

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan)	Case No. 16-395-EL-SSO
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)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs)	Case No. 16-396-EL-ATA
)	
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13)	Case No. 16-397-EL-AAM
)	

**REPLY IN SUPPORT OF MOTION FOR PROCEDURAL SCHEDULE AND
MEMORANDUM IN SUPPORT OF INTERSTATE GAS SUPPLY, INC.**

I. INTRODUCTION

On October 19, 2018, Interstate Gas Supply, Inc. ("IGS") filed a Notice of Withdrawal ("Notice") from the Amended Stipulation and Recommendation ("Stipulation") filed in the above-captioned proceeding. Contemporaneous with that filing, IGS moved the Public Utilities Commission of Ohio ("Commission") to establish a procedural schedule to permit IGS to create a record, cross-examine witnesses that supported the Stipulation, present its own witnesses, and brief all issues so that the Commission may issue an order based upon the entire record and briefs. To that end, IGS moved for the Commission to adopt the following procedural schedule:

- IGS Testimony: 11/20/2018
- Discovery Response Period: 7 Calendar Days
- Procedural Conference: 12/5/2018

- Evidentiary Hearing: 12/12/18.¹

On October 26, 2018, the Dayton Power and Light Company (“DP&L”) and Industrial Energy Users-Ohio (“IEU-Ohio”) filed separate memoranda contra to IGS’ motion. DP&L’s memorandum contra relies entirely on its separate motion to strike IGS’ Notice. DP&L argues that to the extent its motion is granted, IGS’ proposed procedural schedule “would potentially waste time, energy, and resources of the Commission and the parties.”² In the alternative, DP&L requests that the Commission “convene a status conference at its convenience to hear from the parties and consider the appropriate procedural path forward.”³

Relative to DP&L, IEU-Ohio takes a more constructive approach. Noting other cases set for hearing in early December and the uncertainty regarding issues that IGS will address, IEU-Ohio recommended dates approximately one month later than the dates proposed by IGS.⁴ IEU-Ohio’s proposed procedural schedule, however, would provide an opportunity for testimony in response to IGS’ testimony by January 4, 2019.⁵

For the reasons outlined below, the Commission should grant IGS’ motion for a procedural schedule, although IGS does not object to portion of IEU-Ohio’s alternative proposal.

¹ Motion for Procedural Schedule of Interstate Gas Supply, Inc. at 3 (October 19, 2018) (hereinafter “IGS’ Motion”).

² Memorandum in Opposition of The Dayton Power and Light Company to Motion for Procedural Schedule of Interstate Gas Supply, Inc., at 1 (October 26, 2018) (“hereinafter “DP&L Memo Contra”).

³ *Id.*

⁴ Industrial Energy Users-Ohio’s Memorandum Contra to Interstate Gas Supply, Inc.’s Motion for Procedural Schedule at 3 (hereinafter “IEU-Ohio Memo Contra”).

⁵ *Id.*

IGS does not oppose IEU-Ohio's proposed December 14, 2018 deadline to file testimony. IGS is also involved in the proceedings IEU-Ohio identified; therefore, IEU-Ohio's proposal is acceptable. Because IEU-Ohio did not propose a hearing date, IGS suggests that, to the extent IEU-Ohio's proposed testimony date is accepted, the Commission move the hearing to January 7, 2019, with a prehearing conference on January 3.

But, the Commission should reject IEU-Ohio's proposal that IGS be required to file an identification of issues that it intends to address at the hearing. As IGS noted in its Notice, IGS intends to oppose the Stipulation. Consequently, IGS is permitted to address any matter relevant to the proceeding subject to the rules of evidence and Commission practice. Under Commission practice, while parties often submit pre-filed testimony identifying specific issues to be addressed, parties are not required to identify any and all issues that they intend to address in a proceeding. It would be arbitrary and unreasonable to apply such a rule to one intervenor in a proceeding, given that no other intervenor in this proceeding has followed such a rule.

Additionally, the Commission should reject IEU-Ohio's proposal to permit the filing of testimony in opposition to IGS on January 4, 2019. Parties have already had an opportunity to provide evidence in support of the Stipulation. The purpose of this hearing is to afford IGS due process and an opportunity to oppose the Stipulation: to create a record, cross-examine witnesses that supported the Stipulation, present its own witnesses, and brief all issues so that the Commission may issue an order based upon the entire record and briefs. Any testimony in response to IGS cannot be characterized as anything other than rebuttal testimony. Under Commission practice, a request to

provide rebuttal testimony is typically heard *after* a party opposing the Stipulation presents their testimony at trial. Therefore, it would be premature to permit any party to provide rebuttal testimony at this juncture.⁶

DP&L's memo contra should be rejected in its entirety. As IGS will demonstrate under a subsequent filing, DP&L's motion to strike is without merit. Therefore, DP&L has offered no legitimate opposition to IGS' proposed schedule. Ironically, DP&L feigns support for judicial economy. But, rather than providing constructive changes to the proposed schedule, DP&L proposes to delay discussing the "appropriate procedural path forward" until a procedural conference can be held at some point down the road. The time to provide feedback regarding the path forward is now. Indeed, IGS and IEU-Ohio have already recommended the appropriate procedural path. A procedural conference to discuss the schedule that is the subject of this pleading cycle would be a redundant waste of time, energy, and resources. DP&L's failure to propose alternative dates in its memo contra is a waiver of the right to provide substantive input. Accordingly, the Commission should reject DP&L's request for delay.

In conclusion, the Commission should grant IGS' motion for procedural schedule. IGS' Notice was timely and appropriate under Section XI. 5 of the Stipulation. DP&L's memo contra seeks to delay and frustrate IGS' right to due process in this proceeding. IEU-Ohio's motion should be denied in part; however, its request to move IGS' testimony

⁶ *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. 12-426-EL-SSO, *et. al.* (rebuttal testimony submitted following commencement of hearing); *See In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.* (hearing on rebuttal testimony held subsequent to hearing on prefiled testimony).

deadline to December 14, 2018 is reasonable and should be granted. Based on the foregoing, IGS' Motion should be granted subject to the conditions outlined above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this *Reply in Support of Motion for Procedural Schedule and Memorandum of Support of Interstate Gas Supply Inc.* was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio on this 31st day of October 2018.

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/s/ Michael Nugent
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Summary: Reply Reply in Support of Motion For Procedural Schedule and Memorandum in Support electronically filed by Mr. Michael A Nugent on behalf of Interstate Gas Supply, Inc.