

**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).)	

**MEMORANDUM CONTRA THE APPLICATION FOR REHEARING
OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
BY INTERSTATE GAS SUPPLY, INC. AND IGS SOLAR, LLC**

I. INTRODUCTION

On June 16, 2021, the Commission adopted a stipulation and recommendation filed in the above-captioned proceedings which, among other things, authorized the collection of costs associated with the Dayton Power and Light Company's ("DP&L" or "AES Ohio") Smart Grid Plan through AES Ohio's Infrastructure Investment Rider ("IIR").¹ Subsequently, the Office of the Ohio Consumers' Counsel ("OCC") filed an application for rehearing challenging the Commission's Opinion and Order ("Order"), including the use of the IIR.

Interstate Gas Supply, Inc. and IGS Solar, LLC (collectively, "IGS") urge the Commission to reject these assignments of errors in OCC's Application for Rehearing and uphold the Commission's determinations regarding the IIR for the reasons provided below.

II. ARGUMENT

A. The Commission properly rejected OCC's assertion that the Infrastructure Investment Rider was not a provision, term, or condition of AES Ohio's most recent standard service offer.

In its Application for Rehearing, OCC asserts that the Commission erred by permitting AES Ohio to charge customers through the IIR because the IIR is not a provision, term, or condition of AES Ohio's most recent standard service offer, ESP I.² Although OCC recognizes that the ESP I settlement does reference an IIR tariff that AES

¹ Opinion and Order (June 16, 2021) at ¶ 75.

² OCC Application for Rehearing at 33-35.

Ohio could implement at a future point to collect charges related to Smart Grid, according to OCC, because AES Ohio never filled an IIR placeholder tariff after the approval of the ESP I settlement and AES Ohio withdrew its first Advanced Metering Infrastructure (“AMI”) and Smart Grid proposals filed during ESP I, the IIR is a nonexistent cost recovery mechanism that cannot now be used to charge consumers under ESP I.³ Further, OCC argues that the Commission failed to explain the rationale for its decision to permit charges to consumers through the IIR, in violation of R.C. 4903.09.⁴

It is undisputed that 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.⁵ 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.⁶

OCC’s assertion that the IIR is not a provision of ESP I conflates the authorization of a rider with the implementation of its charges. Although AES Ohio never received subsequent approval to implement AMI and Smart Grid proposals through the IIR during ESP I’s initial term, that does not mean that the IIR mechanism was somehow eliminated

³ *Id.* at 34, 19-21.

⁴ *Id.* at 19-22.

⁵ *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. (“ESP I”), Opinion and Order (June 24, 2009) at 5, 8-9.

⁶ See *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.

from ESP I. Nor does the lack of a placeholder tariff for the IIR in AES Ohio's rate book negate the rider's establishment 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 continue to be rejected.

Further, AES Ohio's withdrawal of its first AMI and Smart Grid proposals only reinforce the continued existence of the IIR in ESP I. When the Commission approved AES Ohio's motion to withdraw its initial AMI and Smart Grid proposals submitted during ESP I, it stated that it "expects that DP&L will continue to explore the potential benefits of future investments in AMI and Smart Grid programs and that DP&L will, when appropriate, file new AMI and/or Smart Grid proposals in a new docket."⁷ Thus, the Commission expected and intended for AES Ohio to continue to pursue Smart Grid proposals.

However, according to OCC, this somehow "ended any DP&L proposal under ESP I to go forward with a Smart Grid plan," and AES Ohio "quash[ed] plans to go forward with its IIR as part of ESP I."⁸ But OCC is again conflating the establishment of a rider with the implementation of its charges. AES Ohio did not request, nor did the Commission approve the termination of the IIR mechanism. Instead, the Commission simply granted the request to withdrawal a specific proposal to populate the IIR mechanism.

Finally, the Commission properly explained the basis for its decision to permit the collection of charges through the IIR, consistent with R.C. 4903.09. In the Order, the

⁷ *ESP I*, Entry (Jan. 5, 2011) at 2.

⁸ OCC Application for Rehearing at 20-21.

Commission agreed with the Signatory Parties that the IIR is a provision of ESP I and could be utilized to recover the costs associated with AES Ohio's Smart Grid Plan.⁹ Additionally, the Commission rejected OCC's arguments regarding the use of the IIR by explaining that OCC failed to preserve any challenge to the reinstatement of the IIR when AES Ohio withdrew ESP III.¹⁰ Finally, the Commission, relying upon evidence submitted into the record, found the charges to be reasonable and appropriate for recovery.¹¹ Therefore, the Commission met its burden under R.C. 4903.09.

OCC has failed to present any new or compelling arguments regarding the IIR. Therefore, the Commission should deny OCC's rehearing request on this issue.

III. CONCLUSION

For the foregoing reasons, IGS recommends that the Commission deny the Application for Rehearing filed by OCC regarding the use of the IIR.

Respectfully submitted,

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⁹ Order at ¶ 75.

¹⁰ *Id.*

¹¹ *Id.*

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CERTIFICATE OF SERVICE

I certify that this document was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on July 30, 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.

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in

Case No(s). 18-1875-EL-GRD, 18-1876-EL-WVR, 18-1877-EL-AAM, 19-1121-EL-UNC, 20-1041-EL-UNC

Summary: Memorandum Memorandum Contra the Application of Rehearing filed by the Office of the Ohio Consumers' Counsel by Interstate Gas Supply, Inc. and IGS Solar, LLC electronically filed by Bethany Allen on behalf of Interstate Gas Supply, Inc. and IGS Solar, LLC