

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Dayton Power and Light Company for)	
Approval of its Plan to Modernize its)	Case No. 18-1875-EL-GRD
Distribution Grid.)	

In the Matter of the Application of the)	
Dayton Power and Light Company for)	
Approval of a Limited Waiver of Ohio)	Case No. 18-1876-EL-WVR
Adm. Code 4901:1-18-06(A)(2).)	

In the Matter of the Application of the)	
Dayton Power and Light Company for)	
Approval of Certain Accounting Methods.)	Case No. 18-1877-EL-AAM

In the Matter of the Application of the)	
Dayton Power and Light Company for)	
Administration of the Significantly)	
Excessive Earnings Test Under R.C.)	Case No. 19-1121-EL-UNC
4928.143(F) and Ohio Adm. Code)	
4901:1-35-10 for 2018.)	

In the Matter of the Application of The)	
Dayton Power and Light Company for a)	
Finding that its Current Electric Security)	
Plan Passes the Significantly Excessive)	Case No. 20-1041-EL-UNC
Earnings Test and the More Favorable in)	
the Aggregate Test in R.C. 4928.143(E).)	

In the Matter of the Application of The)	
Dayton Power and Light Company for a)	
Finding That Its Current Electric Security)	
Plan Passes the Significantly Excessive)	Case No. 20-0680-EL-UNC
Earnings Test and More Favorable in the)	
Aggregate Test in R.C. 4928.143(E).)	

REPLY BRIEF OF INTERSTATE GAS SUPPLY, INC. AND IGS SOLAR, LLC

I. INTRODUCTION

On February 12, 2021, The Dayton Power and Light Company (“DP&L”), Interstate Gas Supply, Inc. and IGS Solar, LLC (collectively, “IGS”), the Office of the Ohio Consumers’ Counsel (“OCC”), and numerous other parties filed Initial Briefs regarding the Stipulation and Recommendation (“Stipulation”) filed in the above captioned proceedings.¹ With one exception, all parties expressed support for the Stipulation, which presents a reasonable, comprehensive resolution to multiple complex cases pending before the Commission. The Stipulation provides for substantial improvements for DP&L’s distribution grid infrastructure, encourages the development of innovative offerings in the retail marketplace, and supports economic development across DP&L’s service territory. Further, the parties accomplished these outcomes after a protracted and open negotiation process. In sum, the Initial Briefs demonstrate that the Stipulation satisfies the Commission’s long-standing Three-Part Test for reviewing contested stipulations and should be approved.²

In contrast to the other parties that filed briefs, OCC alleges that the Stipulation violates all three prongs of the Three-Part Test. In this broadside attack, OCC makes two claims that are at best faulty. First, OCC seeks to overturn the first prong of Supreme

¹ *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Plan to Modernize its Distribution Grid*, Case Nos. 18-1875-EL-GRD et al; *In the Matter of the Application of the Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm. Code 4901:1-35-10 for 2018*, Case No. 19-1121-EL-UNC; *In the Matter of the Application of The Dayton Power and Light Company for a Finding that its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and the More Favorable in the Aggregate Test in R.C. 4928.143(E)*, Case No. 20-1041-EL-UNC; *In the Matter of the Application of The Dayton Power and Light Company for a Finding That Its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and More Favorable in the Aggregate Test in R.C. 4928.143(E)*, Case No. 20-0680-EL-UNC, Stipulation and Recommendation (Oct. 23, 2020) (“Stip. Parties Ex. 1”).

² See *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm’n*, 68 Ohio St.3d 559 (1994).

Court approved standard. Second, OCC seeks to undermine the settlement by introducing a “strawman” that one particular rider does not “exist.” Because neither claim is sound, the Commission should reject both.³

II. REPLY COMMENTS

A. The Commission should reject OCC’s allegations that the Stipulation fails the first prong of the test because it results from a redistributive coalition and lacked serious bargaining.

OCC asserts that the Stipulation fails the first prong of the Test because it resulted from a “redistributive coalition.”⁴ According to OCC, a redistributive coalition encourages members to support a settlement in exchange for benefits that will only accrue to themselves to the detriment of similarly situated entities.⁵ OCC claims that while the Stipulation may create “the veneer of widespread support,” in reality the settlement benefits only a small group of signatory parties and not the broader public.⁶ Instead, OCC calls on the Commission to “consider the millions of parties in Ohio that are not part of the settlement.”⁷

The legal standard for addressing the participation of parties, however, is whether a party has been excluded from the negotiations.⁸ Notably, OCC does not claim that it or

³ In this Reply, IGS responds to certain specific claims put forth by OCC. However, IGS’s decision not to respond to the other arguments raised in this proceeding should not be construed as implicit agreement with those arguments.

⁴ OCC Initial Brief (“OCC Initial”) at 37-42, 47-49.

⁵ *Id.* 41-42.

⁶ *Id.* at 40.

⁷ *Id.* at 41.

⁸ See *In the Matter of the Application of Ohio Power Company for Administration of the Significantly Excessive Earnings Test Pursuant to R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10*, Case No. 17-1230-EL-UNC, Opinion and Order (Feb. 27, 2019) at ¶ 27, citing *Time Warner AxS v. Pub. Util. Comm.*, 75

any of the other unspecified “millions of parties in Ohio” were somehow excluded from the settlement negotiations. Indeed, OCC makes no attempt to contradict the evidence submitted in this proceeding that demonstrates all parties, signatory and those that chose not to sign, were given equal access to the extensive settlement discussions and provided multiple opportunities to provide feedback during negotiations.⁹ No *party* was denied a seat at the bargaining table, so no violation occurred.

Additionally, OCC’s characterizations of the alleged motives of the signatory parties must be ignored. The Commission has repeatedly stated that although signatory parties may receive benefits under a stipulation, “the Commission will not conclude that these benefits are the sole motivation of any party in supporting the Stipulation.”¹⁰

Moreover, OCC is wrong that the Stipulation provides benefits for only those signatory parties, while denying the same for similarly situated entities. For instance, although IGS was the only CRES provider that signed the Stipulation, its participation in the settlement process secured benefits such as the elimination of fees to access customer data and the development of electronic consent methods for data sharing that

Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996) (“The primary focus of this provision of the three-part test is whether each party was afforded the opportunity to participate in settlement discussions and whether any class of customers was intentionally excluded from settlement discussions.”)

⁹ DP&L Ex. 4 at 13-14.

¹⁰ *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer*, Case Nos. 16-395-EL-SSO et al., Opinion and Order (Oct. 20, 2017) at ¶ 22; see *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO et al., Opinion and Order (April 25, 2018) at ¶ 204, citing *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 44, Fifth Entry on Rehearing (Oct. 12, 2016) at 104.

will flow through to all CRES providers,¹¹ Thus, despite only one CRES provider participating in the so called “redistributive coalition,” all CRES providers will receive these same benefits, which will in turn lead to new opportunities for all customers.

Finally, OCC’s assertion that serious bargaining could not have occurred “because it resulted in zero concessions from the utility” is factually incorrect.¹² DP&L did make concessions. For example, DP&L’s initial Grid Modernization Application proposed multiple “distributed energy demonstration programs,” including batteries, microgrids, and community solar projects.¹³ DP&L claimed this would enable and encourage distributed energy resources to be integrated into the grid.¹⁴ As proposed by DP&L, the \$28M price tag plus the ongoing operations and maintenance costs would be collected from all ratepayers.¹⁵ However, serious bargaining in the settlement process resulted in a reasonable and lawful alternative to accomplish the same effect without any risk or burden on ratepayers. Instead of ratepayer subsidized generation projects, DP&L has committed shareholder dollars to support multiple distributed energy projects within its territory.¹⁶

¹¹ See Stip. Parties Ex. 1 at 23, 25-26,

¹² OCC Initial at 46.

¹³ OCC Ex. 74 at 6, 8-9; OCC Ex. 73 at WP-4.2.

¹⁴ OCC Ex. 74 at 6, 8-9.

¹⁵ OCC Ex. 73 at WP-4.2.

¹⁶ See Stip. Parties Ex. 1 at 37-42.

B. The Infrastructure Investment Rider (“IIR”) is a provision of ESP I, and therefore, its use does not violate important regulatory principles and result in failure of the third prong.

OCC also alleges that the Stipulation violates important regulatory principles and practices by, among other things, allowing DP&L to recover costs through the IIR.¹⁷ According to OCC, the IIR was not approved by the Commission in ESP I because no tariff was filed that implemented the IIR, nor was there a placeholder rider filed after the approval of ESP I.¹⁸ Further, in regard to the IIR placeholder tariff that currently exists, OCC believes that the Commission may have mistakenly approved that tariff in DP&L’s most recent return to ESP I based on DP&L’s misrepresentation that the IIR tariff previously existed.¹⁹

OCC is simply incorrect. In ESP I, the Commission approved, without modification, a stipulation that included “the development of a mechanism to implement AMI and Smart Grid,” known as the IIR.²⁰ The IIR was approved as a placeholder rider with subsequent implementation and associated charges to occur in a separate proceeding – a process the Commission has repeatedly authorized in ESP proceedings.²¹

¹⁷ OCC Initial at 79.

¹⁸ *Id.* at 80.

¹⁹ *Id.* at 81.

²⁰ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 08-1094-EL-SSO et al., Opinion and Order (June 24, 2009) at 5, 8-9.

²¹ See *id.*; *In re Ohio Power Co.*, Case Nos. 16-1852-EL-SSO et al., Second Entry on Rehearing (Aug. 1, 2018) at ¶ 55; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case Nos. 11-346-EL-SSO et al., Opinion and Order (Aug. 8, 2012) at 24-25; *In re Duke Energy Ohio, Inc.*, Case Nos. 08-920-EL-SSO et al., Opinion and Order (Dec. 17, 2008) at 17; *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case Nos. 08-935-EL-SSO et al., Second Opinion and Order (Mar. 25, 2009) at 15.

OCC is conflating the authorization of a rider with the implementation of its charges. Although DP&L never received subsequent approval to implement AMI and Smart Grid through the IIR during ESP I's initial term, that does mean that the IIR was somehow eliminated from ESP I. Nor does the lack of a placeholder tariff for the IIR in DP&L's rate book negate the rider's authorization by the Commission. There is no practical difference from the physical existence, or lack thereof, of a zero-rate tariff. Customers are charged the same for the IIR: nothing. The mechanism exists; it is just waiting to be utilized. OCC's attempts to put form over substance should be rejected.

Further, contrary to OCC's claims, there is no evidence that DP&L misled the Commission regarding the IIR tariff in the ESP III Withdrawal Proceeding. In that proceeding, DP&L's filing stated that the IIR would be implemented "as [it] existed in 2017 before the Commission's decision in ESP III."²² As explained above, in 2017, the IIR was authorized.²³ This time, however, DP&L decided to file a zero-rate placeholder tariff to recognize the prior authorization.

In addition, OCC's arguments regarding whether the IIR was part of ESP I are too late. The appropriate venue to challenge the authorization of the IIR was in the ESP III Withdrawal Proceeding. In that proceeding, the Commission was required "to continue the provisions, terms, and conditions of the utility's most recent standard service offer," which was ESP I.²⁴ If OCC believed that the IIR was not a provision of ESP I, then OCC should have raised the issue there. Instead, OCC has essentially filed an improper

²² OCC Initial at 80, *citing* OCC Ex. 21.

²³ See R.C. 4928.143(C)(2).

²⁴ R.C. 4928.143(C)(2)(b).

application for rehearing regarding the ESP III Withdrawal Proceeding, and it should be rejected.²⁵

III. CONCLUSION

For the foregoing reasons, IGS recommends the Commission reject the arguments raised by OCC. IGS again recommends that the Commission find that the Stipulation is the product of serious bargaining, is in the public interest, and does not otherwise violate any important regulatory policy or principle, especially those provisions related to data access enhancements and the encouragement of distributed generation owned independent of the investor owned utility.

Respectfully submitted,

Bethany Allen (0093732)
Counsel of Record
bethany.allen@igs.com
Joseph Olikar (0086088)
joe.oliker@igs.com
Michael Nugent (0090408)
michael.nugent@igs.com
Evan Betterton (0100089)
Evan.betterton@igs.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000

Frank P. Darr (0025469)
fdarr2019@gmail.com
6800 Linbrook Blvd.
Columbus, Ohio 43235
Telephone: (614) 390-6750

²⁵ See *In the Matter of the Application of Ohio Power Company to Update its gridSMART Rider Rates*, Case Nos. 15-240-EL-RDR et al., Finding and Order (Apr. 19, 2017) at ¶ 33, Second Entry on Rehearing (Dec. 6, 2017) at ¶ 20 (finding OCC's general opposition to a utility's grid modernization program constituted an untimely request for rehearing of the Commission's orders in previous proceedings authorizing the continuation and completion of the program).

***Attorneys for Interstate Gas Supply,
Inc. and IGS Solar, LLC***
(willing to accept service via email)

CERTIFICATE OF SERVICE

I certify that this *Reply Brief of Interstate Gas Supply, Inc. and IGS Solar, LLC* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on March 5, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on the parties subscribed to this proceeding. Additionally, notice was provided to the parties listed below.

/s/ Bethany Allen

Bethany Allen

SERVICE LIST

Michael J. Schuler
THE DAYTON POWER AND
LIGHT COMPANY
1065 Woodman Drive
Dayton, OH 45432
michael.schuler@aes.com

Jeffrey S. Sharkey
D. Jeffrey Ireland
Christopher C. Hollon
FARUKI PLL
110 North Main Street, Suite 1600
Dayton, OH 45402
jsharkey@ficlaw.com
djireland@ficlaw.com
chollon@ficlaw.com

*Counsel for The Dayton Power
and Light Company*

Matthew R. Pritchard
Todd Long
MCNEES WALLACE & NURICK LLC
21 E. State Street, 17th Floor
Columbus, Ohio 43215
mpritichard@mcneeslaw.com
tlong@mcneeslaw.com

Counsel for Industrial Energy Users-Ohio

Steven L. Beeler
Robert A. Eubanks
Thomas G. Lindgren
OFFICE OF THE OHIO ATTORNEY
GENERAL
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
steven.beeler@ohioattorneygeneral.gov
roberteubanks@ohioattorneygeneral.gov
thomas.lindgren@ohioattorneygeneral.gov

*Counsel for Staff of the
Public Utilities Commission of Ohio*

Madeline Fleisher
DICKINSON WRIGHT PLLC
150 E. Gay Street, Suite 2400
Columbus, Ohio 43215
mfleisher@dickinsonwright.com

Counsel for Smart Thermostat Coalition

Kimberly W. Bojko
CARPENTER LIPPS & LELAND LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Bojko@carpenterlipps.com

*Counsel for Ohio Manufacturers'
Association Energy Group*

Steven D. Lesser
N. Trevor Alexander
Mark T. Keaney
Kari D. Hehmeyer.
BENESCH, FRIEDLANDER, COPLAN
& ARONOFF LLP
41 South High Street, Suite 2600
Columbus, OH 43215-6164
slesser@beneschlaw.com
talAlexander@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com

*Counsel for the City of Dayton and
Honda of America Mfg., Inc.*

Angela Paul Whitfield
CARPENTER LIPPS & LELAND LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
paul@carpenterlipps.com

Counsel for The Kroger Co.

Michael L. Kurtz
Kurt J. Boehm
Jody Kyler Cohn
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Counsel for Ohio Energy Group

David C. Rinebolt
OHIO PARTNERS FOR AFFORDABLE
ENERGY
P.O. Box 1793
Findlay, Ohio 45839
drinebolt@opae.org

*Counsel for Ohio Partners
for Affordable Energy*

Devin D. Parram
Dane Stinson
Jhay T. Spottswood
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
dparram@bricker.com
dstinson@bricker.com
jspottswood@bricker.com

*Counsel for The Ohio Hospital
Association*

Stephanie M. Chmiel
Kevin D. Oles
THOMPSON HINE LLP
41 S. High St., Suite 1700
Columbus, Ohio 43215
Stephanie.Chmiel@ThompsonHine.com
Kevin.Oles@ThompsonHine.com

Counsel for University of Dayton

Mark A. Whitt
Lucas A. Fykes
WHITT STURTEVANT LLP
88 E. Broad Street, Suite 1590
Columbus, Ohio 43215
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com

Counsel for Direct Energy

Miranda Leppla
Trent Dougherty
Chris Tavenor
OHIO ENVIRONMENTAL COUNCIL
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212
mleppla@theoec.org
tdougherty@theoec.org
ctavenor@theoec.org

Counsel for Ohio Environmental Council

Joseph Halso
SIERRA CLUB
ENVIRONMENTAL LAW PROGRAM
1536 Wynkoop Sttreet, Suite 200
Denver, Colorado 80202
joe.halso@sierraclub.org

Richard C. Sahli
RICHARD SAHLI LAW OFFICE, LLC
981 Pinewood Lane
Columbus, Ohio 43230
rsahli@columbus.rr.com

Counsel for Sierra Club

Christine M.T. Pirik
Madeline Fleisher
DICKINSON WRIGHT PLLC
150 E. Gay Street, Suite 2400
Columbus, Ohio 43215
cpirik@dickinsonwright.com
mfleisher@dickinsonwright.com

Counsel for Mission: data Coalition

Robert Dove
Kegler Brown Hill + Ritter Co., L.P.A.
65 E. State Street, Suite 1800
Columbus, Ohio 43215
rdove@keglerbrown.com

*Counsel for Natural Resources
Defense Council*

Caroline Cox
ENVIRONMENTAL LAW & POLICY
CENTER
21 W. Broad St., Suite 800
Columbus, Ohio 43215
ccox@elpc.org

Nikhil Vijaykar
ENVIRONMENTAL LAW & POLICY
CENTER
35 E. Wacker Dr. Suite 1600
Chicago, Illinois 60601
nvijaykar@elpc.org

*Counsel for Environmental Law & Policy
Center*

Dylan F. Borchers
Kara H. Herrnstein
Jhay T. Spottswood
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
dborchers@bricker.com
kherrnstein@bricker.com
jspottswood@bricker.com

Counsel for Chargepoint, Inc.
Miranda Leppla
Trent Dougherty
Chris Tavenor
OHIO ENVIRONMENTAL COUNCIL
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212
mleppla@theoec.org
tdougherty@theoec.org
ctavenor@theoec.org

Counsel for Ohio Environmental Council

Christopher Healey
William J. Michael
Amy Botschner O'Brien
Angela O'Brien
OFFICE OF THE OHIO CONSUMERS'
COUNSEL
65 E. State Street, 7th Floor
Columbus, Ohio 43215
christopher.healey@occ.ohio.gov
william.michael@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
angela.obrien@occ.ohio.gov

Michael D. Dortch
Justin M. Dortch
KRAVITZ, BROWN & DORTCH, LLC
64 E. State Street, Suite 200
Columbus, Ohio 43215
mdortch@kravitzllc.com
jdortch@kravitzfic.com

*Counsel for Office of the
Ohio Consumers' Counsel*

Michael J. Settineri
Gretchen L. Petrucci
VORYS, SATER, SEYMOUR AND
PEASE LLP
52 E. Gay Street
Columbus, Ohio 43215
mjsettineri@vorys.com
glpetrucci@vorys.com

Drew Romig
ARMADA POWER, LLC
230 West Street, Suite 150
Columbus, Ohio 43215
dromig@annadapower.com

Counsel for Armada Power, LLC

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/5/2021 3:52:31 PM

in

Case No(s). 18-1875-EL-GRD, 18-1876-EL-WVR, 18-1877-EL-AAM, 20-0680-EL-UNC, 19-1121-EL-UNC

Summary: Brief Reply Brief of Interstate Gas Supply, Inc. and IGS Solar, LLC electronically filed by Bethany Allen on behalf of Interstate Gas Supply, Inc. and IGS Solar, LLC