

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton  
Power and Light Company for an Increase in  
Electric Distribution Rates.

Case No. 20-1651-EL-AIR

In the Matter of the Application of The Dayton  
Power and Light Company for Accounting  
Authority.

Case No. 20-1652-EL-AAM

In the Matter of the Application of The Dayton  
Power and Light Company for Approval of  
Revised Tariffs.

Case No. 20-1653-EL-ATA

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**REPLY BRIEF OF  
INTERSTATE GAS SUPPLY, INC.**

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**March 30, 2022**

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## **I. INTRODUCTION**

In its Initial Post Hearing Brief, Interstate Gas Supply, Inc. (“IGS”) advocates for changes to the AES service territory that make it greener, more competitive, and equitable for all AES stakeholders. Unfortunately, the Staff Report of Investigation (“Staff Report”) in this proceeding suggests that the Commission should exercise its traditional regulatory authority to permit AES Ohio to recover the cost of providing competitive services—for example, generation-related uncollectibles and generation-related assessments—through distribution rates.

Contrary to current Ohio law, customers within the AES Ohio service territory are being discriminated against and facing switching fees not imposed on similarly situated customers who elect to take service under the Standard Service Offer (“SSO”)—despite the clear and unambiguous language in AES Ohio’s filed tariffs. Additionally, the fee lacks any evidentiary support from either AES Ohio or Commission Staff.

As stated in its Initial Post Hearing Brief, IGS urges the Commission to avoid violating the law and contradicting recent Commission precedent. The Commission should reject the notion of rebundling uncollectible expenses and the PUCO/OCC assessments directly associated with providing the SSO, into AES Ohio’s distribution rates. By staying the course with prior Commission decisions, AES Ohio’s distribution rates will not unlawfully subsidize AES Ohio’s SSO rates.

The Commission also has the opportunity to continue pushing Ohio into a more sustainable and green future through a minor change to AES Ohio’s demand charge tariff that would remove a huge barrier to distributed generation development within the state, and, in doing so, promote state policy. The Commission should take this chance to modify AES Ohio’s demand charge tariff in a way that more closely aligns the actual distribution related costs associated with each

customer. Such a modification would be consistent with the long held rate design principle of cost causation.

## **II. ARGUMENT:**

### **A. Uncollectible Generation Expenses: The Commission should not allow AES Ohio to directly recover competitive service costs in distribution rates.**

Both the Staff and AES Ohio disagree with IGS regarding the recovery of uncollectible expenses directly associated with the SSO. Staff makes a cursory mention of the subject in their Initial Brief claiming the costs are justified because AES acts as a “provider of last resort.”<sup>1</sup> No legal basis, historical precedent, or state policy is presented to support Staff’s argument. Meanwhile, AES Ohio conveniently neglects to mention that they are already collecting a portion of these costs through the SSO rate itself.<sup>2</sup>

Neither party provides any legal reasoning or evidence as to why a fairly allocated portion of the \$2.4 million in bad debt proposed to be collected would not clearly be a competitive cost needed in order for AES Ohio to offer their one and only competitive product, the SSO. Mountains of past precedent, clearly outlined in the Initial Brief of IGS, demonstrate that the Commission lacks the authority to approve the placement of competitive costs into base distribution rates.

Based on the testimony and evidence in the record of this proceeding, it is undeniable that CRES providers face the exact same costs in the regular course of doing business. AES Ohio and Staff admit that CRES providers also face uncollectible expense when offering competitive

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<sup>1</sup> Staff Initial Brief at 41.

<sup>2</sup> AES Initial Brief at 67-68; see also Tr. at 729.

products such as the SSO.<sup>3</sup> Thus, not allocating the appropriate portion of these uncollectible expenses, some of which are currently being collected through the SSO, would be a direct violation of state law.<sup>4</sup>

Moreover, Staff's assertion that the collection of such expenses in base distribution rates is justified given the utility's place as the provider of last resort is completely without merit and contrary to state law and policy. The Staff proposal would create a situation in which CRES customers are required to pay any uncollectible expense embedded in the rates charged by their chosen supplier, but also the uncollectible expense of other customers who elect to take service under the SSO. Staff's proposed recovery mechanism would create two completely different playing fields – one where CRES customers are double charged the bad debt expense from both their CRES provider as well as through their distribution rates and one where SSO customers have their bad debt expense subsidized by the competitive market.

When a shopping customer creates bad debt which flows to their supplier from unpaid generation costs, an SSO customer that creates bad debt should also see that apportioned bad debt flow to their generation provider, in this case the SSO. Not doing so would rebundle AES Ohio's distribution rates and violate the Commission's ability by recovering the costs of a competitive service in a distribution rate case.<sup>5</sup>

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<sup>3</sup> Tr. At 729.

<sup>4</sup> IGS Initial Brief at 10.

<sup>5</sup> R.C. 4909.18.

**B. PUCO and OCC Assessments: The Commission should stand by its past decisions and continue allocating an appropriate portion of these expenses to the SSO.**

The Staff recommends that AES Ohio rebundle the portion of the PUCO and OCC assessments that were correctly allocated as part of SSO Generation expenses in prior cases.<sup>6</sup> Staff again makes no legal arguments as to why these clearly competitive costs should not continue to be allocated based on revenue to their appropriate cost center. As discussed above, Ohio law and policy prohibit the Commission from regulating or providing cost recovery for competitive service through distribution rates.<sup>7</sup> The Commission lacks the authority to authorize the recovery of costs related to competitive retail electric services in a distribution rate case filed under R.C. 4909.18.

Similar to bad debt expenses, AES Ohio previously unbundled a portion of these costs in accordance with state law requiring unbundled electric rates.<sup>8</sup> Staff itself previously determined that these costs were indeed directly related to the offering of a competitive service yet makes no mention or justification for the change in their position.<sup>9</sup> The Commission has been disinclined to completely reverse course and overturn precedent by changing the classification of certain charges in the past without a mountain of convincing evidence.<sup>10</sup> The mere assertion that these costs are now somehow related to the utility's provision of the SSO is clearly not sufficient to meet that settled standard.

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<sup>6</sup> Staff Initial Brief at 41.

<sup>7</sup> IGS Energy Objections to the Staff Report at 7-9.

<sup>8</sup> *In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case Nos. 15-1830-EL-AIR, et al., Opinion and Order (Sept 26, 2018) at ¶32.

<sup>9</sup> *Id.*

<sup>10</sup> *Cleveland Electric Illuminating*, Case No. 85-675-EL-AIR (June 24, 1986) at 129.

AES Ohio does little more than copy and paste Staff's argument into their initial brief on this issue. Given that no legal reasoning of any kind is provided that would justify the Commission ruling against its own past decisions, the Commission should continue to allocate the PUCO/OCC assessments on a bypassable basis.

**C. Switching Fees: The Commission should direct AES Ohio to eliminate the \$5 given a complete lack of evidentiary support.**

Saying that a charge is "typical amongst Ohio utilities" does not rise to the level of justifying that charge. The burden of proof in a distribution rate case falls on the utility to show that the proposed rates and charges are just and reasonable.<sup>11</sup> However, in this case, that one passing phrase is the only justification of the \$5 switching fee currently only being charged to CRES providers.

Again, neither AES nor Staff provide any justification of the \$5 switching fee. Staff witness Smith admitted that no study of the costs had been started or completed.<sup>12</sup> Allowing AES Ohio to continue assessing this discriminatory switching fee without any evidentiary support would violate current Ohio law.<sup>13</sup>

The current \$5 fee is a legacy charge that has existed for more than two decades, and no examination into its justification has ever been completed.<sup>14</sup> The current switching fee acts as nothing more than a barrier to entry to the competitive market, as no justification was made by

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<sup>11</sup> R.C. 4909.18; R.C.4909.19(C); *Ohio Edison Co. v. Pub. Util. Comm'n*, 63 Ohio St.3d 555 (1992); *Cincinnati Bell Tel. Co. v. Pub. Util. Comm'n*, 12 Ohio St.3d 280, 287 (1984).

<sup>12</sup> Tr. at 1238.

<sup>13</sup> R.C. 4909.15(C)(1).

<sup>14</sup> IGS Ex. 3 (Response to IGS-INT-02-004).

AES Ohio or Staff to attempt to substantiate the fee. AES Ohio is selectively choosing not to charge the fee when a customer returns to take service under the SSO but continues to assess the fee on suppliers. The current AES Ohio tariff explicitly states that “the Company will charge the Customer a switching fee of five dollars (\$5) for returning to the Standard Offer Tariff.”<sup>15</sup> While Staff witness Smith points out a minor difference in the notice requirements of customers returned to the SSO, this clarification is not substantiated with facts as to the costs of such actions.

Given that no proper justification was provided to substantiate the current switching fee and the fact that AES Ohio has unilaterally decided not to charge the fee to customers electing the SSO, the fee should be abandoned all together.

**D. Demand Charge: The Commission Staff does not dispute the clear evidence that the demand charge would follow the principles of cost causation.**

In its Initial Brief, the Commission Staff merely stated that they believe there are “incentives outside of the demand charge” that encourage the development of distributed generation.<sup>16</sup> IGS never asserted that no other incentives exist. During the proceeding and in its Initial Brief, IGS asserted that a change in the current demand charge tariff that better aligned an individual customer’s strain on the distribution system during peak times was not merely an “incentive” for distributed generation but on its face appropriate ratemaking.<sup>17</sup>

The Demand Charge tariff, proposed in the written testimony of witness White, follows the principle of cost causation by charging customers different rates based on their demand during

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<sup>15</sup> P.U.C.O. 17, Electric Distribution Tariff, Sheet D34 at 2.

<sup>16</sup> Staff Initial Brief at 41.

<sup>17</sup> IGS Initial Brief at 14.



peak times and not merely on their highest demand regardless of the time of day. By not adopting such a tariff, customers are not properly incentivized to shift demand towards lower grid traffic times because they are not reaping any of the benefits they are imparting on the grid. So, while Commission Staff is correct that other incentives may exist, no current incentive or program allows a customer to see any monetary benefit based on the benefit they provide to the grid at its most congested times.

## **VII. CONCLUSION**

The Commission should utilize this case to both hold onto past market enhancements made in prior cases while also seizing the opportunity to continue pushing the competitive marketplace within AES Ohio's service territory forward. No evidence or compelling argument was presented by either AES Ohio or the Commission Staff regarding any of the issues addressed in this Reply Brief. By retaining the status quo when it comes to the PUCO/OCC assessments and uncollectible expenses, the Commission would continue to align costs with their source and not unduly favor the SSO by requiring shopping customers to pay those assessments or charges twice. The Commission should also take this opportunity to eliminate the \$5 switching fee currently only being assessed to CRES with absolutely no evidentiary support in the record of this proceeding.

Additionally, the Commission should continue the precedent set by prior cases, and in line with state policy, of unbundling rates by rejecting the Staff Report's request to collect all AES uncollectible expense through distribution rates. It is clear that a portion of the total uncollectible expense is directly related to provision of the SSO, which is defined as a competitive offering under Ohio law. Not allocating such fees would create undue preference for a single offering, the SSO.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Reply Brief of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on March 30, 2022. The Commission's e-filing system will electronically serve notice of the filing of this document upon the following parties listed below.

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