

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM CONTRA APPLICATION FOR REHEARING OF
INTERSTATE GAS SUPPLY, INC.**

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

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I. INTRODUCTION

IGS is proposing to increase the price that consumers pay for DP&L's standard offer for electric generation service. That was a bad idea when IGS first proposed it. And it's an equally bad idea now, on rehearing. Wisely, the PUCO already rejected IGS's proposal. And now, for protection of Dayton-area consumers, the PUCO should reject the same proposal on rehearing.

IGS would accomplish this price hike by shifting certain distribution costs to consumers who buy DP&L's standard offer for electric generation. Increasing DP&L's competitive standard offer (that IGS has to compete against to win customers) obviously works for IGS. But it doesn't work for Dayton-area consumers.

The Standard Offer is available to all consumers, all the time, no matter what, and is used as a default service that is always available. The Standard Offer is also useful to

consumers as the rate they can use to compare offers made by marketers like IGS. OCC's expert witness, Mr. Ross Willis, testified that the Standard Offer benefits all consumers. According to Mr. Willis, all consumers should bear any distribution-related costs for providing it. Notably, the PUCO already rejected IGS's proposal, in its Supplemental Opinion and Order. IGS has given the PUCO no reason now to depart from its determination. Therefore, the PUCO should reject IGS's Application for Rehearing.

II. BACKGROUND

On March 14, 2017, several parties, including IGS, submitted an Amended Stipulation ("Settlement") for approval to the PUCO.¹ The PUCO modified and approved the Settlement. Several parties, including OCC, sought rehearing on the PUCO's modification of the Settlement but the PUCO denied them.²

On October 19, 2018, and under Provision XI(5) of the Settlement, IGS filed a Notice of Withdrawal from the Amended Stipulation and Recommendation.³ 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.⁴ After

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

² 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 (January 7, 2019).

³ *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.").

⁴ *Id.*

withdrawing, IGS submitted the Supplemental Direct Testimony of Matthew White on February 12, 2019.⁵

IGS's testimony presented two potential modifications to the Settlement. In the first, notwithstanding that the PUCO itself modified the Settlement to make the OVEC subsidy rider non-bypassable, IGS urged the PUCO to make the Rider bypassable. This would enable customers of marketer providers (50% of total customers shop in DP&L service territory⁶) such as IGS to avoid the charges, while forcing DP&L's standard service offer customers to pay more, as IGS admitted.⁷ This effectively allows marketers like IGS to have more head room to make a profit. IGS also argued that a non-bypassable rider would allow DP&L to collect generation-related revenue that it cannot otherwise collect from the competitive market.⁸ Finally, IGS argued that denying this cost recovery would prevent shopping customers from paying an "anticompetitive subsidy" for generation costs through distribution charges.⁹ On rehearing, IGS no longer pursues these arguments.¹⁰

IGS's second proposal – which it does raise on rehearing¹¹ – is to unbundle costs associated with standard service offer rates by creating two new riders.¹² The first is a credit rider allowing all customers to avoid distribution costs that IGS claims are solely

⁵ Supplemental Direct Testimony of Matthew White on Behalf of Interstate Gas Supply, Inc. (February 12, 2019) ("White's Testimony").

⁶ Hearing Transcript, Vol. III at 1399:19-22.

⁷ Hearing Transcript Vol. III at 1401:18-19; Willis Testimony at 3:18-20.

⁸ White's Testimony at 4:7-9.

⁹ White's Testimony at 5:14-18.

¹⁰ See IGS's Application for Rehearing.

¹¹ See *id.* at 23-26.

¹² White's Testimony at 3:17-20, 9:21,10:11-21.

related to DP&L's standard service offer.¹³ 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.¹⁴ In its Supplemental Opinion and Order, the PUCO rejected IGS's proposal because it had already been litigated and rejected in DP&L's rate case.¹⁵

III. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding."

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." Additionally, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "[i]f, after such rehearing, the commission is of the opinion that the

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Supplemental Opinion and Order (November 21, 2019) at ¶¶ 84-85.

original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.”

IGS has failed to meet the statutory standard for modifying the Supplemental Opinion and Order. To protect consumers, Application for Rehearing should be rejected.

IV. RECOMMENDATIONS

To protect consumers, the PUCO should reject IGS’s rehearing application about its proposal to establish a collection mechanism to charge DP&L’s standard service offer customers more.

In its Supplemental Opinion and Order, the PUCO rejected IGS’s proposal because it had already been litigated and rejected in DP&L’s rate case.¹⁶ IGS didn’t show in its Application for Rehearing why the PUCO’s Supplemental Opinion and Order was wrong (which would be difficult given that the Order is right). Instead, IGS attempts to relitigate the DP&L rate case yet again.¹⁷ IGS has given the PUCO no reason to depart from its Supplemental Opinion and Order. The PUCO should not. It should reject IGS’s Application for Rehearing because IGS’s proposal has already been litigated and rejected in DP&L’s rate case.

Further, OCC has pointed out throughout this proceeding that there are substantive reasons for rejecting IGS’s proposal (in addition to procedural reasons). IGS does not even address those reasons in its Application for Rehearing. Put simply, the standard offer is available to all consumers, all the time, no matter what, and is used as a default service. The standard offer is also used by consumers as a price to compare offers

¹⁶ See Supplemental Opinion and Order (November 21, 2019) at ¶¶ 84-85.

¹⁷ See IGS’s Application for Rehearing at 23-26.

made by marketers, to learn if a marketer's offer is competitive with the standard offer. OCC's expert witness, Mr. Ross Willis, testified that the SSO benefits all consumers. Therefore, all consumers should bear costs for providing it.

A. IGS's proposal to increase DP&L's standard offer rate harms customers and is not in the public interest.

The PUCO should reject IGS's proposal to establish a collection mechanism to charge DP&L customers more for the standard service offer.¹⁸ Doing so harms customers and is against the public interest.

As OCC witness Willis explained in his testimony, all customers, both DP&L customers and marketer customers, receive benefits from the existence of the Utility's default or standard service offer.¹⁹ Therefore, it is reasonable and in the public interest that all customers share in the costs.

As justification for its proposal, IGS claims that it and the Retail Energy Supply Association ("RESA") identified approximately \$12 million in standard offer-related costs included in the most recent base distribution rate case (Case No. 15-1830-EL-AIR) that are allegedly borne by marketer customers.²⁰ However, as explained in more detail later, according to OCC Expert Witness Willis, this is merely an attempt by IGS to push its costs onto standard offer customers.²¹ This result would harm default customers and is not in the public interest.

¹⁸ *See id.*; White Testimony at 3:17-20, 9:21, 10:11-15. IGS's proposal involves establishing a collection mechanism to charge DP&L customers more for the standard service offer through the creation of two new riders. One would be a credit rider allegedly allowing all customers to avoid paying the distribution costs IGS claims are solely related to DP&L's standard offer. The second rider would be to collect the same charges from standard service offer customers that are credited all customers under the first rider.

¹⁹ Willis Testimony at 11:19-20, 12:1-2.

²⁰ White Testimony at 10:9-11.

²¹ Willis Testimony at 11:19-20, 12:1-2.

OCC Witness Willis testified that the actual net effect of IGS's proposal is that millions of dollars per year would be shifted from customers of marketers like IGS to customers of DP&L. IGS would lower the electric bills of its and other marketers' customers while raising the electric bills of DP&L's standard service offer customers.²² Further, as Mr. Willis emphasizes, IGS's proposal is harmful to customers paying the standard service offer and it is not in the public interest.²³ As Mr. Willis concludes, DP&L's distribution costs should not be shifted from all customers to just standard offer customers, as IGS proposes.²⁴

OCC Witness Willis testifies that DP&L's competitively bid standard service offer provides several benefits to both marketer and DP&L customers.²⁵ 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.²⁶ OCC Witness Willis further explains that this obligation ensures the standard service offer is available to all customers, all the time, no matter what.²⁷ 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.²⁸ 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

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Willis Testimony at 11:19-20, 12:1-2.

²⁶ *Id.* at 12:14-16.

²⁷ *Id.* at 11:19-20, 12:1-2.

²⁸ *Id.* at 12:12-14.

standard service offer customers are appropriately assigned to the distribution function of DP&L. DP&L's distribution service costs should not be paid only by one subsection of customers, as IGS proposes.

A second benefit provided by OCC Witness Willis is 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.²⁹ 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.³⁰ 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).³¹

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.³² 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.³³ This is a benefit that all customers have, but under IGS's proposal, the shopping customers would not have to pay for it.³⁴

OCC Expert Witness Willis concluded that all customers benefit from standard offer service, therefore all customers should share in the costs of providing and

²⁹ *Id.* at 13:10-19.

³⁰ *Id.* at 16-19.

³¹ *Id.* at 14-15.

³² *Id.* at 15-16.

³³ *Id.*

³⁴ *Id.*

administering the standard service offer.³⁵ This approach is more in the public interest than IGS's proposal, where only a subset of customers would pay standard service offer costs.³⁶ Therefore, the PUCO should deny IGS's proposal to unbundle costs associated with standard service offer rates.

B. IGS's proposal to increase the standard offer rate violates the important regulatory principle of cost causation (where those who cause costs, pay costs), thus harming consumers.

IGS's proposal violates the regulatory principle of cost causation. The proposal shifts certain costs onto DP&L's standard offer customers (and away from marketer customers). Under IGS's proposal, marketer customers would continue receiving the same benefit of standard-offer service as a default safety net and would still be part of the cost causation of default (standard offer) service. But IGS would have its customers and other marketer customers avoid paying for it. That is wrong.

IGS's proposal violates the principle of cost causation because only the standard service offer customers will be paying for it despite all customers having the benefit of default service. 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 could 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.

³⁵ *Id.*

³⁶ *Id.*

V. CONCLUSION

To protect the public interest, IGS's Application for Rehearing should be rejected. IGS is attempting, yet again, to litigate issues from a past DP&L rate case. As the PUCO correctly found in its Supplemental Opinion and Order, IGS should not be allowed another bite at the apple to relitigate these same issues from DP&L's rate case.

Additionally, there are substantive reasons to reject IGS's Application for Rehearing, as explained above. But IGS does not address those substantive reasons that favor rejecting its proposal to increase the standard offer rate that customers pay. IGS's Application for Rehearing should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the Memorandum Contra Application for Rehearing of Interstate Gas Supply, Inc. was served upon the following parties via electronic transmission this 2nd day of January 2020.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Memorandum Memorandum Contra Application for Rehearing of Interstate Gas Supply, Inc. by The Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Michael, William J.