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. 08-1094-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	)))	Case No. 08-1095-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 Section 4905.13.	)))))	Case No. 08-1096-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of its Amended Corporate Separation Plan.	))))	Case No. 08-1097-EL-UNC

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

Pursuant to R.C. 4903.10 and Ohio Admin. Code 4901-1-35, Interstate Gas Supply, Inc. ("IGS") respectfully submits this Application for Rehearing of the Second Finding and Order ("Order")[1] issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on December 18, 2019. As set forth below, the Order is unlawful and unreasonable insofar as the Order authorized The Dayton Power & Light Company ("DP&L") to retain the provisions, terms, and conditions of its Alternate Generation Supplier Coordination tariff ("Supplier Tariff" or "Tariff G8") after DP&L voluntarily withdrew its third electric security plan ("ESP III").

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[1] *In re Dayton Power and Light Co.,* Case Nos. 08-1094-EL-SSO et al. ("*ESP I Case*"), Second Finding and Order (December 18, 2019).

A. The Second Finding and Order (¶42) violates R.C. 4928.143(C)(2)(b) and otherwise lacks record support insofar as the Order authorized DP&L to retain the provisions, terms, and conditions of its Supplier Tariff as modified and approved under DP&L's ESP III. The Supplier Tariff contains discriminatory and burdensome collateral requirements that were implemented as part of ESP III; there is no evidentiary basis for these collateral requirements in this proceeding. When DP&L withdrew its ESP, such collateral requirements were withdrawn. Retention of these requirements is unlawful and reasonable.

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

Respectfully submitted,

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MEMORANDUM OF SUPPORT OF INTERSTATE GAS SUPPLY, INC.

I. BACKGROUND AND INTRODUCTION

On October 20, 2017, the Commission issued an Opinion and Order ("ESP III Order") authorizing DP&L to establish a standard service offer in the form of an electric security plan ("ESP") (hereinafter "*ESP III Case*"). As part of the order, the Commission authorized DP&L to modify its Alternate Generation Supplier Coordination Tariff, including collateral requirements contained in Tariff G8.[2] Following the issuance of a subsequent order modifying DP&L's ESP, on November 26, 2019, DP&L filed notice of its intention to

[2] *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 16-0395-EL-SSO, et al. ("*ESP III Case*"), Opinion and Order (Oct. 20, 2017).

withdraw its ESP application in its entirety.[3] DP&L's notice of withdrawal argued that pursuant to R.C. 4928.143(C)(2)(b), the Commission "must" issue an order continuing the provisions, terms, and conditions of DP&L's standard service offer ("SSO") that was in effect prior to effective date of its ESP III.[4]

Additionally, DP&L's notice of withdrawal provided that because the Commission previously authorized DP&L's withdrawal from its second electric security plan ("ESP"), the terms and conditions established in the above-captioned proceeding ("ESP I") served as the most recent standard service offer in effect at the time the Commission approved DP&L's ESP III. [5] DP&L, therefore, notified the Commission of its intention to terminate its ESP III application and revert to the provisions, terms, and conditions established in its ESP I.[6]

To implement its proposal, DP&L filed proposed tariffs in the above-captioned proceeding that it argued were not only "consistent with the tariffs that the Commission approved in its August 26, 2016 Opinion and Order in this matter ('ESP 1')[,]" but also in effect prior to the Commission's Order establishing DP&L's ESP III.[7] But, DP&L's filing also provided that its Alternate Generation Supplier Coordination Tariff ("Supplier Tariff" or "Tariff G8") - as well as several other tariffs - would "not be changed from how they

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[3] *ESP III Case*, Notice of Withdrawal of the Dayton Power and Light Company's Application Pursuant to R.C. 4928.143(C)(2)(a) (November 26, 2019) (hereinafter "Notice of Withdrawal").

[4] *Id*. at 3.

[5] *Id*.

[6] *Id*.

[7] *ESP I Case*, Notice of Filing of Proposed Tariffs (November 26, 2019).

exist currently[.]"[8] Notably, DP&L's proposed tariff filing provided that the Supplier Tariff would remain effective as of the date the Commission approved DP&L's ESP III compliance tariffs (i.e. November 1, 2017).[9]

On December 18, 2019, the Commission issued a Finding and Order in the *ESP III* case that accepted DP&L's notice of withdrawal and effectively terminated the provisions, terms, and conditions established in that application.[10] That same day, the Commission issued a Second Finding and Order in the above-captioned proceeding that addressed the lawfulness of DP&L's revised final tariffs.[11] After noting that DP&L has exercised its statutory right to withdraw ESP III, the Commission recognized that "[a]ccording to the plain language of [R.C. 4928.143(C)(2)(b)], the Commission ***must*** restore the provisions, terms and conditions of ESP I which were in effect prior to the effective date of ESP III."[12] Subsequently, the Commission reviewed and approved DP&L's proposed tariffs, made modifications as required by R.C. 4928.143(C)(2)(b), and directed DP&L to file revised tariffs consistent with the Second Finding and Order.[13] Absent from the Commission's order, however, was an explicit directive for DP&L to refile its Supplier Tariff, and restore that tariff to the terms and conditions that existed prior to the effective date of DP&L's ESP III.

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[8] *Id*. at 2.

[9] *Id*. at P.U.C.O. No. 17 Electric Generation Service Tariff Index, Seventy-Second Revised Sheet No. G2.

[10] *ESP III Case*, Finding and Order (Dec. 18, 2019).

[11] *ESP I Case*, Second Finding and Order (Dec. 18, 2019).

[12] *Id.* at ¶ 27 (emphasis added).

[13] *Id.* at ¶ 44-45.

On December 19, 2019, DP&L filed its Revised Tariffs, and, pursuant to the Commission's directive, eliminated certain riders from its updated filing that were created by and through its ESP III. But DP&L's Revised Tariff filing maintained the Supplier Tariff as authorized on November 1, 2017.[14]

IGS acknowledges and understands that given the number of concurrent filings made in the *ESP I and ESP III* cases, as well as the controversy surrounding the authorization of DP&L's proposed rate stabilization charge, that the Commission's approval of the Supplier Tariff may have been the result of an oversight. Nevertheless, the Commission's approval of that tariff subjects IGS and other market participants to unreasonable, unsubstantiated, and overly burdensome collateral requirements that were effectively withdrawn. DP&L should be not be permitted to terminate its ESP III and then selectively implement certain provisions of that application to IGS' detriment.

Accordingly, the Commission should direct DP&L to file a revised Supplier Tariff that restores the provisions, terms, and conditions that were in effect prior to the November 1, 2017 effective date of DP&L's ESP III.

II. ARGUMENT

A. The Second Finding and Order (¶42) violates R.C. 4928.143(C)(2)(b) and otherwise lacks record support insofar as the Order authorized DP&L to retain the provisions, terms, and conditions of its Supplier Tariff as modified and approved under DP&L's ESP III. The Supplier Tariff contains discriminatory and burdensome collateral requirements that were implemented as part of ESP III; there is no evidentiary basis for these collateral requirements in this proceeding. When DP&L withdrew its ESP, such collateral requirements were withdrawn. Retention of these requirements is unlawful and unreasonable.

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[14] *ESP I Case,* Revised Tariff Filing at P.U.C.O. No. 17 Electric Generation Service Tariff Index Sheet No. G2 (December 19, 2019).

The Commission's Second Finding and Order is unlawful because it approved DP&L's proposal to retain the provisions, terms, and conditions of its Supplier Tariff as modified and approved under its ESP III.[15] R.C. 4928.143(C)(2)(a) authorizes a utility to withdraw an application for an ESP if the Commission approves that application subject to modification. The rule further provides that upon withdrawal of an application, all the provisions, terms, and conditions proposed in that application are effectively terminated. For that reason, R.C. 4928.143(C)(2)(b) expressly requires the Commission to "issue an order to continue the provisions, terms, and conditions of the utility's most recent standard service offer." The Commission's Order, however, failed to fully discharge that obligation.

The Order approving DP&L's revised Supplier Tariff filing is contrary to R.C. 4928.143(C)(2)(b) insofar as it approved DP&L's proposal to retain specific collateral requirements that terminated after DP&L voluntarily withdrew from its ESP III. Here, the Commission's failure to require DP&L to restore the terms and conditions of its Supplier Tariff prior to the effective date of its ESP III allows DP&L to continue to impose discriminatory collateral requirements that require IGS, as well as other privately held companies deprived of investment grade long-term bonds, to post excessive collateral.[16] The Order falls short of its statutory obligation to "restore the provisions, terms and conditions of ESP I which were in effect prior to the effective date of ESP III[,]"[17] and its

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[15] *ESP I Case*, Second Finding and Order at ¶ 44.

[16] *ESP III Case*, Supplemental Opinion and Order at ¶ 64.

[17] *ESP I Case*, Second Finding and Order at ¶ 27.

net impact will allow DP&L to continue to demand that IGS and other suppliers comply with its discriminatory collateral requirements until such time as the Commission directs DP&L to file an updated Supplier Tariff.[18]

Moreover, there is no evidentiary basis in the ESP I case to support DP&L's burdensome collateral requirements. The Supreme Court 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). Permitting DP&L to selectively retain an unsubstantiated provision of its now defunct ESP III violates the requirement that the Commission issue orders based upon with record support.

Accordingly, IGS respectfully requests that the Commission approve its Application for Rehearing and direct DP&L to file a revised Supplier Tariff that restores the provisions, terms, and conditions in effect prior to the effective date of DP&L's ESP III (i.e. November 1, 2017).

The Supplier Tariff provisions, terms, and conditions in effect prior to the effective date of DP&L's ESP III are well-established. According to the Commission, "DP&L's most recent SSO would be ESP I, which was reinstated by the Commission in the Finding and Order issued on August 26, 2016 in these proceedings."[19] DP&L's Supplier Tariff was in effect as part of its ESP I during this time, and was most recently updated in the Commission's Finding and Order in *In re AES Corporation*, Case No. 11-3002-EL-MER,

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[18] *See* R.C. 4905.32

[19] *ESP I Case*, Second Finding and Order at ¶ 27.

Finding and Order (Nov. 22, 2011).[20] Therefore, the Commission should direct DP&L to revise its Supplier Tariff and restore that tariff to the provisions, terms, and conditions that were in effect when the Commission approved the Supplier Tariff as part of DP&L's merger in Case No. 11-3002-EL-MER.

To the extent DP&L feels that its existing collateral requirements in Case No. 11-3002-EL-MER are insufficient to prevent supplier default, DP&L is free to propose new collateral requirements in its upcoming Commission-mandated ESP filing.[21] Any proposal to update and revise its collateral requirements should be accompanied by evidentiary support to justify the proposed changes.

III. CONCLUSION

The Commission's Second Finding and Order is unlawful under R.C. 4928.143(C)(2)(b), because it approved DP&L's proposal to retain specific collateral requirements that terminated after DP&L voluntarily withdrew from its ESP III. The Commission, therefore, should grant IGS' Application for Rehearing and direct DP&L to file a revised Supplier Tariff that restores the tariff to the provisions, terms, and conditions in effect at the time the Commission approved that tariff as part of DP&L's merger in Case No. 11-3002-EL-MER.

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[20] *In re AES Corporation*, Case No. 11-3002-EL-MER (Nov. 22, 2011). IGS also notes that revisions to the Alternative Generation Supplier Coordination Tariff were approved in DP&L's ESP II, however that ESP was withdrawn as well. *See ESP I Case*, Finding and Order (Aug. 26, 2016) at ¶ 11.

[21] *ESP III Case*, Finding and Order at ¶ 17 (Dec. 18, 2019).

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this *Application for Rehearing and Memorandum of Support* on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that this document is also being served electronically on the following parties on this 17th day of January 2020.

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Summary: Application for Rehearing electronically filed by Mr. Michael A Nugent on behalf of Interstate Gas Supply, Inc.