.³⁸ The Order authorized DP&L to recover SSO-related costs through distribution rates. While acknowledging the SSO subsidy raised by IGS, the Order determined that IGS’ proposal cannot be adopted because “R.C. 4909.18 does not authorize the creation of rate adjustment clauses.”³⁹ The Order provided no substantive evaluation of IGS’ quantification of SSO-related costs proposed for recovery in this proceeding. Further, the Order provided no substantive evaluation of IGS’ legal arguments.

³⁶ *Id.* at 10-11.

³⁷ RESA/IGS Ex. 1 at 3.

³⁸ Order at 42, 44.

³⁹ Order at 11.

At the same time, the Order determined that it was appropriate to eliminate from distribution rate recovery the portion of the PUCO and OCC assessments that resulted from SSO revenue.⁴⁰ The Order determined that these costs should be allocated to SSO service based upon the amount included in the test year: “the bypassable rider may recover adjusted test year expenses only and will not be adjustable.”⁴¹

Furthermore, the Order authorized DP&L to cease collecting a switching fee when a customer switches from a CRES provider to the SSO, while the Order requires customers to pay a switching fee to move from the SSO to a CRES provider. The Order also authorized DP&L to continue imposing on CRES providers a charge of \$150 for each historical usage data request. Both of these fees relate to the provision of non-competitive services that DP&L provides to CRES providers and their customers.⁴²

With respect to the switching fee, the Order claims that the “Commission affirmed the switching fees in DP&L’s SSO proceeding.”⁴³ The Order further states that no evidence was presented to demonstrate that the switching fees are unreasonable.⁴⁴

Although the Order alleged the switching fee amount was authorized in the SSO case, that case authorized changes to Tariff G-8.⁴⁵ But the switching fees are contained

⁴⁰ *Id.* at 12.

⁴¹ *Id.*

⁴² Order at 17-18.

⁴³ Order at 18.

⁴⁴ *Id.*

⁴⁵ See ESP Amended Stipulation at 25-26.

in Tariff D34, which the Staff Report conceded was being changed in *this case*.⁴⁶ One of the changes related to the applicability of the switching fee. As the Application notes, the tariffs in existence prior to the Commission's Order imposed a switching fee on customers switching from a CRES provider to the SSO.⁴⁷ But, the tariffs proposed in this case eliminated the application of the switching fee to customers switching to the SSO.⁴⁸

With respect to the historical usage fees, the Order stated that such fees were authorized in Case No. 11-3002-EL-MER and no party demonstrated that they should be changed in this proceeding and principles of "costs causation" require CRES providers to pay such fees.⁴⁹ Ironically, the Order accepted fees applicable to CRES providers without any evidence of cost causation, but refused to reduce distribution rates and assign costs to the SSO despite clear evidence of cost causation.

III. STANDARD OF REVIEW

In a distribution rate case, "the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility." R.C. 4909.18 and R.C. 4909.19(C). Interpreting this standard, the Supreme Court of Ohio has stated that the "company appropriately bears the risk that property not included in its application and not made available for timely verification will be excluded from rate base." *Ohio Edison Co. v. Pub. Util. Comm'n*, 63 Ohio St. 3d 555, 558; *Cincinnati Bell Tel. Co. v. Pub. Util. Comm'n Ohio*, 12 Ohio St. 3d 280, 287 (Cincinnati bell "failed to sustain its burden of

⁴⁶ "Various changes are being made by the Applicant to update this tariff to remove obsolete language, or to offer clarity. Staff recommends the Commission's approval." Staff Report at 27.

⁴⁷ Rehearing Exhibit A (containing a redlined version of DP&L's existing and proposed tariff).

⁴⁸ *Id.*

⁴⁹ Order at 17-18.

proof when it offered no testimony before the commission on the issue of its requested budget adjustment.”)

Before approving a contested settlement, the Commission must find that: (1) the settlement is a product of serious bargaining among capable, knowledgeable parties; (2) the settlement, as a package, benefits ratepayers and the public interest; and; (3) the settlement package does not violate any important regulatory principles or practices.⁵⁰

A settlement is not evidence and it is not binding on the Commission. It is a recommendation by parties to a proceeding on how the Commission should address and resolve contested issues and nothing more. A settlement must be supported by record evidence.⁵¹

Moreover, a settlement cannot provide the Commission with jurisdiction or authority that has not been conferred by the General Assembly. For example, Monongahela Power relied upon a settlement for its authority to end the five-year market development period early. The Supreme Court rejected the claim that the settlement provided support for the early termination, stating:

Nevertheless, to the extent that Section IV of the Stipulation approved by the commission in the ETP Order can be considered an order authorizing the early end of Mon Power's MDP, that order was premature. *It was based upon an optimistic assumption that the requisite levels of the switching rate or effective competition would be achieved by December 31, 2003, an assumption that proved to be unwarranted, making any such order ending*

⁵⁰ *Consumers' Counsel v. Pub. Util. Comm'n*, 64 Ohio St.3d 123, 126 (1992). See, also, *AK Steel Corp. v. Pub. Util. Comm'n*, 95 Ohio St.3d 81, 82-83 (2002).

⁵¹ *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46 (2011).

*the MDP unenforceable because the order exceeded the statutory authority of the commission.*⁵²

As discussed below, the Order applied the Commission's traditional ratemaking authority under Chapter 4909 to authorize DP&L to recover SSO-related costs through its distribution service rates. Consequently, the Order required choice customers to pay twice for competitive retail electric services—once through their distribution rates to pay for service provided to SSO customers, and a second time for the services provided by their CRES provider. The General Assembly prohibited the Commission from authorizing the recovery of competitive services through non-competitive distribution rates. Thus, the settlement violates Ohio law, discriminates against choice customers, and is contrary to the public interest. On rehearing, the Commission should eliminate from distribution rates approximately \$11 million in SSO-related costs and reallocate those costs to SSO service. Moreover, the Commission should eliminate DP&L's unsubstantiated fees.

IV. ARGUMENT

A. The Order is unlawful and unreasonable inasmuch as authorized DP&L to recover the cost of competitive retail electric service through non-competitive service rates. 4928.05(A)(1) prohibits the Commission from exercising Chapter 4909 to regulate competitive retail electric services; therefore, the Order exceeded the scope of the Commission's jurisdiction.

The Order authorized DP&L to increase its distribution rates pursuant to Chapter 4909. DP&L's rates will, in part, include test year expense and capital costs, including a rate of return on those costs, related to the provision of competitive retail electric service to SSO customers. In this respect, the Order erred.

⁵² *Monongahela Power Co. v. Pub. Util. Comm'n.*, 104 Ohio St.3d 571, 2004-Ohio-6896 at 26 (2004) (emphasis added).

Prior to 1999, Ohioans received one bundled rate for all retail electric services. At the time, all retail electric services were regulated under Chapter 4909. Under this traditional form of regulation, commonly referred to as economic regulation, the Commission established retail electric rates based upon a formula.⁵³ The Commission was required to follow the formula—“the Commission may not legislate in its own right.”⁵⁴

Senate Bill 3 restructured the retail electric market, separating the distribution, transmission, and generation functions that were traditionally provided through pancaked bundled rates. The purpose of unbundling was to separate the competitive and non-competitive functions so that customers could “shop” for their competitive retail electric service.

SB 3 eliminated the Commission’s authority to regulate or provide compensation to support competitive retail electric service through non-competitive service rates regulated under Chapter 4909. Indeed, the General Assembly specifically provided that “*a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission under Chapters **4901. to 4909.**, 4933., 4935., and 4963.*” R.C. 4928.05(A)(1) (emphasis added). SB 3 removed the Commission’s jurisdiction to regulate competitive retail electric service under Chapter 4909. In other words, the Commission lacks authority to authorize the recovery of costs related to competitive retail electric services

⁵³ *Office of Consumers’ Counsel v. Pub. Util. Comm’n*, 67 Ohio St. 2d. 153 (1981).

⁵⁴ *Id.* at 166.

in a distribution rate case filed under 4909.18. Thus, the Commission may only regulate non-competitive service in a base distribution rate case.

By law, the SSO is an EDU offering of a competitive retail electric services: it is “*a standard service offer of all competitive retail electric services* necessary to maintain essential electric service to consumers.”⁵⁵ The record is uncontroverted that the Stipulation would permit DP&L to recover SSO-related costs through distribution rates authorized under R.C. 4909.18.⁵⁶ Indeed, IGS put forth evidence demonstrating that these costs exceed of \$11 million.⁵⁷ Moreover, these costs are comparable to the costs that CRES providers must incur simply to make a competitive product available.⁵⁸

The Commission’s authority to supervise and regulate the SSO is limited to R.C. 4928.141-144. “Nothing in this division shall be construed to limit the commission’s authority under sections 4928.141 to 4928.144 of the Revised Code.”⁵⁹ Of those statutes, the Commission’s ability to establish rates is limited to R.C. 4928.142 and 4928.143. Therefore, The Order violated the explicit prohibition against application of Chapter 4909 to regulate and grant cost recovery for competitive retail electric services.

⁵⁵ RC. 4928.141(emphasis added). R.C. 4928.03.

⁵⁶ 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).

⁵⁷ RESA/IGS Ex. 2 at JEH-1.

⁵⁸ RESA/IGS Ex. 2 at 8.

⁵⁹ R.C. 4928.05(A)(1). Conversely, “On and after the starting date of competitive retail electric service, a noncompetitive retail electric service supplied by an electric utility shall be subject to supervision and regulation by the commission under Chapters 4901. to 4909.” R.C. 4928.05(A)(2).

The Order attempts to gloss over its unlawful authorization of SSO cost recovery, claiming that IGS has failed to offer evidence that the Stipulation benefits the public interest (Order at 39) and that IGS has failed to offer evidence that the Stipulation violates a regulatory policy or principle (Order at 41). These statements are contrary to the record and briefs, which reflects that the Stipulation permitted DP&L to collect cost related to competitive retail electric service through distribution rates.⁶⁰ Thus, in authorizing the Stipulation, the Order required shopping customers to pay twice for competitive retail electric services—once in the charges paid to their CRES providers, and again through their distribution rates to subsidize the competitive services provided to SSO customers.⁶¹ This irrefutable fact is in and of itself sufficient evidence to demonstrate that the Stipulation is against the public interest and violates Ohio law.

Therefore, the Order is unlawful and unreasonable and should be modified on rehearing to eliminate DP&L's recovery of SSO costs through distribution rates. While the Order should eliminate such unlawful distribution-based cost recovery, IGS does not object to the Commission permitting DP&L to collect such costs through a bypassable rate.

B. The Order authorized an anticompetitive, unlawful, and unreasonable subsidy to DP&L's competitive retail electric service in violation of precedent and State policy enumerated in R.C. 4928.02. *Elyria Foundry Co. v. Pub. Util. Comm'n*, 14 Ohio St.3d 305, 315 (2007).

⁶⁰ REAS/IGS Ex. 2 at 1-19 and JEH-1.

⁶¹ *Id.*; 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).

Ohio law requires the Commission to “[e]nsure the availability of unbundled and comparable retail electric service.”⁶² Ohio policy further requires the Commission to ensure that customers have “nondiscriminatory, and reasonably priced retail electric service.”⁶³ Likewise, the Commission must “[e]nsure 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.”⁶⁴

The Supreme Court has noted that the General Assembly “restructured Ohio’s electric-utility industry to foster retail competition in the generation component of electric service.”⁶⁵ To that end, the General Assembly “required the unbundling of the three major components of electric service — generation, distribution, and transmission — and the components that make up the three major service components.”⁶⁶ “In short, each service component was required to stand on its own.”⁶⁷

The Court has rebuffed prior attempts to rebundle the recovery of competitive services through non-competitive distribution rates. For example, in *Elyria Foundry Co.*

⁶² R.C. 4928.02(B); see also R.C. 4928.05(A)(1) eliminating authority to apply traditional regulatory authority to unbundled competitive services.

⁶³ R.C. 4829.02(A).

⁶⁴ R.C. 4928.02(H).

⁶⁵ *Industrial Energy Users-Ohio v. Pub. Util. Comm’n*, 117 Ohio St. 3d 486, 487 (2008).

⁶⁶ *Industrial Energy Users-Ohio v. Pub. Util. Comm’n*, 117 Ohio St. 3d 486, 487 (2008).

⁶⁷ *Migden-Ostrander v. Pub. Util. Comm’n*, 102 Ohio St. 3d 451, 452-53 (2004).

v. Pub. Util. Comm'n, 14 Ohio St.3d 305 (2007), the Commission authorized FirstEnergy to recover SSO-related fuel costs through distribution rates. Following an appeal, the Court held that “[f]uel is an incremental cost component of generation service. Thus, by allowing that generation-cost component to be deferred and subsequently recovered in a distribution rate case, or alternatively allowing FirstEnergy to apply generation revenues to reduce distribution expenses, the commission violated R.C. 4928.02(G).”⁶⁸

Here, the record evidence shows that the Order authorized DP&L to recover through distribution rates costs components related to the provision of the SSO—similar costs that CRES providers must incur to offer a competitive product. Rather than requiring SSO service to “stand on its own,” the Order authorized DP&L to bundle components of the SSO into distribution rates and therefore provide the SSO with an anticompetitive subsidy. The subsidy is collected disproportionately from shopping customers; therefore, it is discriminatory. The Order authorized a result that violates Ohio law and Supreme Court precedent that prohibits anticompetitive subsidies and requires unbundled and comparable rates.

C. The Order is unlawful and unreasonable because it violated R.C. 4903.09 by failing to state findings of fact and reasons prompting the Commission’s decisions. *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512,519, 526-27 (2011). The Order failed to appropriately consider or address IGS’ arguments that the Stipulation recommended that the Commission: (1) unlawfully and unreasonably apply Chapter 4909 to authorize recovery of competitive retail electric service costs through non-competitive service rate structures; (2) unlawfully and unreasonably provided a subsidy to DP&L’s competitive retail electric service rates in violation of R.C. 4928.02; and (3) the Order further failed to evaluate and address IGS’

⁶⁸ *Elyria Foundry Co. v. Pub. Util. Comm'n*, 14 Ohio St.3d 305, 315 (2007).

**analysis and quantification of competitive retail electric service costs
proposed for recovery in distribution rates**

R.C. 4903.09 requires the Commission to address competing arguments and provide a record upon which the Supreme Court of Ohio may evaluate the Commission's decisions. *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512,519, 526-27 (2011); *In re Comm'n Rev. of Capacity Charges of Ohio Power Co.*, 147 Ohio St. 3d 59, 70-72 (2016). The Order failed to comply with this requirement in several respects.

First, IGS challenged the legality of applying the Commission's Chapter 4909 authority to provide recovery for competitive retail electric service costs through non-competitive service rates.⁶⁹ As discussed previously, IGS argued that R.C. 4928.05(A)(1) prohibits the Commission from applying its traditional ratemaking authority under Chapter 4909 in this nature. The Order failed to substantively address IGS' argument.

Second, IGS argued that recovering SSO-related costs through non-competitive services rate structures would run afoul of State Policy and precedent set forth in *Elyria Foundry Co.*, 14 Ohio St.3d 305 (2007).⁷⁰ The Order failed to address IGS' argument.

Finally, IGS' testimony and briefs presented a comprehensive thoughtful analysis and quantification of SSO-related costs unlawfully proposed for recovery through distribution rates.⁷¹ Specifically, IGS identified these costs to exceed \$11 million.⁷² The

⁶⁹ IGS Initial Brief at 33-37.

⁷⁰ *Id.* at 37-39.

⁷¹ *Id.* at 17-22, 33-39.

⁷² *Id.*

Order rejected IGS' proposed allocation of costs without substantively addressing IGS' position.

Accordingly, on rehearing, the Commission should fully address IGS' arguments and render conclusions of law based upon the record.

D. The Order is unlawful and unreasonable inasmuch as it rejected IGS' proposed rider recommendation without otherwise eliminating DP&L's recovery of SSO-related costs through non-competitive service rates. The Order should have allocated all competitive retail electric service costs to the SSO.

The Order acknowledged that IGS presented evidence demonstrating that the Stipulation would allow DP&L's distribution rate recovery to include costs pertaining to the SSO. But the Order determined that IGS' proposal to reallocate these costs cannot be adopted because "R.C. 4909.18 does not authorize the creation of rate adjustment clauses."⁷³

IGS recognizes that the ESP Amended Stipulation authorized in DP&L's ESP case designated this proceeding to evaluate the amount of costs that should be reallocated to SSO bypassable rates. Therefore, IGS submitted the testimony of Edward Hess in this proceeding to provide a recommendation to effectively remove SSO-related costs from distribution rates and refunctionalize those costs to SSO service. While the Order had concerns with IGS' proposed remedy, that is not a basis to violate the explicit prohibition against regulation of competitive services under Chapter 4909. The Order's reasoning is equivalent to throwing the baby out with the bath water. If the Order had issue with IGS'

⁷³ Order at 11-12.

rider proposal, it could have modified the methodology, rather than ignoring the requirement that it cannot subsidize and regulate the SSO through distribution rates.

Indeed, the Commission's reasoning is particularly troubling given that in a separate part of the Order, it identified costs that should be allocated directly to SSO service based upon the test year, without additional adjustments or true ups.⁷⁴ Clearly, this methodology is acceptable and lawful and would provide a more favorable outcome than requiring shopping customers to subsidize the SSO through their non-competitive distribution rates. Accordingly, on rehearing, the Commission should reduce DP&L's distribution rates to eliminate the recovery of SSO-related costs and reallocate those costs to DP&L's SSO rates.

E. The Order is unlawful and unreasonable inasmuch as it concluded the existence of costs related to DP&L's facilitation of the choice market may justify subsidizing SSO service. The Order's reasoning circumvents the statutory limitation against regulation of competitive retail electric services under Chapter 4909. The Order is also arbitrary, capricious, and an abuse of discretion given that choice-related costs are already directly assigned to CRES providers. *Forest Hills Utility Co. v. Pub. Util. Comm'n Ohio*, 31 Ohio St. 2d 46 (1972).

The Order indicated that "[i]f we are to evaluate whether there are actual distribution costs solely related to providing SSO service, we should also evaluate whether there are actual distribution costs solely related to the customer choice program."⁷⁵ "Then, the Commission may determine whether it is necessary to reallocate

⁷⁴ Order at 12.

⁷⁵ Order at 10.

costs between shopping and non-shopping customers in order to ensure an EDU's rates are fair and reasonable to customers.”⁷⁶ The Order erred for several reasons.

First, the Order is incorrectly concluded that the Commission has authority to regulate or provide cost recovery related to the SSO through distribution rates pursuant to the Commission's traditional ratemaking authority.⁷⁷ The Commission has no such authority; therefore, the existence of choice-related costs cannot justify otherwise unlawful cost recovery related to SSO service.

Second, the “netting” concept alluded to by the Order is arbitrary, unjust, and unreasonable inasmuch as it attempts to justify subsidizing the SSO based upon a flawed comparison. To start, unlike SSO customers, ***shopping customers are already paying fees to DP&L for services rendered.*** These fees have added up to ***millions of dollars.***⁷⁸ DP&L has not even attempted to quantify the reasonableness of these fees, which may overcompensate DP&L for services provided to CRES providers and their customers. It is arbitrary and capricious to net choice-costs against SSO service costs when the record reflects that no such costs are actually recovered through distribution rates—they are already directly assigned to CRES providers.

Third, although shopping customers and CRES providers are already compensating DP&L for the services they receive, these services do not relate to competitive retail electric service. When DP&L incurs cost related to the choice market,

⁷⁶ *Id.* at 10-11.

⁷⁷ R.C. 4928.05(A)(1).

⁷⁸ RESA/IGS Ex. 2 at 10-11.

these costs relate to services that are a traditional monopoly function. For example, when DP&L provides meter data through an Electronic Data Interchange transaction to a CRES provider, there is no other way to obtain that data to be able to bill a customer.⁷⁹ Moreover, that same data is being used for SSO customers without a fee. When DP&L provides such service, it is not in fact providing a competitive retail electric service. The provision of the CRES product is handled by the CRES, which sends an EDI transaction in the other direction to administer the product. Thus, the Order sought to net choice and SSO-related costs based upon a flawed apples to oranges comparison. Moreover, if the services DP&L provided to the choice market are truly a function of distribution service and if the Commission includes them in any netting methodology, the fees and shopping penalties should be eliminated.

F. The Order's determination that choice costs may justify subsidizing the standard service offer is against the manifest weight of the evidence. The record reflects \$11 million in SSO-related costs proposed for recovery in distribution rates; substantial CRES provider fees to cover choice-related costs; thus, the record demonstrates that additional costs should be allocated to the SSO even under the Order's unlawful reasoning. *Westside Cellular, Inc. v. Pub. Util. Comm.*, 98 Ohio St. 3d 165; *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n Ohio*, 76 Ohio St.3d 163, 166 (1996).

In a distribution rate case "the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility." R.C. 4909.18 and R.C. 4901.19(C). Assuming arguendo that the Commission may net choice-related costs against SSO-related costs, the Order is not supported by the manifest weight of the evidence. Indeed, the record contradicts the Order's conclusion. As the Supreme Court

⁷⁹ RESA/IGS Ex. 1 at 2.

has held, “[a] legion of cases establish that the commission abuses its discretion if it renders an opinion on an issue without record support.” *Cleveland Elec. Illum. Co. v. Pub. Util. Comm’n Ohio*, 76 Ohio St.3d 163, 166 (1996). *Westside Cellular, Inc. v. Pub. Util. Comm.*, 98 Ohio St. 3d 165

IGS submitted testimony indicated that based upon the amount of revenue recommended in the Staff Report, DP&L would recover in excess of \$11 million in SSO-related costs through distribution rates. No other quantitative estimate of the SSO subsidy was provided in this case. To avoid allocating this amount to the SSO, the Order relies upon the alleged existence of choice-related costs. But the Order failed to cite any evidence to quantify such costs. At the same time, the record reflects that DP&L already collected significant, unsubstantiated switching fees and historical usage fees from CRES providers, adding up to millions of dollars in just a few years.⁸⁰ Thus, the record reflects there are over \$11 million in SSO-related costs in distribution rates and zero uncompensated choice-related costs. The Order’s failure to allocate \$11 million in SSO-related costs—even under the Order’s own flawed methodology—is contrary to the manifest weight of the evidence and reflects an abuse of discretion. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm’n Ohio*, 76 Ohio St.3d 163, 166 (1996). Therefore, the Commission should grant this application for rehearing and eliminate SSO-related costs from distribution service recovery and reallocate such costs to SSO service.

G. The Order is unlawful, unreasonable, and discriminatory inasmuch as it authorized DP&L to impose switching fees and historical usage fees on CRES providers without evidentiary support in violation of R.C. 4909.15 and R.C. 4909.18. The application of these fees to CRES providers is discriminatory in violation of R.C. 4905.35 and 4928.02.

⁸⁰ IGS/RESA Ex. 2 at 10-11.

The Order states that the “Commission affirmed the switching fees in DP&L’s SSO proceeding.”⁸¹ Similarly, the Order alleges that the historical usage fees were authorized in DP&L’s merger case, over five years ago.⁸² Regarding both fees, the Order states that no evidence was presented to demonstrate that either fee is unreasonable. The Order is incorrect factually and legally, and failure to correct the Order would further discriminate against shopping customers.

Initially, the Order is incorrect that IGS was required to demonstrate the unreasonableness of the switching fee and the historical usage fee. As the Order notes, these fees relate to non-competitive service.⁸³ This is a distribution rate case in which DP&L is requesting authority to increase its compensation for non-competitive services, which includes the services that DP&L provides to CRES providers. Pursuant to R.C. 4909.15(C)(1), the “revenues and expenses of the utility shall be determined during a test period.” In a distribution rate case, “the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility.” R.C. 4909.18 and R.C. 4909.19(C).

Accordingly, DP&L’s costs for providing non-competitive services to CRES providers is embedded in the test year expense in this case. Likewise, the revenues that DP&L collects pursuant to these fees is a credit to DP&L’s costs. Therefore, the combined impact of DP&L’s fees and expenses is embedded in the revenue requirement the Order

⁸¹ Order at 18.

⁸² *Id.* at 17-18.

⁸³ Order at 16-18.

authorized.⁸⁴ Given's DP&L's burden of proof, the Order should have required to demonstrate that its fees are just and reasonable if they are to be assessed at all. DP&L, however, provided no evidentiary support for such fees and the Order cited no record evidence to support the calculation of the fees. Therefore, the Order is unlawful and unreasonable. "A legion of cases establish that the commission abuses its discretion if it renders an opinion on an issue without record support." *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n Ohio*, 76 Ohio St.3d 163, 166 (1996). *Westside Cellular, Inc. v. Pub. Util. Comm.*, 98 Ohio St. 3d 165. Just as the Commission has previously declined to authorize rates without an evidentiary basis, the Order should have directed DP&L to eliminate its unsubstantiated switching fee and historical usage fee. *Cincinnati Bell Tel. Co. v. Pub. Util. Comm'n Ohio*, 12 Ohio St. 3d 280, 287. The Order impermissibly shifted the burden of demonstrating the unreasonableness of these fees to IGS.

The Order's reasoning related to the switching fee is particularly egregious. The Order is incorrect that the SSO case authorized changes to the switching fee.⁸⁵ The Order contains no citations to the record in that case or to sections in the Order to support that fact. There is no support for this assertion. While the SSO case authorized changes to Tariff G-8, the switching fees are contained in Tariff D34. And that Tariff is explicitly discussed in the Staff Report and tariffs that were filed in *this case*.⁸⁶ Regarding the Switching Fee Rider, the Staff Report states, "[v]arious changes are being made by the

⁸⁴ 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).

⁸⁵ Order at 18.

⁸⁶ Staff Report at 27.

Applicant to update this tariff to remove obsolete language, or to offer clarity. Staff recommends the Commission's approval."⁸⁷ Moreover, the Application notes that the tariffs in existence prior to the Commission's Order imposed a switching fee on a customer to move to the SSO.⁸⁸ But, the tariffs proposed for approval in this case eliminated the application of the switching fee to customers switching to the SSO.⁸⁹ Thus, the Order's authorization of the Stipulation in fact authorized changes to the switching fee—exempting their application to customers switching back to the SSO, but it retained the fee for customers that shop. Thus, the Order incorrectly relied upon the SSO case as a basis for failing to address IGS' argument.

Selectively imposing switching fees on shopping customers would violate Ohio law. Under R.C. 4905.35, "[n]o public utility shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage." Moreover, it is the state policy to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."⁹⁰ It is unduly discriminatory and unreasonable to impose a switching fee on customers selecting a CRES provider, while imposing no fee on customers taking service on the SSO. To the extent that the Order does not eliminate the switching fee altogether, at a minimum, it must be applied to customers that switch to the SSO.

⁸⁷ *Id.*

⁸⁸ Rehearing Exhibit A.

⁸⁹ *Id.*

⁹⁰ R.C. 4928.02.

V. CONCLUSION

For the reasons stated herein, IGS urges the Commission to grant this Application for Rehearing. It is unjust, unreasonable, discriminatory on multiple fronts, contrary to the public interest, and would violate Ohio law. The Commission should grant this Application for Rehearing and ensure that customers are not penalized for exercising their right to shop. Further, the Commission should eliminate the discriminatory and unsubstantiated fees that DP&L has sought to impose upon CRES providers and their customers.

Respectfully submitted,

/s/Joseph Olikier

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Interstate Gas Supply, Inc.* was served this 26th day of October 2018 via electronic mail upon the following:

/s/ Joseph Olikar

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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

THE DAYTON POWER AND LIGHT COMPANY

CASE NO. 15-1830-EL-AIR

CASE NO. 15-1831-EL-AAM

CASE NO. 15-1832-EL-ATA

2015 DISTRIBUTION BASE RATE CASE

BOOK II – SCHEDULES

VOLUME 4 OF 4

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Dayton Power and Light Company
DP&L Case No. 15-1830-EL-AIR
Standard Filing Requirements for Rate Increases
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THE DAYTON POWER AND LIGHT COMPANY
 Sheet No. D34
 MacGregor Park
 1065 Woodman Dr.
 Dayton, Ohio 45432

Original ~~First Revised~~

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P.U.C.O. No. 1817
 ELECTRIC DISTRIBUTION SERVICE
 SWITCHING FEE ~~RIDER~~

APPLICABLE:

All Customers who take Distribution and Transmission services from the Company are subject to the following terms, conditions and rates regarding switching Alternate Generation Suppliers ("AGS").

SWITCHING TO AN ALTERNATE GENERATION SUPPLIER

Once a Customer has selected an AGS, and the AGS has notified the Company in accordance with established business procedures, service will become effective on the Customer's next scheduled meter reading date unless other arrangements are made between the Customer or AGS and the Company. A Customer receiving generation from an AGS will automatically be transferred to the Company's Competitive Retail Generation Service Tariff, Sheet No. G9. The Company shall not prohibit Customer switching from one AGS to another under established business protocols.

CONFIRMATION OF SWITCH

When the Company receives a request to switch to a new AGS, they will send confirmation of the change to the Customer, and electronic notices to the new AGS and the previous AGS. The confirmation letter to the Customer will include the following language:

This letter confirms that a request has been received to change your electric generation supplier under DP&L's Electric Choice Program. This change will be effective with the scheduled meter reading on (date). Under this program, you will purchase your electric generation from (AGS's name) and DP&L will continue to deliver the energy through facilities owned and serviced by DP&L.

The Customer's notice will also include the right to rescind. If, after receipt of a confirmation letter, a Customer contacts the Company indicating that he/she does not want to switch to the AGS listed in the confirmation letter, the Company will give the Customer a rescission identification number and inform the Customer that they will automatically be returned to their previous AGS without any interruption of service.

If sufficient time is available and it is practicable, the Company will attempt to inform the Customer of a switch in AGS prior to the switch occurring, but cannot guarantee that the Customer will receive such letter before the switch is made. It shall be the responsibility of the Customer and his or her respective AGS to settle disputes regarding energy supplied on the Customer's behalf.

Filed pursuant to the Opinion and Order in Case No. 05-1514 EL ATA dated December 21,
 2005 of the Public Utilities Commission of Ohio.

Issued ~~December 23, 2005~~

Effective January 1, 2006

Issued by

THOMAS A. RAGA ~~JAMES V. MAHONEY~~, President and Chief Executive Officer

THE DAYTON POWER AND LIGHT COMPANY
Sheet No. D34
MacGregor Park
1065 Woodman Dr.
Dayton, Ohio 45432

Original First Revised

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Original Sheet No. D34
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P.U.C.O. No. 1817
ELECTRIC DISTRIBUTION SERVICE
SWITCHING FEE ~~RIDER~~

AUTHORIZATION TO SWITCH TO AN ALTERNATE GENERATION SUPPLIER

The AGS shall coordinate Customer enrollment with the Company in accordance with the procedures set forth in the Alternate Generation Supplier Coordination Tariff, Sheet No. G8. The AGS shall provide notification of the switch request to the Company utilizing standard business protocols before the switch is effectuated. ~~Prior to the switching level reaching twenty percent (20%), each Customer will receive one free switch during the Rate Stabilization Period. Then~~ The Company will charge a switching fee of five dollars (\$5) for every switch to an AGS.

RETURNING TO THE STANDARD OFFER

A Customer may at any time return to the Company's applicable Standard Offer Tariff for Generation Service. ~~However, the Company will charge the Customer a switching fee of five dollars (\$5) for returning to the Standard Offer Tariff.~~

In the event that a Customer returns to Standard Offer due to default, abandonment, slamming or certification rescission of their AGS, the Customer will be automatically returned to the applicable Standard Offer Tariff, ~~and will not be charged the switching fee.~~

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Summary: Application for Rehearing and Memorandum in Support electronically filed by Mr. Joseph E. Oliker on behalf of IGS Energy