

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
the Dayton Power and Light Company for	)	Case No. 16-0395-EL-SSO
Approval of its Electric Security Plan.	)	
	)	
In the Matter of the Application of the	)	
Dayton Power and Light Company for	)	Case No. 16-0396-EL-ATA
Approval of Revised Tariffs.	)	
	)	
In the Matter of the Application of the	)	
Dayton Power and Light Company for	)	Case No. 16-0397-EL-AAM
Approval of Certain Accounting Authority	)	
Pursuant to Ohio Rev. Code § 4905.13.	)	

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**INITIAL BRIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

In its application, Dayton Power and Light (“DP&L”) proposed a charge to customers (“Reconciliation Rider” or “OVEC subsidy rider”) to subsidize the costs of producing power at two 1950’s era coal plants which it has an interest in (the OVEC units). The Office of the Ohio Consumers' Counsel (“OCC”) has demonstrated before the Public Utilities Commission of Ohio (“PUCO”) that customers should be protected from paying this charge. Nonetheless, the PUCO allowed the charge and ordered the charge to be paid for by all customers. IGS, in order to reap more profits, is opposing the PUCO’s decision that all customers should pay the charge. IGS supports making the charge bypassable for those who shop, thus limiting the charge to DP&L’s standard offer customers.

While maintaining its position that the Rider should not be allowed, OCC recommends that Ohio law, consumer protection, and basic fairness requires that the PUCO reject IGS's proposal to have only standard offer consumers pay the OVEC subsidy Rider. The PUCO should affirm its Opinion and Order already entered in this case that all consumers should pay the Rider.

IGS has another proposal that the PUCO should also reject – to unbundle costs associated with standard service offer rates. Specifically, IGS proposed to create two new riders. One would be a credit rider allowing all customers to avoid distribution costs IGS claims are solely related to DP&L's standard offer. The second would be paid only by standard service offer ("SSO") customers and the total negative revenue requirement under the first rider would be the same as the total positive revenue requirement under the second rider.

The SSO is available to all consumers, all the time, no matter what, and is used as a default service. The SSO is also used as a rate to compare offers made by marketers. OCC's expert witness, Mr. Ross Willis, testified that the SSO benefits all consumers. Accordingly, all consumers should pay the OVEC costs, not just standard service offer customers, and the PUCO should also reject IGS's unbundling proposal.

## **II. BACKGROUND**

On March 14, 2017, several parties, including IGS, submitted an Amended Stipulation ("Settlement") for approval to the PUCO.<sup>1</sup> Under the Settlement, the OVEC subsidy Rider would be bypassable – shopping customers would not pay it.<sup>2</sup>

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<sup>1</sup> See *Amended Stipulation and Recommendation*, March 14, 2017 ("Settlement").

<sup>2</sup> Settlement at 13.

On October 20, 2017, the PUCO modified the March 14, 2017 Settlement and approved the Rider over several objections, including OCC’s objection to making customers pay any subsidy charge for the OVEC coal plants. In modifying the Settlement, the PUCO made the Rider non-bypassable and ordered DP&L to charge the rate to all customers, shopping and non-shopping alike.<sup>3</sup> The PUCO agreed with OCC that the Rider should be non-bypassable, because under a bypassable Rider there would be a potential for escalating bill impacts to standard service offer customers as shopping increases.<sup>4</sup>

Several parties, including OCC, sought rehearing on the PUCO’s modification of the Settlement but the PUCO denied them.<sup>5</sup> On October 19, 2018, and under Provision XI(5) of the Settlement, IGS filed a Notice of Withdrawal from the Amended Stipulation and Recommendation.<sup>6</sup> IGS argued that the PUCO modification to the Settlement (making the OVEC subsidy rider non-bypassable) was material and undermined the benefit of the bargain for IGS.<sup>7</sup> After withdrawing, IGS submitted the Supplemental Direct Testimony of Matthew White on February 12, 2019.<sup>8</sup>

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<sup>3</sup> Opinion and Order at 35 (Oct. 20, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> OCC opposed the Settlement and has appealed the PUCO Order approving the settlement. *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Sup. Ct. 2019-0020, OCC Notice of Appeal (Jan. 7, 2019).

<sup>6</sup> *Notice of withdrawal from Amended Stipulation and Recommendation* at 2, (October 19, 2018) (“Notice of Withdrawal”) (If any party withdraws as a signatory party to the Stipulation, “the Commission will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs.”).

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

<sup>8</sup> Supplemental Direct Testimony of Matthew White on Behalf of Interstate Gas Supply, Inc. (February 12, 2019) (“White’s Testimony”).

IGS’s testimony presents two potential modifications to the Settlement. In the first, notwithstanding that the PUCO itself modified the Settlement to make the Rider non-bypassable, IGS urges the PUCO to make the Rider bypassable. This would enable customers of marketer providers (50% of total customers shop in DP&L service territory<sup>9</sup>) such as IGS to avoid the charges, while forcing DP&L’s standard offer customers to pay more, as IGS admitted.<sup>10</sup> This effectively allows marketers like IGS to have more head room to make a profit. IGS also argues that a non-bypassable rider would allow DP&L to collect generation-related revenue that it cannot otherwise collect from the competitive market.<sup>11</sup> Finally, IGS argues that denying this cost recovery would prevent shopping customers from paying an “anticompetitive subsidy” for generation costs through distribution charges.<sup>12</sup>

IGS’s second proposal is to unbundle costs associated with standard service offer rates by creating two new riders.<sup>13</sup> The first is a credit rider allowing all customers to avoid distribution costs that IGS claims are solely related to DP&L’s standard offer.<sup>14</sup> The second would be paid only by SSO customers, and the total negative revenue requirement under the first rider would be the same as the total positive revenue requirement under the second rider.<sup>15</sup>

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<sup>9</sup> Hearing Transcript, Vol. III at 1399:19-22.

<sup>10</sup> Hearing Transcript Vol. III at 1401:18-19; Willis Testimony at 3:18-20.

<sup>11</sup> White’s Testimony at 4:7-9.

<sup>12</sup> White’s Testimony at 5:14-18.

<sup>13</sup> White’s Testimony at 3:17-20, 9:21,10:11-21.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

### III. STANDARD OF REVIEW

IGS is proposing changes to a Settlement that the PUCO already approved with modifications. The Supreme Court of Ohio (“Court”) stated in *Duff v. Pub. Util. Comm.*<sup>16</sup> that a stipulation (settlement) is merely a recommendation that is not legally binding upon the PUCO. The PUCO “may take the stipulation into consideration but must determine what is just and reasonable from the evidence presented at the hearing.”<sup>17</sup> The Court in *Consumers’ Counsel v. Pub. Util. Com.*<sup>18</sup> considered whether a just and reasonable result was achieved with reference to the following criteria adopted by the PUCO in evaluating settlements:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties, where there is diversity of interests among the stipulating parties?
2. Does the settlement package violate any important regulatory principle or practice?
3. Does the settlement, as a package, benefit ratepayers and the public interest?

The PUCO also routinely considers whether the parties represent a diversity of interests.

The PUCO has already applied the settlement standard to determine if the original proposed settlement, with a bypassable Rider, was just and reasonable.<sup>19</sup> It was not. The

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<sup>16</sup> *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367 (1978); *see also* Ohio Adm. Code 4901-1-30(E).

<sup>17</sup> *See id.*

<sup>18</sup> *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992).

<sup>19</sup> Opinion and Order at 60.

PUCO agreed with OCC that leaving the Rider bypassable would have an anti-competitive effect by artificially inflating standard service offer prices and increasing the risk for escalating bill impacts as shopping increases.<sup>20</sup> IGS's proposal asks the PUCO to approve a settlement provision that it has already deemed unjust and unreasonable. IGS is not proposing something new for the PUCO to consider..

Now, the PUCO must again apply its settlement test to decide whether IGS has presented evidence demonstrating that its proposals benefit customers and are in the public interest.<sup>21</sup> The PUCO must also decide if IGS's proposals comply with Ohio law. A settlement must satisfy the provisions in R.C. 4905.22, which requires that every public utility furnish necessary and adequate service and facilities, and that all charges for any service must be just and reasonable. As OCC demonstrates below and in testimony, IGS's proposals fail to satisfy this standard as well as the settlement test.

#### **IV. RECOMMENDATIONS**

##### **A. The PUCO should deny IGS's proposal to make the OVEC subsidy Rider bypassable because it violates the PUCO's Settlement Standard and Ohio Law**

The PUCO should deny IGS's proposal to make the OVEC subsidy Rider bypassable. That said, it is important to clarify that OCC's position and Mr. Willis's testimony on the Rider bypassability issue in no way means that OCC supports the OVEC subsidy Rider. OCC continues to oppose this Rider and has appeals filed at the Supreme Court.

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<sup>20</sup> *Id.* at 34-35.

<sup>21</sup> *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367 (1978); *see also* Ohio Adm. Code 4901-1-30(E).

While OCC stands firmly that there should be no OVEC coal subsidy charge paid by any consumers, if the PUCO approves the charge it should be paid by all customers (non-bypassable) and not just the select few that are standard offer customers.<sup>22</sup> If a charge for the OVEC subsidy is to stand (it should not), then at the very least PUCO should make the charge one that is payable by all customers, not just the standard offer customers. If IGS's proposal is adopted (which it should not be), the OVEC Subsidy Rider will force charges on standard offer customers that are not just and reasonable and do not comply with Ohio Law.

The PUCO should uphold its modification to the Settlement, making the OVEC Subsidy Rider non-bypassable, made in its October 20, 2017 Order.<sup>23</sup> There, as part of DP&L's approved electric security plan, the PUCO determined that the Rider for subsidizing OVEC coal power plants so-called price hedge should be paid by all customers and not just by DP&L's standard offer customers.<sup>24</sup> If an OVEC subsidy rider must be charged to customers (it shouldn't), then it should be paid by all customers as OCC recommended and the PUCO has already ordered.<sup>25</sup> This solution is less harmful to consumers and more in the public interest than a bypassable rider which harms standard offer customers.

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<sup>22</sup> Rebuttal Testimony of Wm. Ross Willis on Behalf of the Office of the Ohio Consumers' Counsel (April 9, 2019) ("Willis Testimony") at 5:7-8.

<sup>23</sup> OCC's renewal of its position on the IGS proposals should not be taken as an endorsement of the PUCO's Order accepting the Settlement, which OCC opposed. In this regard, OCC has pending before the Ohio Supreme Court an Appeal of the PUCO's Orders. See Ohio S.Ct. Case No. 2019-0020.

<sup>24</sup> Opinion and Order at 60.

<sup>25</sup> *Id.*

IGS has not satisfied any of the criteria the PUCO uses to evaluate settlements.<sup>26</sup> Under the PUCO Settlement Standard, the PUCO must determine if a settlement is just and reasonable.<sup>27</sup> It must be the result of serious bargaining.<sup>28</sup> It must not violate any important regulatory principles or practices.<sup>29</sup> Finally, the settlement must benefit ratepayers and the public interest.<sup>30</sup> Therefore, if the OVEC coal subsidy charge is made bypassable, it will not be the result of serious bargaining, it will violate important regulatory principles and practices such as cost causation, and it will harm ratepayers, which is not in the public interest. Worse, it will be against Ohio law because the bypassable charges would not be just and reasonable, as explained below.

**1. IGS's Proposal regarding bypassability is not just and reasonable and violates the PUCO Settlement Standard.**

The first prong of the PUCO's Settlement Standard requires that a settlement be the product of serious bargaining among capable, knowledgeable parties.<sup>31</sup> IGS's proposal is not the result of any bargaining, let alone serious bargaining. Further, IGS has not demonstrated that its proposal regarding the bypassability of the OVEC subsidy charge is supported by a diversity of interests among the stipulating parties. Although many parties requested rehearing, IGS was the only signatory party to withdrawal from the Modified Settlement approved by the PUCO.<sup>32</sup> Bargaining requires at least two

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<sup>26</sup> *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157 (1978) ("Settlement Standard").

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Settlement Standard.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Notice of Withdrawal at 2.

parties, and there can be no bargaining when only one party disagrees with the result after the fact. Moreover, the PUCO is not bound to a settlement negotiated by the parties and was within its capacity to amend the Settlement.<sup>33</sup>

The second prong of the PUCO Settlement Standard states that a settlement must not violate any important regulatory principles or practice.<sup>34</sup> IGS's bypassability proposal violates the regulatory principle of cost causation, according to OCC Witness Willis, and should be denied by the PUCO.<sup>35</sup> Specifically, as Mr. Willis explained in his testimony, the proposal shifts all the OVEC costs onto SSO customers; although marketer customers are receiving the same benefit of default service as a safety net, and are part of the cost causation of default service, but they are not paying for it.<sup>36</sup> Mr. Willis also testified that this inequality multiplies quickly as more customers, those that can anyway<sup>37</sup>, shift from default SSO service to marketer service to avoid the charge.<sup>38</sup>

As OCC expert witness Willis testified, making the OVEC rider bypassable would only benefit CRES providers like IGS because making the Rider bypassable (avoidable) would only benefit shopping customers.<sup>39</sup> Moreover, Mr. Willis explained, shopping customers would be able to avoid charges under the Rider were it made

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<sup>33</sup> *Duff v. Pub. Util. Comm.*

<sup>34</sup> Settlement Standard.

<sup>35</sup> Willis Testimony at 4:19-20. Cost causation is the principle that approved rates must reflect the actual costs caused by the customer who must pay them. *See K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); To evaluate compliance with cost causation principles requires the comparison of the costs assessed against a party to the burdens imposed or benefits drawn by that party. *See also Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004).

<sup>36</sup> Willis Testimony at 12:11-12.

<sup>37</sup> Not all customers are able to shop. Many CRES providers require credit checks that some customers, especially low-income, are not able to pass. This puts an even heavier burden on those who can already barely afford the standard offer.

<sup>38</sup> Willis Testimony at 10:11-13.

<sup>39</sup> Willis Testimony at 6:3-7.

bypassable, while standard offer customers would be forced to pick up the ever-increasing tab.<sup>40</sup> This violates the principle of cost causation because although all customers have the benefit of default service, only the standard offer customers will be paying for it.<sup>41</sup> This result is anti-competitive, anti-market, and discriminatory (against standard service customers).

Importantly, testified OCC Witness Willis, all customers, whether standard offer or CRES, benefit from the default standard service offer.<sup>42</sup> It is a safety net that is available to all customers, at all times, he explained.<sup>43</sup> Where all customers benefit from the service (all customers therefore are responsible for cost causation), either directly, or as a safety net service option, all customers should pay to keep this default service available. This is a competitively neutral, non-discriminatory solution, and the PUCO should deny IGS's proposal to make the OVEC cost rider bypassable. Therefore, IGS's proposal regarding bypassability violates the second prong of the PUCO's Settlement Standard because it violates the important regulatory principle of cost causation, and the PUCO should deny it.

The third prong of the PUCO Settlement Standard requires that a proposed settlement, as a package, benefits customers and the public interest.<sup>44</sup> IGS's proposed settlement, as a package, does the opposite. It harms customers and the public interest by

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Willis Testimony at 13:19-20.

<sup>43</sup> *Id.*

<sup>44</sup> Settlement Standard.

giving marketers such as IGS a competitive advantage that inequitably places the cost of default service solely on standard service customers.

As OCC expert Witness Willis has emphasized, the proposal increases the charges to SSO customers, and only SSO customers.<sup>45</sup> This increase harms customers, and SSO customers especially, since they would be paying all of the cost for default service support.<sup>46</sup> Moreover, testifies Mr. Willis, although marketer customers receive the benefit of default service as a safety net, and as IGS witness White is well aware, they are not sharing in the cost under IGS's proposal.<sup>47</sup> This result is inequitable and gives marketers like IGS a competitive advantage, which is not in the public interest.

OCC expert witness Willis explained in this testimony that under a bypassable rider, the subsidy charge will continue to increase for the remaining customers as more standard offer customers (that are able) leave to avoid it.<sup>48</sup> In other words, and as IGS admitted<sup>49</sup>, the more customers that start shopping and avoid the charge, the higher the cost of standard offer customers' service who are stuck paying the OVEC bill.<sup>50</sup> This is anti-competitive behavior and against the public interest, not to mention discriminatory to default customers.

As OCC Witness Willis testified, and the PUCO agreed, such a result would inflate standard service offer charges to consumers.<sup>51</sup> Mr. Willis further testified that this

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<sup>45</sup> Willis Testimony at 11:16-17.

<sup>46</sup> *Id.*

<sup>47</sup> Willis Testimony at 12-14: *see* Hearing Transcript Vol. VIII at 1404:8-12.

<sup>48</sup> Willis Testimony at 10:11-13.

<sup>49</sup> Hearing Transcript Vol. VIII at 1404:8-12.

<sup>50</sup> *See* Hearing Transcript Vol. VIII at 1402:8-12, 1403:16.

<sup>51</sup> Third Entry on Rehearing at ¶51 (Sept. 19, 2018).

artificial inflation results in anti-competitive consequences that are harmful to markets, consumers, and against the public interest.<sup>52</sup> This discriminatory inflation is against the public interest and is the very result that the PUCO hoped to avoid when it modified the Settlement and rightly made the Rider non-bypassable.<sup>53</sup>

OCC Witness Willis testified that while customers should not have to subsidize OVEC coal plants at all, IGS's proposal to place all the subsidy burden on just DP&L's standard offer customers would make a bad situation worse.<sup>54</sup> Further, in a recent Entry on Rehearing, the PUCO agreed with OCC Witness Kahal that making the OVEC Subsidy Rider bypassable would artificially inflate standard service offer prices.<sup>55</sup> This anti-competitive and discriminatory inflation would be harmful to consumers and against the public interest.

IGS presented the Supplemental Testimony of Matt White to support making the Rider bypassable.<sup>56</sup> IGS testified that the PUCO should not charge the Rider to all customers because it would allow DP&L to receive generation-related revenue that it cannot otherwise recover from the competitive market.<sup>57</sup> IGS also testified that the Rider is not a "hedge,"<sup>58</sup> and there is little chance of it providing a credit to customers.<sup>59</sup> IGS reasoned that standard offer customers, of which he admitted were 50%<sup>60</sup> of all DP&L

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<sup>52</sup> Willis Testimony at 10:13-14.

<sup>53</sup> Opinion and Order at 35 (Oct. 20, 2017).

<sup>54</sup> Willis Testimony at 5:10.

<sup>55</sup> Third Entry on Rehearing at ¶51 (Sept. 19, 2018).

<sup>56</sup> White Testimony generally.

<sup>57</sup> White Testimony at 4:7-9.

<sup>58</sup> White Testimony at 4:14.

<sup>59</sup> *Id.*

<sup>60</sup> Hearing Transcript, Vol. VIII at 1399:20-22.

territory customers, would only be slightly impacted by an estimated cost of \$1.84 a month if the Rider were bypassable.<sup>61</sup> Finally, IGS testified that making any cost recovery under the Rider bypassable would prevent shopping customers from paying what he calls an anticompetitive subsidy for generation costs through distribution charges.<sup>62</sup>

IGS is wrong regarding bypassability. Its proposal to make the Rider bypassable is not in the public interest. Although no customer should have the burden of this charge, OCC Expert Witness Willis appropriately testified that denying IGS's proposal to spare only shopping customers from paying the charge would allow for a competitively neutral, non-discriminatory outcome, which is consistent with established regulatory practices and principles.<sup>63</sup> According to OCC Witness Willis, under a bypassable rider, the subsidy charge will increase for the remaining customers as more standard service customers leave to avoid it.<sup>64</sup> So even if IGS's calculation that standard offer bills would increase by \$1.84 a month was right initially,<sup>65</sup> making the Rider bypassable would substantially increase this cost as more customers leave the standard service offer to avoid the charge.<sup>66</sup> This would be an anti-competitive outcome and burden SSO customers, many

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<sup>61</sup> Hearing Transcript, Vol. III at 1417:1-4.

<sup>62</sup> White Testimony at 5:15-17.

<sup>63</sup> Willis Testimony at 10:9-11.

<sup>64</sup> *Id.*

<sup>65</sup> Hearing Transcript, Vol. VIII at 1417:1-4.

<sup>66</sup> Willis Testimony at 10:11-13.

of which are unable to shop even if they wanted to because of credit worthiness<sup>67</sup> or other limitations.

Notably (and inaccurately) as IGS testified, OVEC's generation "hedge" is not dedicated to DP&L's standard offer customers.<sup>68</sup> Instead, as OCC Witness Willis correctly testified, the OVEC-produced generation is liquidated into PJM's markets and consequently the so-called "hedge" will benefit both CRES and DP&L standard offer customers if the power plants become profitable.<sup>69</sup> Consequently, and as OCC Witness Willis testified, shopping customers are not singled out as IGS suggests in its testimony.<sup>70</sup> In fact, Mr. Willis testified, keeping the Rider non-bypassable would not distort shopping decisions for generation supply and would not impede a customer's decision regarding the selection of a supplier.<sup>71</sup> Instead, continues Mr. Willis in his testimony, DP&L's standard service offer customers and CRES customers would be impacted in the same manner.<sup>72</sup>

On the other hand, as OCC Witness Willis concluded in his testimony, making the Rider bypassable would be anticompetitive.<sup>73</sup> Shopping customers would benefit, but only DP&L's standard service offer customers would pay, giving marketers, like IGS, a

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<sup>67</sup> Not all customers are able to shop. Many CRES providers require credit checks that some customers, especially low-income, are not able to pass. This puts an even heavier burden on those who can already barely afford the standard offer.

<sup>68</sup> White Testimony at 5:4-7.

<sup>69</sup> Willis Testimony at 10:17-19.

<sup>70</sup> *Id.* at 10:19-20.

<sup>71</sup> *Id.* at 11:1-3.

<sup>72</sup> Willis Testimony at 3-4.

<sup>73</sup> *Id.* at 4-5.

competitive advantage.<sup>74</sup> These anticompetitive outcomes neither advance the public interest nor promote established regulatory practices or principles.

Currently, as OCC Witness Willis noted in his testimony, DP&L's standard offer is generally among the lowest generation rates available for customers.<sup>75</sup> This would change if the Rider is made bypassable. IGS's proposal would only benefit marketers generally, and IGS specifically.<sup>76</sup> By increasing DP&L's rate against which IGS competes for customers, IGS's proposals would create increased margins that make competing against DP&L's standard offer easier (and more profitable) for the marketers. This results in an unfair competitive advantage that would harm consumers.

The PUCO should deny IGS's bypassability proposal and uphold the Modified Settlement it has already approved. Because some customers are paying for a safety net available to all customers, IGS's settlement proposal is discriminatory, anti-competitive, and not in the public interest. Therefore, the PUCO should uphold the modifications it made to the Settlement in its October 20, 2017 order and reject IGS's proposal to reverse the modifications.

## **2. IGS's proposal violates Ohio law.**

In addition to applying its Settlement Standard to proposed settlements, The PUCO must also decide if IGS's proposals satisfy the provisions in R.C. 4905.22. The revised code requires that every public utility furnish necessary and adequate service and facilities, and that all charges for any service must be just and reasonable. Although OCC does not agree that the OVEC subsidy rider charges are just and reasonable, IGS has not

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<sup>74</sup> *Id.* at 5-7.

<sup>75</sup> *Id.* at 6:2-3.

<sup>76</sup> *Id.*

shown that DP&L charges under a bypassable rider are just and reasonable. It is not just and reasonable to force any consumers to subsidize support of OVEC coal plants. It is definitely not just and reasonable to force only standard service offer customer to solely fund this subsidy, while the shopping customers get the advantage of the default service for free.

IGS's proposal to make the OVEC subsidy bypassable is unreasonable, against Ohio law, and against the public interest. IGS has not satisfied any of the criteria the PUCO uses to evaluate settlements. It is not the result of serious bargaining. It also violates the important regulatory principle of cost causation by only burdening some customers with the costs caused by all customers. IGS's proposed settlement, as a package, harms customers and the public interest by giving marketers such as IGS a competitive advantage that inequitably places the cost of default service solely on standard service customers. Accordingly, the PUCO should uphold the modifications to the Settlement made in its October 20, 2017 Order and reject IGS's proposed modification, consistent with OCC's recommendations set forth above and in Mr. Willis' testimony.

**B. The PUCO should reject IGS's proposal to establish a rider mechanism to unbundle DP&L's standard service offer costs into two charges,.**

**1. IGS's unbundling proposal harms customers and is not in the public interest.**

The PUCO should not establish a rider mechanism to unbundle DP&L's standard service offer related costs into two charges as IGS proposes in testimony.<sup>77</sup> Doing so is

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<sup>77</sup> White Testimony at 3:17-20, 9:21, 10:11-15.

not in the public interest and is just another way IGS attempts to burden standard offer customers with the costs of the OVEC subsidy Rider. IGS proposed creating two new riders.<sup>78</sup> One would be a credit rider allegedly allowing all customers to avoid distribution costs IGS claims are solely related to DP&L's standard offer.<sup>79</sup> The second would be paid only by standard service offer customers and the total negative revenue requirement under the first rider would be the same as the total positive revenue requirement under the second rider.<sup>80</sup> As OCC witness Willis also explained in his testimony, all customers, whether shopping or not, receive benefits from the existence of the Utility's default or standard service offer.<sup>81</sup> Therefore, it is equitable and in the public interest that all customers share in the costs.

As justification for proposing these riders, IGS claims that it and the Retail Energy Supply Association ("RESA") identified approximately \$12 million in SSO-related costs included in the most recent base distribution rate case (Case No. 15-1830-EL-AIR) that are allegedly borne by marketer customers.<sup>82</sup> However, according to OCC Expert Witness Willis, this is merely a different attempt by IGS to push certain distribution costs onto SSO default customers.<sup>83</sup> This result harms default customers and is not in the public interest.

OCC Witness Willis testified that the actual net effect of these proposed riders is that millions of dollars per year would be shifted from marketer customers (lowering

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Willis Testimony at 11:19-20, 12:1-2.

<sup>82</sup> White Testimony at 10:9-11.

<sup>83</sup> Willis Testimony at 11:19-20, 12:1-2.

their electric bills) to DP&L standard service offer customers (raising their electric bills).<sup>84</sup> Further, Mr. Willis emphasizes, this is harmful to customers paying the standard offer and is not in the public interest.<sup>85</sup> As Mr. Willis concludes, DP&L's standard service offer should not be unbundled from one rider charge into two rider charges, as IGS proposes.<sup>86</sup>

OCC Witness Willis testifies that DP&L's competitively bid standard service offer provides several benefits to both marketer and DP&L customers.<sup>87</sup> One benefit, Mr. Willis explains, is the distribution utility's obligation to stand ready to serve in the event of a supplier default, which has been characterized as a provider of last resort.<sup>88</sup> OCC witness Willis further explains that this obligation ensures the standard service offer is available to all customers, all the time, no matter what.<sup>89</sup> In other words, it provides a safety net for all customers. If a customer's supplier fails to provide service, the customer receives the standard service offer as a default service from the electric distribution utility in that service territory.<sup>90</sup> Therefore, as Mr. Willis concluded in his testimony, all costs that DP&L incurs to provide services to or on behalf of marketer customers and DP&L standard service offer customers are appropriately assigned to the distribution function of DP&L and should not be split into two separate riders.

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Willis Testimony at 11:19-20, 12:1-2.

<sup>88</sup> *Id.* at 12:14-16.

<sup>89</sup> *Id.* at 11:19-20, 12:1-2.

<sup>90</sup> *Id.* at 12:12-14.

A second benefit provided by OCC Witness Willis is that that DP&L customers can receive electric service that is competitively bid (i.e., the standard service offer) without needing to engage in the time-consuming and sometimes confusing process of selecting an alternative supplier.<sup>91</sup> Mr. Willis testified that the standard service offer also provides the benefit of a competitive price-to-compare that all customers can use to evaluate marketer offers when deciding whether to shop for their generation.<sup>92</sup> Marketer customers can receive that same benefit even when they consider competitive choices (i.e. they are not required to shop. If they want default service, it's there).<sup>93</sup>

Mr. Willis also emphasized that although shopping, marketer customers still benefit from the standard service offer because they have a safety net in case the supplier they have chosen defaults.<sup>94</sup> The safety net provides that they will be placed on the default standard service offer if this happens, so they will not be without service.<sup>95</sup> This is a benefit that all customers have, but under IGS's proposal, the shopping customers would not have to pay for it.<sup>96</sup>

OCC Expert Witness Willis concluded that all customers benefit from standard offer service, therefore all customers should share in the costs of providing and administering the standard service offer.<sup>97</sup> This non-bypassable approach would limit the

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<sup>91</sup> *Id.* at 13:10-19.

<sup>92</sup> *Id.* at 16-19.

<sup>93</sup> *Id.* at 14-15.

<sup>94</sup> *Id.* at 15-16.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

harm to customers from a bypassable charge and be more in the public interest.<sup>98</sup>

Therefore, the PUCO should deny IGS's proposal to unbundle costs associated with standard service offer rates.<sup>99</sup>

**2. IGS's unbundling proposal violates the important regulatory principle of cost causation.**

The second prong of the PUCO Settlement Standard states that a settlement must not violate any important regulatory principles or practice. IGS's unbundling proposal violates the regulatory principle of cost causation. The proposal shifts certain costs onto SSO customers (and away from shopping customers); although marketer customers are receiving the same benefit of default service as a safety net, and are part of the cost causation of default service, but they are not paying for it.

IGS's unbundling proposal violates the principle of cost causation because although all customers have the benefit of default service, only the standard offer customers will be paying for it. IGS's proposals would only benefit marketers generally, and IGS specifically. By increasing DP&L's rate against which IGS competes for customers, IGS's proposals would create increased margins that make competing against DP&L's standard offer easier (and more profitable) for the marketers. Therefore, the PUCO should reject IGS's proposal to unbundle the alleged cost of the standard service offer.

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<sup>98</sup> *Id.*

<sup>99</sup> Settlement Standard.

## V. CONCLUSION

The PUCO should reject IGS's proposals regarding the OVEC Subsidy Rider and unbundling presented by IGS because their proposals harm consumers, are not in the public interest, and violate important regulatory principles and practices. The proposals fail to meet any of the prongs of the PUCO's settlement criteria and do not comply with Ohio law under 4905.22. Although DP&L's standard offer is currently among the lowest generation rates available for customers, this will change if the Rider is made bypassable.

IGS's proposals would only benefit marketers generally, and IGS specifically. By increasing DP&L's rate against which IGS competes for customers, IGS's proposals would create increased margins that make competing against DP&L's standard offer easier (and more profitable) for the marketers. This results in an unfair competitive advantage, which is discriminatory against standard offer customers and anti-competitive.

Moreover, IGS's proposals, if implemented, would increase the cost that customers pay for DP&L's standard service offer. This harms consumers by increasing the price of electricity generation they purchase with DP&L's standard service offer and it makes these customers pay even more to make up for what customers of IGS and other marketers would not be paying. This is an anti-competitive result which harms consumers and are not in the public interest. IGS's proposal is unfair and discriminatory to standard service offer customers. It is also anticompetitive. It does not advance the public interest and is contrary to established regulatory practices and principles.

For these reasons, and for the reasons set forth in OCC's testimony, the PUCO should reject IGS's proposals to overturn its decision making the Rider non-bypassable and to unbundle the costs associated with standard service offer rates.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the Initial Brief was served upon the following parties via electronic transmission this 15th day of May 2019.

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