BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Dayton Power and Light Company to Increase its Rates for Electric Distribution.	))))	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 Dayton Power and Light Company for Approval of Revised Tariffs.	)))	Case No. 20-1653-EL-ATA

MEMORANDUM CONTRA APPLICATIONS FOR REHEARING OF AES OHIO AND INTERSTATE GAS SUPPLY, INC. BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

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BY
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The Office of the Ohio Consumers' Counsel ("OCC") files this Memorandum Contra to AES Ohio's ("DP&L") and Interstate Gas Supply, Inc.'s ("IGS") Applications for Rehearing.

I. INTRODUCTION

The Public Utilities Commission of Ohio ("PUCO") approved a rate increase of $75.6 million, or a 30.8% increase, for DP&L.[1] The PUCO-approved increase is nearly double OCC's recommendation and is well above the PUCO Staff's own recommendation. Nevertheless, DP&L seeks rehearing on several issues. IGS also seeks rehearing. DP&L's and IGS's Applications for Rehearing are without merit and should be denied.

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[1] *Id.* at ¶ 227.

First and foremost, DP&L seeks to re-litigate the issue of when the rate increase should take effect. DP&L wants the rate increase to take effect immediately. However, DP&L is operating under Electric Security Plan ("ESP") I, which provides for a rate freeze. The rate increase therefore cannot take effect until the PUCO approves a new ESP. DP&L has a new ESP case pending and that case is scheduled for hearing in March.[2] The PUCO, after considering the arguments DP&L raised, correctly decided that DP&L "is precluded from implementing an increase in rates during the period of its rate freeze…"[3] DP&L has not raised any new issues. The PUCO should therefore reject DP&L's request for rehearing on this issue.

DP&L and IGS also seek rehearing on several other issues in the PUCO's Opinion and Order ("Order") of December 14, 2022. DP&L's and IGS's arguments for rehearing are without merit and their Applications for Rehearing should be denied.

II. ARGUMENT

A. The PUCO correctly decided that DP&L is subject to a rate freeze which precludes it from charging consumers new distribution rates until a new ESP is approved.

In its Application for Rehearing, DP&L argues that the distribution rate freeze expired on December 31, 2012 under the 2009 Stipulation. As part of its argument, DP&L avers the rate freeze term from the 2009 Stipulation was "never a provision, term or condition of ESP I."[4] In this respect it argues that a rate freeze is not "specifically authorized" under the ESP statute (under R.C. 4928.143(B)(2)(h)). According to DP&L,

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[2] *In re DP&L ESP,* Case No. 22-900-EL-SSO, Entry (November 21, 2022).

[3] Opinion and Order at ¶ 225 (December 14, 2022).

[4] DP&L Application for Rehearing at 1-2 (January 13, 2023).

because it was not specifically authorized, it cannot be authorized under a general grant of authority.[5] Additionally, DP&L argues that the PUCO found its rates were insufficient and under such a finding, it is required to implement new rates.[6] DP&L also alleges that it would be unconstitutional for the PUCO to implement a rate freeze.[7] DP&L also asserts that the intervenors waived any right they had to assert that DP&L was subject to a rate freeze while under ESP I.[8]

These very same arguments were presented to the PUCO in numerous pleadings in this case (and in an oral argument to the PUCO Commissioners requested by DP&L) and in Case No. 08-1094-EL-SSO. DP&L has raised nothing new that warrants further consideration in its Application for Rehearing.

The PUCO in its Opinion and Order fully addressed and rejected DPL's claims. The PUCO agreed with OCC and other intervenors and the PUCO Staff that the rate freeze was a provision, term or condition of ESP I.[9] And the PUCO found that DP&L's arguments regarding waiver to be "unpersuasive."[10] Instead it concluded that "the rate freeze can and should be enforced in this proceeding."[11]

The PUCO was "not persuaded that the rate freeze was simply a term of a settlement agreement and not a provision of the SSO approved as ESP I."[12] The PUCO

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[5] *Id*.

[6] *Id*.

[7] DP&L Memorandum Contra at 2.

[8] *Id*. at 3.

[9] *In the Matter of the Application of the Dayton Power and Light Company to Increase Its Rates for Electric Distribution.,* Case No. 20-1651-EL-AIR, Opinion and Order at ¶ 208 (December 14, 2022).

[10] *Id*. at ¶ 221.

[11] *Id*.

[12] *Id*.

found that a provision freezing base distribution rates is permitted under R.C. 4928.143(B)(2)(h), noting three prior occasions where the PUCO had ruled that a rate freeze is a provision permitted under the statute.[13]

Additionally, the PUCO found DP&L's constitutional arguments "unavailing."[14] In this regard, the PUCO found that the statute was not ambiguous and thus "there is no call to determine whether our interpretation of the statute is violative of the constitution."[15] The PUCO further found that authorizing the rate freeze does not amount to an unconstitutional taking as DP&L voluntarily agreed to freeze its rates. And the PUCO found that even if the earnings "were somehow deemed so just and unreasonable that a constitutional claim was colorable (which they are not)," DP&L had two different "escape mechanisms:" file for emergency rate relief or seek to operate under a new SSO.[16]

In ruling against DP&L's claims that parties had waived the right to enforce the rate freeze, the PUCO found that when DP&L's plan was extended or reverted to, all portions of the plan continued unless explicitly modified.[17] The PUCO also found that DP&L's argument that the rate freeze was eliminated when the PUCO approved DP&L's 2015 rate case to be "without merit."[18] The PUCO found that "nothing in R.C. 4909.15 prohibits the enforcement of the distribution rate freeze."[19] It noted that R.C. 4909.15(E)

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[13] *Id*. at ¶ 209.

[14] *Id*. at ¶ 210.

[15] *Id*.

[16] *Id*.

[17] *Id*. at ¶ 221.

[18] *Id*.

[19] *Id*. at ¶ 222.

requires the PUCO to give "'due regard to all such other matters as are proper, according to the facts in each case.'"[20] The 2009 rate freeze commitment is such a consideration, according to the PUCO.

Notably, the PUCO found "unavailing" DP&L's pleas to not enforce the rate freeze because of the alleged deleterious effects it would have on the utility's ability to provide reliable service.[21] The PUCO ruled that it "may not unilaterally modify the terms of the approved ESP or choose not to implement those terms simply because their enforcement will present a financial hardship for the utility."[22] Importantly, the PUCO found "it bears repeating that AES Ohio is statutorily obligated to furnish necessary and adequate service."[23]

Since nothing new was raised by DP&L in its Application for Rehearing and the PUCO thoroughly addressed these same issues in its Order, rehearing should be denied.

B. The PUCO correctly excluded earnings-based incentive compensation from operating income and correctly ruled that earnings-based incentive compensation cannot be collected from consumers in operating income, plant-in-service or depreciation reserve in future rate cases.

DP&L argues that the PUCO erred by excluding earnings-based incentive compensation from operating income and by ruling that such costs cannot be collected from consumers in rate base in future rate cases.[24] The PUCO, however, correctly

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[20] *Id.*

[21] *Id. at* ¶ 223.

[22] *Id.*

[23] *Id.*

[24] DP&L Application for Rehearing at 22-24 (January 13, 2023).

decided this issue and followed its long-standing practice by excluding these costs from operating income.

The PUCO erred, however, by not going far enough – the PUCO should have excluded these costs from rate base in the current case. The PUCO ruled that DP&L only needed to remove earnings-based incentive compensation from rate base (plant-in-service and depreciation reserve) on a going-forward basis, but not for the present case. OCC filed an Application for Rehearing arguing that the PUCO erred by not excluding these costs from plant-in-service and depreciation reserve in the present case.[25]

The PUCO's Order removed earnings-based incentive compensation from DP&L's operating expenses.[26] For the sake of consistency, the PUCO should have also excluded these costs from plant-in-service and depreciation reserve. OCC's Application for Rehearing argues that the PUCO has consistently excluded these costs from both operating income and rate base in other cases.[27] The PUCO's reasoning is that "to the extent that a public utility awards financial incentives to its employees for achieving financial goals, shareholders are the primary beneficiary and, therefore, that portion of the incentive compensation should not be recovered from ratepayers."[28]

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[25] OCC Application for Rehearing at 3-7 (January 13, 2023).

[26] Opinion and Order at ¶¶ 65-68 (December 14, 2022).

[27] OCC Application for Rehearing at 3-7 (January 13, 2023).

[28] *In the Matter of the 2016 Review of the Distribution Investment Rider Contained in the Tariff of Ohio Power Company,* Case No. 17-38-EL-RDR, Opinion and Order at ¶ 47 (June 17, 2020), *citing In re Duke Energy Ohio, Inc.,* Case No. 18-397-EL-RDR, Finding and Order (July 31, 2019) at ¶ 17*; In re Duke Energy Ohio, Inc*., Case No. 16-664-EL-RDR, Finding and Order (May 15, 2019) at ¶ 16; *In re Duke Energy Ohio, Inc*., Case No. 15-534-EL-RDR, Opinion and Order (October 26, 2016) at ¶¶ 20, 44*; In re Ohio American Water Co*., Case No. 09-391-WS-AIR, Opinion and Order (May 5, 2010) at 20-22, Entry on Rehearing (June 23, 2010) at 11-12; *In re Ohio Edison Co., the Cleveland Electric Illuminating Co., and the Toledo Edison Co*., Case No. 07-551-EL-AIR, et al., Opinion and Order (January 21, 2009) at 17, Entry on Rehearing (February 2, 2011) at 4-5.

The PUCO's logic for excluding these costs is sound. DP&L's Application for Rehearing on this ground should be denied.

C. To protect consumers, the PUCO correctly used a 4.4 percent cost of debt in calculating DP&L's rate of return.

DP&L's Application for Rehearing includes a request "that the Commission clarify that the approved cost of debt is 4.44 percent."[29] DP&L argues that the record supports a 4.44 percent cost of long-term debt, yet the PUCO's Order states that the cost of long-term debt is 4.4 percent.[30] It is unclear what sort of "clarification" DP&L seeks on this issue. In any event, R.C. allows for rehearing only if the applicant establishes that a PUCO order is unreasonable or unlawful.[31] DP&L does not allege the PUCO's Order on this issue is unreasonable or unlawful, and the statute does not provide for rehearing to seek "clarification," so the PUCO should dismiss DP&L's Application for Rehearing on this issue.

To the extent that DP&L is arguing that the PUCO-approved rate of return is too low, then OCC opposes DP&L's request for "clarification" because the PUCO-approved rate of return is actually too high. OCC incorporates the arguments contained in its Application for Rehearing that the PUCO set the return on equity too high, which resulted in an unjust and unreasonable rate of return.[32]

[29] DP&L Application for Rehearing at 25 (January 13, 2023).

[30] *Id.*

[31] R.C. 4903.10.

[32] OCC Application for Rehearing at 18-24 (January 13, 2023).

D. To protect consumers, the PUCO correctly decided that customer deposits may be paid in three installments.

DP&L seeks rehearing on the PUCO's ruling that customer deposits may be paid in three installments. DP&L argues that the law does not require a utility to offer installment plans for customer deposits.[33] The PUCO should deny this ground for rehearing.

The PUCO required DPL&L to make customer deposits payable in three installments based on PUCO Staff's recommendation.[34] Staff made this recommendation because customer complaints about DP&L's deposit requirements were "increasing" and "unusually high."[35] Staff pointed out that two natural gas local distribution companies provide installment plans for customer deposits.[36] The PUCO also noted that this requirement would not materially impact DP&L's finances.[37]

Both the PUCO and the PUCO Staff provided sound logic for requiring DP&L to allow consumers to pay deposits in three installments. As OCC noted in its Application for Rehearing: "[e]nergy prices, inflation and unemployment are soaring. The stock market is crashing. A recession is looming."[38] The PUCO's Order approved a rate increase of $75.6 million, or a 30.8% increase.[39] It is ironic and insensitive for DP&L, having just received a 30.8% rate hike, to oppose the PUCO's requirement that consumers be allowed to pay their deposits in three installments. Customer complaints

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[33] DP&L Application for Rehearing at 25 (January 13, 2023).

[34] Opinion and Order at ¶ 179 (December 14, 2022).

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] OCC Application for Rehearing at 18-24 (January 13, 2023). (Citations omitted.)

[39] Opinion and Order at ¶ 227 (December 14, 2022).

about DP&L's deposit requirement were "unusually high" even before the 30.8% rate hike.

The PUCO acted reasonably by requiring that DP&L allow consumers to pay deposits in three installments. The PUCO should overrule this ground for rehearing.

E. The PUCO should reject DP&L's request for rehearing on the amount of the customer charge for residential consumers.

DP&L's current customer charge for residential consumers is $7.00.[40] The PUCO's Order allows DP&L to increase its residential customer charge to $9.75.[41] DP&L argues that the PUCO should have approved a residential customer charge of $15.66.[42] DP&L's arguments have no merit, and the PUCO should deny rehearing on this issue.

OCC argued that the residential customer charge increase should be no greater than $8.25.[43] OCC witness Mr. Robert Fortney presented the following reasons for this position: (1) the cost for transformers should not be included in the residential customer charge; (2) PUCO Staff's recommendation for a higher customer charge was based on an unreasonably high carrying cost of 26.35%; and (3) the regulatory principle of gradualism calls for a smaller increase.[44]

The PUCO adopted PUCO Staff's recommendation for a residential customer charge of $9.75.[45] DP&L's request to increase the residential customer charge to $15.66

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[40] DP&L Application for Rehearing at 26 (January 13, 2023).

[41] Opinion and Order at ¶ 157 (December 14, 2022).

[42] DP&L Application for Rehearing at 26 (January 13, 2023).

[43] Testimony of OCC Witness Robert Fortney, OCC Ex. 4 at 8-11.

[44] *Id.*

[45] Opinion and Order at ¶ 157 (December 14, 2022).

is patently unreasonable. This would more than double the current customer charge of $7.00, clearly violating the regulatory principle of gradualism.

One of the few tools consumers have to limit their energy bills is to reduce their energy usage. Increasing the customer charge reduces consumers' control over their energy bills. With DP&L's 30.8% rate hike, consumers will need all the tools at their disposal to control their increasing energy bills. The PUCO should therefore deny this ground for rehearing.

F. The PUCO lawfully, reasonably, and without discrimination authorized continuation of DP&L's $5 switching fee. The PUCO should not now modify its Opinion and Order to adopt IGS' proposal to artificially increase rates—by adding a switching fee—for the standard service offer ("SSO") charged to consumers.

In its December 14, 2022 Opinion and Order, the PUCO lawfully and reasonably authorized the continuation of DP&L's $5 switching fee charged to marketers.[46] But IGS wants the PUCO to reverse its decision.[47] This is because energy marketer IGS wants DP&L to charge consumers who wish to move back to the SSO from a marketer offer the same as consumers who choose to switch to the marketer.[48]

IGS argues that the PUCO unlawfully and unreasonably and discriminatorily authorized continuation of DP&L's switching fee in violation of R.C. 4903.09 and *Tongren v. PUCO*, 85 Ohio St.3d 87 (1998).[49] IGS is wrong. Similarly, IGS' assertion that the application of the switching fee is contrary to the state policy in R.C.

[46] Opinion and Order (December 14, 2022) at ¶ 44 and Tr. 1238-44.

[47] IGS Application for Rehearing (January 13, 2023) at 8 ("IGS AFR").

[48] *Id.*

[49] *Id.*

4928.02(H) and (I) is wrong.[50] IGS and other marketers have made this argument before, and the PUCO has rejected it each time.[51] The PUCO should again follow its precedent and reject IGS' arguments as they have no merit.

In its Application for Rehearing filed in this case, IGS argues that the PUCO Opinion and Order unlawfully and unreasonably and discriminatorily authorized AES Ohio's $5 switching fee (the fee a consumer pays when switching from the SSO to a marketer).[52] IGS bases its argument on several factors, none of which are compelling.

First, IGS argues that the Opinion and Order impermissibly authorized the fee without rendering findings of fact and conclusions of law based upon the record in violation of R.C. 4903.09 and *Tongren v. PUCO*, 85 Ohio St.3d 87 (1998).[53] This is incorrect. *Tongren* doesn't apply in this case because the switching fee was set in another case, and because DP&L did not propose changing the fees in this case.

The PUCO properly found and concluded (and the record supports) that switching fees set outside the rate case should not be changed in a rate case, especially when DP&L did not propose changing the fee. Accordingly, the PUCO should reject IGS' argument.

IGS also argues that the switching fee is discriminatory (it's not), violates state policy (it doesn't) and violates PUCO precedent (it doesn't) because DP&L assesses the fee to shopping consumers while providing the same service for free to consumers that take

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[50] *Id.* at 23.

[51] *See* Case No. 20-585-EL-AIR (AEP Ohio) and 17-1263-EL-SSO (Duke), Opinion & Order (December 19, 2018); *see also Id.* ¶ 231; s*ee also* Case No. 17-1263-EL-SSO, Second Entry on Rehearing ¶¶ 30-32 (July 27, 2019) (denying the same argument on rehearing).

[52] IGS AFR at 8.

[53] *Id.*

service under the SSO.[54] The PUCO should reject IGS' proposal, which would artificially increase rates for SSO consumers who choose not to shop (these consumers are not the cost causers).

IGS argues that switching fees are related to DP&L's revenue requirement and should have been investigated like any other rate or charge to ensure that they are just and reasonable.[55] But IGS forgets that the switching fee was decided outside this case, and DP&L did not propose changing it in this case. This issue is just not ripe for consideration in this case, which the PUCO recognized.[56] This is why the PUCO recommended that the accuracy of the fee should be considered in a separate proceeding.[57] The PUCO is correct and should not modify its decision. Moreover, the PUCO's prior ruling approving the $5 switching fee is res judicata and cannot be re-litigated in this case.

There is nothing unreasonable nor unlawful nor discriminatory about this switching fee and how it is administered. The PUCO accepted PUCO Staff's arguments in support of maintaining the $5 switching fee because it is not discriminatory, and because it is reasonably related to the costs of returning consumers to SSO service.[58] Moreover, these costs wouldn't exist if the EDU wasn't required to switch consumers back and forth. The switching costs exist solely because marketers exist. If marketers don't want their consumers to pay this fee, they can always provide a bill credit to its

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[54] *Id.*

[55] *Id.* at 23.

[56] Opinion and Order at ¶ 47.

[57] *Id.*

[58] *Id.*

subscribers. But the marketers won't do this because the more charges that can be passed to the EDU and SSO consumers, the more money that marketers can make.

DP&L's switching fee is PUCO-approved and nothing in this case or IGS' arguments justify imposing this fee on SSO consumers. In fact, the opposite is true. Approving IGS' request would be unlawful and unreasonable because it would violate the principles of cost causation. Under the principles of cost causation, the marketer or its consumers should bear the cost of a switching to marketer service from the SSO since the marketer and switching consumer are the cost causers. Consumers that wish to remain on the SSO should not be required to subsidize the cost incurred by the marketer or its consumers that choose to switch. Moreover, the PUCO Staff is correct that the $5 switching fee reasonably reflects the costs associated with a consumer's switch to SSO service.[59]

Another reason for the PUCO to reject modifying the fee is that DP&L did not propose to amend or discontinue its switching, registration, or other fees assessed to marketers. The PUCO has previously rejected IGS' arguments and other marketers' arguments in rate cases involving AEP Ohio (Case No. 20-585-EL-AIR); Duke Energy Ohio, Inc. (Case No. 17-32-EL-AIR, et al.); and the Dayton Power and Light Company (Case No. 15-1830-EL-AIR, et al.). IGS has again failed to offer any change in circumstances or other evidence that would justify a departure from the PUCO's previous decisions approving the fees and DP&L's tariffs. Consequently, the PUCO's prior

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[59] *Id.* at ¶ 45-46; *see also* PUCO Staff Brief at 11-12; PUCO Staff Reply Brief at 39-40; PUCO Staff Ex. 8 at 6.

determination in DP&L's last base distribution rate case as to these fees should be maintained.[60]

Further, PUCO Staff asserted that the process of switching to and from a marketer and SSO service is not comparable, particularly in relation to consumers who default to the SSO, such that the fee reflects a reasonable difference in rates and charges based upon actual service differences.[61] And DP&L relied on PUCO Staff's arguments in support of maintaining the $5 switching fee asserting that the fee is not discriminatory as it is typical among Ohio utilities and reasonably relates to the costs of returning consumers to SSO service.[62]

IGS also maintains that because DP&L did not identify any support or cost basis for the $5 switching fee, it failed to sustain its burden of proof under R.C. 4909.18 and 4909.19 to show that its proposed rates and charges are just and reasonable.[63] The PUCO agreed with this assertion in the AEP Ohio case, but clarified that "although AEP Ohio bears the burden of proof in these proceedings, IGS and Direct Energy must nonetheless support their objections with evidence."[64] Thus, IGS is the party responsible for providing evidence that the switching fee is unjust or unreasonable, and that evidence was not provided.

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[60] *Id*.

[61] *Id.*

[62] DP&L Brief at 68.

[63] IGS AFR at 9-10.

[64] Case No. 20-585-EL-AIR, Opinion and Order (November 17, 2021) at ¶ 190.

The PUCO should reject IGS' argument that DP&L failed to sustain its burden of proof that its rates are just and reasonable. If IGS wanted to fairly argue its point, it should have objected to the tariff filing when it was made.

G. The PUCO Order is neither unlawful nor unreasonable because it allocated DP&L's generation-related uncollectible expense to the default generation product (SSO), from which all consumers benefit.

IGS argues that the PUCO should reconsider permitting DP&L to recover a portion of its uncollectible expenses using a bypassable rider, rather than permitting the collection of these costs from all consumers through base distribution rates.[65] IGS wants standard service offer ("SSO") consumers to pay more to DP&L, and marketers' consumers to pay less, so that the marketers can gain an unfair competitive advantage over the SSO.[66] This is because, as IGS claims, a portion of SSO uncollectible expenses is generation-related, and thus ineligible for base rate recovery.[67]

Further, IGS argues that by allowing DP&L to recover these expenses from consumers in base rates, marketer consumers unfairly subsidize uncollectible amounts that are attributable to SSO consumers.[68] To remedy this result, IGS proposes that a portion (27.6 percent) of AES Ohio's uncollectible expenses be recovered through a bypassable rider.[69] In other words, IGS seeks to push costs onto SSO consumers instead of shopping consumers.

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[65] *Id.*

[66] IGS AFR at 15-16.

[67] *Id.*

[68] *Id.*

[69] *Id.*

The PUCO should reject IGS' proposal—just as it has each time that marketers have previously argued for the same unfair consumer treatment. The fallacies of IGS's proposal outlined below.

1. Marketers, including IGS, have made the same proposal before, and the PUCO has protected consumers by rejecting it each time.

This is not the first time that a marketer has proposed an artificial rate increase for SSO consumers only like the one being proposed by IGS here. And each time the argument has been raised in the past, the PUCO rejected it.

In DP&L's previous base rate case, parties (including OCC, the PUCO Staff, and the utility), signed a settlement.[70] IGS and other marketers opposed the settlement on the same basis as IGS now opposes the PUCO Order. They argued that the settlement should be rejected because it failed to adopt their "unbundling" recommendation to increase rates paid by SSO consumers and decrease rates paid by marketers' consumers.[71] The PUCO rejected the proposal and approved the DP&L settlement.[72]

In Duke Energy's most recent electric security plan ("ESP") case, marketers, including IGS and RESA, again proposed "unbundling" to increase SSO consumer rates and decrease shopping consumer rates.[73] And again, the PUCO declined to adopt their proposal.[74]

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[70] *In re Application of the Dayton Power & Light Co. for an Increase in its Elec. Dist. Rates*, Case No. 15-1830-EL-AIR, Opinion & Order ¶ 12 (September 26, 2018) (the "DP&L Rate Case Order").

[71] DP&L Rate Case Order at ¶¶ 17-22.

[72] *Id.* at ¶¶ 28-31.

[73] *In re Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 17-1263-EL-SSO, Opinion & Order (December 19, 2018).

[74] *Id.* ¶ 231. *See also In re Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 17-1263-EL-SSO, Second Entry on Rehearing ¶¶ 30-32 (July 27, 2019) (denying the same argument on rehearing).

In an earlier case involving Duke Energy, IGS proposed "unbundling," making the same argument that the utility was improperly charging consumers for SSO costs through its distribution rates.[75] The PUCO declined to adopt IGS's proposal.[76]

In AEP Ohio's most recent base rate case, IGS and other marketers proposed a $64 million offsetting credit to all consumers (both SSO and shopping) through AEP Ohio's "SSO Credit Rider."[77] Under the Marketers' proposal in this AEP case (which they sometimes refer to as "unbundling"), a typical residential SSO consumer would pay an extra $4.20 per month—more than $50 per year.[78] In contrast, a typical residential marketer consumer would get a *credit* of $1.50 per month, or $18 per year.[79] In other words, the Marketers effectively wanted each residential SSO consumer to pay a $68 annual penalty for choosing the SSO.[80] This would make residential consumers' rates unjust and unreasonable.[81] Again, the PUCO declined to adopt IGS' and the other marketers' proposal.[82] It should do so here.

In reading IGS's arguments, one might think that this precedent does not exist—IGS fails to mention it. IGS's only mention of precedent in its AFR is "IGS urges the Commission to avoid violating the law and contradicting recent precedent and reject the

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[75] *In re Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 14-841-EL-SSO, Opinion & Order at 86 (April 2, 2015).

[76] *Id.*

[77] AEP Ohio Rate Case, Opinion and Order at ¶¶ 174-183 (November 17, 2021).

[78] *Id.* (Assuming typical usage of 1,000 kWh per month and the Marketers' proposed rate of $0.0042 per kWh for SSO customers. *See* Tr. Vol. V at 1058:23 – 1059:1 (Marketer witness Lacey testifying that under their proposal, SSO customers would pay $0.0042 per kWh)).

[79] *See Id.,* Tr. Vol. V at 1059:2-5 (Marketer witness Lacey testifying that under their proposal, customers of marketers, sometimes called "shopping" customers, would get a credit of $0.0015 per kWh).

[80] *Id.* (The difference between a $50 charge and an $18 credit).

[81] AEP Ohio Rate Case, Opinion and Order at ¶ 183.

[82] *Id.*

notion of re-bundling uncollectible expenses…directly associated with providing the [SSO].”[83] But IGS never stated what the precedent is, nor did it provide any citation. But the precedent does exist (as discussed above), and the PUCO should respect and follow it, as the Ohio Supreme Court has instructed it to do: “We have instructed the commission to ‘respect its own precedents in its decisions to assure the predictability, which is essential in all areas of law, including administrative law.”[84]

The PUCO should again decline IGS’s attempt to force an artificial rate increase for SSO consumers.

2. All consumers benefit from the SSO, so all consumers should pay for costs that DP&L incurs (if any) to provide the SSO.

Under R.C. 4928.141, DP&L “shall provide consumers ... a standard service offer.” When a consumer that shops with a marketer is no longer able to receive service from that marketer (for example, if the marketer goes out of business), the consumer reverts to the SSO to make certain that the consumer continues to receive electricity.[85] In other words, even consumers that do not *currently* take service under the SSO benefit from the SSO because the SSO stands ready and able to serve them at any time, if necessary.

In an earlier case involving Duke Energy, IGS made arguments similar to the ones it makes now with respect to DP&L, namely, that certain alleged SSO costs should be “unbundled” from distribution rates and paid only by SSO consumers.[86] The PUCO

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[83] IGS AFR at 3, 19.

[84] *In re Ohio Power Co.*, 2015-Ohio-2056, ¶ 16 (quoting *Cleveland Elec. Illuminating Co. v. PUCO*, 42 Ohio St.2d 403 (1975)).

[85] R.C. 4928.141.

[86] *In re Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 17-1263-EL-SSO, Second Entry on Rehearing ¶¶ 30-32 (July 27, 2019).

rejected IGS's argument for several reasons. Among those reasons was that "all consumers benefit from Duke's ability to provide the SSO."[87]

Indeed, here, IGS agreed with the general proposition that when something benefits all consumers, all consumers should pay for it.[88] IGS's stance is that all consumers benefit from the ability to shop, so all consumers should pay for any costs related to shopping.[89] But this is backwards. Not all consumers benefit from shopping, but all consumers do benefit from the SSO default service. This means that is it reasonable for all consumers to pay SSO expenses.

3. The PUCO should reject IGS' unbundling proposal because it would shift $30 million (27.6% of the costs) in costs from nonresidential to residential consumers, thus making residential consumers' rates unjust and unreasonable.

The PUCO adopted PUCO Staff's recommendation to "at this time to include SSO uncollectible expenses in base distribution rates instead of providing for the collection of a portion of these amounts through a bypassable rider."[90] IGS disagrees with the PUCO decision.[91] However, the PUCO believes that this question should be revisited by the parties in AES Ohio's pending ESP proceeding where issues regarding facilitating competition in the market are more appropriate for consideration than a distribution rate case.[92] OCC agrees. Moreover, IGS' proposal would improperly allocate additional uncollectible costs to residential consumers.

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[87] *Id.* ¶ 32.

[88] IGS AFR at 15.

[89] *Id.*

[90] Opinion and Order at ¶ 172.

[91] IGS AFR at 13-14.

[92] Opinion and Order at ¶ 172.

To protect consumers who choose not to shop, the PUCO should not adopt IGS's flawed "unbundling" proposal.

III. CONCLUSION

Based on the foregoing, OCC respectfully requests that the PUCO deny DP&L's and IGS's Applications for Rehearing on the issues discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra Applications for Rehearing of AES Ohio and Interstate Gas Supply, Inc. was served on the persons stated below via electronic transmission, this 23rd day of January 2023.

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

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