BEFORE
THE PUBLIC UTILITY 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. 15-1830-EL-AIR
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority	)))	Case No. 15-1831-EL-AAM
In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs	)))	Case No. 15-1832-EL-ATA

INITIAL POST-HEARING BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION

Mark A. Whitt (0067996)
Rebekah J. Glover (0088798)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
glover@whitt-sturtevant.com

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I. INTRODUCTION

On October 30, 2015, Dayton Power & Light Company (DP&L) filed an application for an increase in its electric distribution rates (Application). As is required under the Ohio Revised Code and the Ohio Administrative Code, DP&L included extensive schedules which detailed the expenses it allegedly incurs in its provision of distribution service, as well as any proposed changes to its current tariffs. DP&L also filed hundreds of pages of testimony in support of these schedules and its overall application.

On March 12, 2018, the Staff of the Public Utilities Commission of Ohio (PUCO or the Commission) filed its Staff Report. The Staff Report adopted a number of the proposals made by the Company, and in many instances relied solely on data provided by the Company in making its recommendations.

On June 18, 2018, a Stipulation and Recommendation (Stipulation) was signed by most of the intervening parties, including Staff. Other than the modifications explicitly stated within, the Stipulation adopts the finding and recommendations of the Staff Report; additionally, other than as modified by either the Stipulation or the Staff Report, the Stipulation states that DP&L's original application is approved.

II. ARGUMENT

The Commission employs a three-part test to evaluate stipulations.[1] This test asks the following questions:

- Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- Does the settlement, as a package, benefit ratepayers and the public interest?

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[1] *See Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994).

- Does the settlement package violate any important regulatory principle or practice?

The Stipulation in this case does not meet the requirements of this test. While the settlement is the product of serious bargaining among capable, knowledgeable parties, it does not benefit all ratepayers or the public interest, and certain provisions do violate important regulatory principles. By allowing certain portions of the Application to stand with virtually no review or input from Staff, the Stipulation continues discriminatory fees and charges on shopping customers and competitive retail electric service (CRES) suppliers, in violation of state law and policy. The Commission must ensure the end of this disparate treatment immediately.

Specifically, the Commission should order DP&L to perform a thorough review of the costs and expenses associated with the provision of its standard service offer (SSO), and unbundle these costs from distribution rates, as required by state law. Additionally, the Commission should order DP&L to either remove certain supplier fees from its tariffs or require DP&L to demonstrate how costs ostensibly recovered through these fees are recovered, and determine the most appropriate amount and method of recovery.

A distribution rate case is the only opportunity for the Commission and other parties to examine the hard data of the expenses incurred in providing distribution utility service, and the various streams of revenue the utility receives for providing that service. Typically it is not enough to take a utility's word for what those expense and revenue figures are; in this case, however, Staff did exactly that, and now CRES suppliers are being forced to continue to pay fees to cover expenses that have never been proven; and shopping customers are being forced to continue to subsidize services available only to non-shopping customers.

And despite the hundreds of pages of schedules and testimony originally filed by the Company and ostensibly adopted by the Stipulation, the only evidence submitted by the

Company at hearing, and therefore the only evidence permitted to be contested by opposing parties, was the testimony of two individuals unable to provide detailed support or information regarding the underlying Application or the reasonableness of the rates requested. The Commission should reject the Stipulation and require a full litigation of DP&L's Application and Staff's recommendations in this case. In the alternative, the Commission should adopt RESA's recommendations to modify the Stipulation as explained below.

A. The Commission should modify the Stipulation to require a full examination of the costs associated with providing SSO service and require those costs to be unbundled from distribution rates.

In DP&L's most recent electric security plan case, Case No. 16-395-EL-SSO, the Commission approved a Stipulation and Recommendation (16-395 Stipulation) that included a provision requiring in the instant proceeding an evaluation of costs contained in distribution rates that may be necessary to provide SSO service.[2] In the Staff Report in this case, Staff stated that it "attempted to evaluate those costs contained in the distribution rates that are necessary to provide [] SSO service and would be removed from DP&L distribution expenses if SSO service was no longer a default service," but then stated that "[t]he Company at this time is unable to quantify different costs between shopping and non-shopping customers and expressed that it would be prohibitively expensive to track costs for the functions of administering the competitive retail market or providing a standard service offer."[3] Further, the Staff Report noted that "the Company stated in its response to a Staff data request that all of the costs that DP&L incurs to provide particular services to or on behalf of shopping and non-shopping customers are appropriately assigned to the distribution function of DP&L because a distribution utility is required by law to

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[2] *In re Application of the Dayton Power & Light Company. To Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 16-395-EL-SSO, et al, Opinion & Order at 8, 60 (Oct. 20, 2017).
[3] Staff Report at 28.

offer a standard service offer and has obligations with regard to administering aspects of the competitive market."[4] Despite the Company's failure to either comply with the 16-395 Stipulation or provide sufficient information to Staff for it to comply, Staff did identify one element of costs to be reallocated: the PUCO and Ohio Consumers' Counsel (OCC) assessment expense; the Staff Report recommended that the SSO generation revenue percentage of these assessments be recovered through an appropriate bypassable rider.[5]

The failure of Staff and DP&L to properly evaluate costs and identify areas that would be appropriate to allocate to the SSO should not be allowed to stand. As the Commission itself has stated, a distribution rate "affords []interested stakeholders the opportunity to address the proper allocation" of costs, and that such a "comprehensive cost review" is best accomplished in a distribution rate case to avoid "disparity in treatment of SSO and choice customers."[6] If the Commission approves the Stipulation, DP&L is not obligated to file another rate case until October 31, 2022. That means that for at least another four years, shopping customers will be forced to subsidize SSO customers, unless the Commission acts to stop it.

1. State law does not permit the Commission to approve recovery that include subsidization of competitive services through non-competitive rates.

The Commission cannot allow distribution utilities to recover costs associated with the provision of SSO service through its distribution rates. The Ohio Revised Code states as much: "a competitive retail electric service *supplied by an electric utility* or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission . . ."[7] No party to this case disputes that there are costs associated with provision of SSO service, or that

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[4] *Id*.
[5] *Id*.
[6] *In re Application of Ohio Power Company 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, Second Entry on Rehearing at 41-42 (Aug. 1, 2018).
[7] R.C. 4928.05(A)(1) (emphasis added).

DP&L has the right to recover those costs in some way. But the law prohibits those competitive costs to be recovered through a subsidization via a non-competitive rate.

Additionally, Staff and DP&L ignore the fact that there are certain costs associated with the administration of the choice market that are, in fact, currently collected apart from distribution recovery. As explained further below, DP&L's Supplier Tariff contains numerous fees and charges for services to CRES suppliers that are inherently monopoly services, and therefore should actually be recovered through distribution rates, as they are non-competitive services only available through the utility. CRES suppliers do not want to unbundle simply to raise the cost of the SSO; we are truly interested in making sure that costs are recovered in a way compatible with Ohio law.

The Supreme Court has interpreted the law in this manner, "requir[ing] the unbundling of the three major components of electric service — generation, distribution, and transmission — and the components that make up the three major service components."[8] The Court has in the past overturned attempts by the Commission to approve unlawful subsidies, in one case stating that "[f]uel is an incremental cost component of generation service. Thus, by allowing that generation-cost component to be deferred and subsequently recovered in a distribution rate case, or alternatively allowing FirstEnergy to apply generation revenues to reduce distribution expenses, the commission violated R.C. 4928.02(G)."[9] By permitting DP&L to rebundle cost components of the SSO into distribution rates, the Stipulation is in violation of Ohio law and Supreme Court precedent.

[8] *Industrial Energy Users-Ohio v. Pub. Util. Comm'n*, 117 Ohio St. 3d 486, 487 (2008).
[9] *Elyria Foundry Co. v. Pub. Util. Comm'n*, 14 Ohio St.3d 305, 315 (2007).

2. The costs associated with providing SSO service should be unbundled using an allocation methodology.

Despite Staff and DP&L's failure to perform any actual evaluation of costs contained in distribution rates that would be better allocated to the SSO, another solution is available to address the disparate treatment and perform a proper allocation. RESA and IGS witness Edward Hess has performed an analysis of DP&L's costs using a cost of service allocation methodology that approximates the costs incurred by the Company in providing the SSO service. According to Mr. Hess, it is the industry's acceptable methodology to identify costs between different types of customers when tracking costs is prohibitively expensive.[10]

Mr. Hess's methodology identifies cost categories which ought to have portions allocated to the SSO, costs that are necessary to administer and support SSO service.[11] Adopting his recommendation would be revenue-neutral to DP&L and would ensure that shopping customers are no longer subsidizing non-shopping customers. It would also result in a more accurate SSO price, as opposed to the current artificially low SSO price that all suppliers must compete against. Because the current SSO price does not accurately reflect costs, it discourages customer engagement and encourages customers to view electric service as a commodity-only product. Adopting this allocation methodology and applying it to DP&L's costs will open up the market and allow more opportunity for customers to affirmatively choose a retail electric product based on the preferences of the customer and the true cost of the service.

Opposing parties will argue that because DP&L is a distribution company required to maintain an SSO option, all costs it incurs are properly allocated to the distribution function and therefore allocation of any costs to the SSO is improper – in fact, DP&L stated as much in

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[10] RESA/IGS Ex. 2 at 7.
[11] *Id.*

response to a Staff data request.[12] This argument simply does not hold water. Nowhere in the law is DP&L given the authority to charge all customers for services not all customers receive. As Mr. Hess states in his direct testimony, it is not dissimilar to the way DP&L charges different distribution customer classes different costs, because the cost of service is different.[13]

Unbundling costs is necessary to comply with the state policies reflected in R.C. 4928.02. Specifically, it ensures effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service by prohibiting the recovery of any generation-related costs through distribution rates.[14] Moreover, it ensures the availability of unbundled, comparable, and nondiscriminatory retail electric service.[15]

3. The PUCO and OCC assessment fees must be unbundled from distribution rates proportional to SSO generation revenue.

In the Staff Report, Staff stated that a portion of DP&L's PUCO/OCC assessment expense, proportional to its SSO generation revenue, be reallocated and recovered through an appropriate bypassable rider.[16] This provision of the Staff Report was unmodified by the terms of the Stipulation.

At a minimum, this provision should stand. While RESA does not concede in any way that either Staff or DP&L performed a full "evaluation of costs contained in distribution rates that may be necessary to provide SSO service," as required in the 16-395 Stipulation, this recommendation is an important indicator that there are in fact certain costs that are rightfully allocated to the provision of SSO service that should be unbundled from distribution rates.

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[12] Staff Report at 28.
[13] RESA/IGS Ex. at 8.
[14] R.C. 4928.02(H).
[15] R.C. 4928.02(B).
[16] Staff Report at 28.

Despite Staff witness Craig Smith's attempt to unilaterally change the Staff recommendation on the stand at hearing, the terms of the Stipulation are clear: if a provision of the Staff Report is unmodified by the Stipulation, it is incorporated into the Stipulation.

B. The Commission should modify the Stipulation to require the removal of certain supplier fees from DP&L's tariff.

RESA also objects to the inclusion of certain fees charged by DP&L to CRES suppliers in its Supplier Tariff, specifically its switching fee and its historical usage interval (HUI) data fee.[17] There is no justification to these costs that DP&L can produce and they were never based on actual expenses. Charges and fees should be based on actual expense when the opportunity for such a review arises, not negotiated in a years-ago settlement and never reviewed again.

In the Application in this proceeding, DP&L did not propose any changes to the switching fees or HUI data fees, nor did it attempt to demonstrate costs incurred or otherwise explain these charges anywhere in its application. The Staff Report did not challenge these fees or question where or how costs are incurred that would justify such charges. The Stipulation did not address either fee, meaning if approved, both the switching fee and HUI fee will stand for the foreseeable future. The Commission should strike these fees from the Supplier Tariff, or at the very least require DP&L to demonstrate the costs associated with those fees and determine the best method for recovery.

1. Switching Fees

DP&L is currently authorized to impose a $5.00 switching fee on any customer who switches either from the SSO to a supplier or between suppliers.[18] There is no such fee for customers who switch from a supplier to the SSO. Not only does this fee create a disincentive for

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[17] Objections to the Staff Report of the Retail Energy Supply Association at 2-3 (Apr. 11, 2018).
[18] DP&L P.U.C.O. No. 17, Tenth Revised Sheet No. G8, Page 30 and First Revised Sheet No. D34, Page 2.

customers to switch, it allows recovery for which DP&L has not demonstrated any need or expense. If any actual expense were incurred through the process of switching customers to suppliers or between suppliers, it would be reasonable to assume that a similar cost would occur when customers are switched from a supplier to the SSO, yet no such "switching fee" is imposed on those customers.

RESA's objection to the switching fee has gone virtually unchallenged by both DP&L and Staff; the only mention of any supplier fees was made by Staff Witness Marchia Rutherford, who stated in her direct testimony that because DP&L "did not propose changing the current switching fee" in its application, "Staff did not review the cost related charge in its investigation of the Company's filing."[19] Likewise, at hearing, Ms. Rutherford testified that despite the possibility that the Company's cost to provide a service over time may have changed since a fee was previously approved, if no change to a fee is proposed it is Staff's general protocol to simply determine whether there are any "lingering recommendations" from prior Commission decisions, and not to examine any cost-based issues.[20]

The Commission should remove the switching fee from DP&L's tariff or require the Company to demonstrate the costs associated with switching customers to or between suppliers.

2. Historical Usage Interval Data Fees

Historical usage interval data is used by CRES suppliers to model and calculate products to a particular customer's needs and peak usage profiles. Under DP&L's Supplier Tariff, this data is provided upon request, and DP&L is authorized to charge up to $150 per account, per request.[21] According to DP&L, this charge was derived not based on any actual cost or expense

[19] Staff Ex. 1 at 3.
[20] Tr. II at 256.
[21] DP&L P.U.C.O. No. 17, Tenth Revised Sheet No. G8, Page 29-30.

incurred by the Company to collect or provide this data, but was part of a settlement package in Case No. 11-3002-EL-MER.[22]

As testified to by RESA witness Teresa Ringenbach, there is no reason to believe that any de minimis costs DP&L incurs are not already being recovered by DP&L through base rates or its customer charge.[23] As Ms. Ringenbach stated, DP&L recovered over $2.7 million between 2012 and 2017 through this fee alone; any initial costs associated with this system likely would have been paid off already.[24] Despite being asked in discovery, DP&L has refused to provide any information about what ongoing costs it incurs to provide this data;[25] as Ms. Ringenbach testified at hearing, in her experience with other utilities across the country, the "expense" related to providing HUI data through a typical electronic data exchange is cents per transaction.[26] Neither Staff nor DP&L have attempted to dispute Ms. Ringenbach's assertions nor have they attempted to explain the need for DP&L to continue to collect roughly half a million dollars annually for this service.

Not only has there been no justification for such a high fee to be charged per data request, any minimal costs associated with the provision of this data should be recovered as a monopoly service, if DP&L is ever required, and is actually able, to demonstrate such costs exist. Neither suppliers nor customers are able to access this data without going through the utility, despite being an essential piece for customers be able to make informed decisions about their own usage, whether to choose a supplier, and which one. The Commission should require DP&L to

[22] RESA/IGS Ex. 1 at TR-2.
[23] RESA/IGS Ex. 1 at 2.
[24] *Id*. at 3.
[25] *Id*. at 2; Tr. I at 109.
[26] Tr. I at 111.

demonstrate the costs it incurs to provide HUI data and determine how and at what level it is appropriate for DP&L to recover this cost through base rates.

III. CONCLUSION

A distribution rate case is the only opportunity for the Commission to fully examine the costs utilities incur for providing distribution service and determine whether and how those costs should be recovered. If costs are incurred but are in the provision of non-distribution service, or if the utility charges fees for certain services but does not demonstrate that there are any actual costs associated with those services, then a rate case, as the Commission itself has determined,[27] is the only available avenue for stakeholders to attempt to rectify those issues. Under the terms of the Stipulation, there is no guarantee of another rate case filing by DP&L until October 31, 2022. Unless the Commission addresses the issues raised by RESA in this proceeding, this means that shopping customers will spend at least another four years paying more than their fair share for services rendered. The Commission cannot allow this disparity to continue.

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Respectfully submitted,
/s/ Mark A. Whitt

Mark A. Whitt (0067996)
Rebekah J. Glover (0088798)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
glover@whitt-sturtevant.com

ATTORNEYS FOR THE RETAIL ENERGY SUPPLY ASSOCIATION

[27] Case No. 16-1852-EL-SSO, Opinion & Order at 98-99 (Apr. 25, 2018).

CERTIFICATE OF SERVICE

I hereby certify that a copy the foregoing Initial Post-Hearing Brief was served by electronic mail this 17th day of August, 2018 to the following:

michael.schuler@aes.com
cfaruki@ficlaw.com
djireland@ficlaw.com
jsharkey@ficlaw.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
christopher.healey@occ.ohio.gov
terry.etter@occ.ohio.gov
bojko@carpenterlipps.com
perko@carpenterlipps.com
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkylercohn@bkllawfirm.com
paul@carpenterlipps.com
sechler@carpenterlipps.com
mfleisher@elpc.org
jvickers@elpc.org
rkelter@elpc.org
kurt.helfrich@thompsonhine.com
stephanie.chmiel@thompsonhine.com
michael.austin@thompsonhine.com
dwilliamson@spilmanlaw.com
lhawrot@spilmanlaw.com
charris@spilmanlaw.com
stephen.chriss@walmart.com
greg.tillman@walmart.com
rdove@attorneydove.com
swilliams@nrdc.org
slesser@calfee.com
jlang@calfee.com
talexander@calfee.com
tdougherty@theoec.org
jfinnigan@edf.org
cmooney@ohiopartners.org
ejacobs@ablelaw.org
joliker@igsenergy.com
mnugent@igsenergy.com
dborchers@bricker.com
mwarnock@bricker.com
jdoll@djflawfirm.com
mcrawford@djflawfirm.com
thomas.mcnamee@ohioattorneygeneral.gov
gregory.price@puco.ohio.gov
patricia.schabo@puco.ohio.gov

/s/ Rebekah J. Glover
Attorney for the Retail Energy Supply Association