BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan.	))))	Case No. 22-900-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Revised Tariffs.	)))	Case No. 22-901-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Accounting Authority Pursuant to Ohio Rev. Code § 4905.13.	)))))	Case No. 22-902-EL-AAM

REPLY BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION

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REPLY BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

Nineteen out of twenty parties in the case joined, or indicated their non-opposition, to the Stipulation and Recommendation ("Stipulation"). Ten briefs in support of the Stipulation were filed. Only one brief was submitted that opposes the Stipulation, by the Office of the Ohio Consumers' Counsel ("OCC"). The Stipulation also carved out the issue of potential modifications to the standard service offer ("SSO") auction process.[1] Two parties, Constellation and OCC, submitted potential SSO modifications. The Retail Energy Supply Association ("RESA") takes no position on the SSO auction process modifications and urges the Commission to adopt the Stipulation without modification. To

[1] Signatory Parties Ex. 1, Stipulation and Recommendation at Section III.A. Because the Stipulation expressly provides that any ruling for or against these SSO auction modifications does not constitute a modification of the Stipulation, any ruling by the Commission on these issues will not allow a party to withdraw from the Stipulation.

the extent that the Commission addresses the SSO auction process, the Commission can do so without modifying the Stipulation.

Below, RESA briefly addresses issues that were identified in testimony but were not advanced on brief. First, RESA addresses the potentiality that PJM could delay future capacity auctions. RESA supports working with AES Ohio and Staff to discuss whether it would be beneficial to follow the current process of delaying an SSO auction or whether capacity should be treated as a pass-through cost with no changes as to what party is ultimately responsible for what charges. However, because this issue was not addressed in initial briefs, it is not properly before the Commission at this time. OCC also raised certain anticompetitive issues in testimony. However, OCC has waived those issues by not presenting them on brief. Further, OCC's witness conceded that he was not actually presenting any specific proposal, had not done any analysis on the anticompetitive issues raised, testified that the issues were inconsistent with State policy, and stated that the implementation of OCC's hypothetical anticompetitive issues would not be likely to produce benefits for consumers.[2]

II. ARGUMENT

A. To the Extent the Commission Adopts Changes to the SSO, Suppliers' Cost Obligations Should Remain Unchanged.

RESA supports the Commission's flexibility in responding to the PJM capacity auction delays. To date, the Commission has authorized AES Ohio and other electric distribution utilities to delay their SSO auctions to accommodate the delays in the PJM

[2] See Tr. II at p. 198-199, 201-202; *see also*, Tr. II at 238 ("Q. Okay. But you clearly don't have all the details in your testimony. A. No.").

capacity auctions.[3] No arguments were made on brief to alter that process should there be future PJM delays. Nonetheless, RESA recognizes it was an issue briefly raised and addressed at the hearing.[4] Should there be future PJM capacity auction delays, RESA would support working with AES Ohio and Staff to discuss finding a resolution to this issue — specifically, the alternatives raised by Staff Witness Benedict — so long as any changes do not alter the ultimate responsibility of the PJM costs currently assessed to the SSO auction winners. If there are future delays in the PJM capacity auctions that would affect AES Ohio's scheduled SSO auctions, RESA would support delaying said auctions.

B. Arguments Not Raised in Initial Post Hearing Briefs are Deemed Waived.

OCC has waived two anticompetitive items covered in its testimony by failing to address the issues in its initial brief. It is well established precedent that if a party fails to submit its arguments or objections in its initial brief, then that party waives the nonbriefed arguments and objections.[5] The waived issues relate to anticompetitive proposals included in OCC witness Wilson's testimony.

At the hearing, OCC presented the testimony of Mr. Wilson that, among other things, superficially addressed placing limitations on customer shopping[6] and standby

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[3] Staff Ex. 2 at 3.

[4] *Id.*, Tr. Vol. III at 537-540.

[5] *In re Matter of the Applications of Columbia Gas of Ohio, Inc. to Establish a Uniform Rate for Natural Gas Service within the Company's Northwestern Region, Lake Erie Refion, Central Region, Eastern Region, and Southeastern Region, et al.*, Case No. 89-616-GA-AIR, Opinion and Order at p. 202-203 (April 5, 1990); *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify Current Accounting Procedures to Extend the Period of Time for the Capitalization of AFUDC on Major Construction Projects After In-Service Dates and Until Revenues are Collected that Include the Associated Costs*, Case No. 82-858-EL-AAM, Opinion & Order at pp. 5-6 (Aug. 25, 1982) (finding OCC waived their right to challenge the method of publication in its Reply Brief because it did not raise the issue of publication in their Initial Brief).

[6] Tr. II at p. 207-208 & 217; *see* OCC Ex. 1 at p. 22.

service charges.[7] The issues were scarcely addressed in testimony. At the hearing, Mr. Wilson conceded that he was not presenting the Commission with any specific proposal.[8] He also conceded that he did not undertake any substantive analysis, that the concepts were incompatible with Ohio's pro customer-choice law, that limitations on customer shopping would not reduce any risk premium in SSO auction prices, and that he had not presented the Commission with details to rule on either item.[9] Not only were the two arguments waived due to OCC's failure to address them on brief, but the lack of record support would have prevented the Commission from adopting either argument if they had been preserved.[10]

III. CONCLUSION

RESA respectfully urges the Commission to adopt the Stipulation without modification. To the extent that the Commission must resolve the issues of the SSO auction process, the Commission can do so without modifying the Stipulation. Finally, RESA requests that the Commission confirm that suppliers' PJM responsibilities remain unchanged.

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[7] Tr. II at p. 201; *see* OCC Ex. 1 at pp. 24-25.

[8] Tr. II at p. 198.

[9] Tr. II at p. 198-199, 201-202; see also, Tr. II at 238 ("Q. Okay. But you clearly don't have all the details in your testimony. A. No.").

[10] R.C. 4903.09; *Elyria Foundry Co. v. PUC*, 114 Ohio St.3d 305, 871 N.E.2d 1176, citing *MCI Telecommunications Corp. v. Pub. Util. Comm*. (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337 ("R.C. 4903.09 requires that a commission order must provide 'in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.'"); *In re Application of Columbus S. Power Co*., 128 Ohio st.3d 512, 2011-Ohio-1788 at ¶ 22-30, citing *Indus. Energy Users-Ohio v. Pub. Util. Comm*., 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30 ("Ruling on an issue without record support is an abuse of discretion and reversible error.").

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Ohio Adm.Code 4901-1-05, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties, this 5th day of June 2023. The following parties were provided by electronic mail a copy of this document:

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Summary: Reply Brief of The Retail Energy Supply Association electronically filed by Mr. Matthew R. Pritchard on behalf of Retail Energy Supply Association.