

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power & Light Company for Approval of Its Electric Security Plan.)))	Case No. 16-0395-EL-SSO
In the Matter of the Application of The Dayton Power & Light Company for Approval of Revised Tariffs.)))	Case No. 16-0396-EL-ATA
In the Matter of the Application of The Dayton Power & Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13.)))))	Case No. 16-0397-EL-AAM

**JOINT INITIAL BRIEF OF
INTERSTATE GAS SUPPLY, INC.
AND
THE RETAIL ENERGY SUPPLY ASSOCIATION**

May 5, 2017

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I. INTRODUCTION

The Stipulation presented to the Public Utilities Commission of Ohio (“Commission”) in this proceeding, if accepted by the Commission, will put in place a six-year electric security plan (“ESP”) for The Dayton Power and Light Company’s (DP&L) service territory. Considering the length of that term, the Retail Energy Supply Association (“RESA”) and Interstate Gas Supply, Inc. (“IGS”) have worked with other Signatory Parties to the March 13, 2017 Amended Stipulation and Recommendation (“Joint Exhibit 1” or “Stipulation”) to ensure that the ESP contains provisions that will lead to further development of the competitive retail electric market in DP&L’s service territory and allow for the development and delivery of innovative products and services to consumers over the six-year ESP term.

There are four key aspects of the Stipulation that are important to developing the competitive retail electric market in DP&L’s service territory. First, the Stipulation will put into place a supplier consolidated billing pilot with Staff’s input to allow *any* interested and qualified competitive retail electric service (“CRES”) provider to provide supplier consolidated billing in DP&L’s service territory – one bill to the customer that contains both DP&L’s charges and the CRES provider’s charges.¹ Costs of the pilot will be shared between DP&L and participating CRES providers, with any recovery by DP&L of its pilot costs limited to a cap of \$1.5 million subject to further Commission review and approval.

Second, the Stipulation calls for Staff to request a Commission rule review to establish parameters for non-commodity billing throughout Ohio and if that is completed, DP&L will implement non-commodity billing in its service territory.² As many know, the unresolved issue

¹ Joint Exhibit 1 at 21-25.

² Joint Exhibit 1 at 21.

of non-commodity billing has been raised in several Commission proceedings but with no resolution.³ The Stipulation provides the Commission the opportunity to put in motion that resolution in the form of a rule review on non-commodity billing that can be used to establish uniform parameters for DP&L's service territory as well as the rest of the state. No costs will be incurred for the provisions of this Stipulation that relate to non-commodity billing – it is simply a recognition of a path forward that can lead to the implementation of a billing program that is currently available in the competitive gas markets.

Third, the Stipulation allows for the bypassable collection or credit by DP&L of the net proceeds of revenues and costs associated with its entitlement to generation from the Ohio Valley Electric Corporation (“OVEC”).⁴ DP&L has proposed a Reconciliation Rider as a way to recover the net of proceeds from selling OVEC energy and capacity into the PJM marketplace and OVEC costs. RESA and IGS do not oppose those provisions as part of the Stipulation particularly as the rider will be charged on a bypassable basis ensuring that shopping customers only pay for the generation they use.

Fourth, the Stipulation recognizes the synergy available with DP&L's pending distribution rate case and includes provisions committing to an evaluation in that case to properly allocate Standard Service Offer (“SSO”)-related costs to that product to ensure that the SSO price is a fair comparison between the SSO product and all other products with the goal of engaging more consumers in the competitive market.⁵ The Stipulation also recognizes that uncollectible expenses for SSO charges should be collected on a bypassable basis, and allows

³ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 14-841-EL-SSO, Opinion and Order at 82-83 (April 2, 2015); and *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, Opinion and Order at 80-82 (February 25, 2015) and Fourth Entry on Rehearing at 56-57 (November 3, 2016).

⁴ Joint Exhibit 1 at 13.

⁵ Joint Exhibit 1 at 9.

recovery of those charges through the Uncollectible Expense Rider as a separate bypassable charge.⁶

All four of the above components of the Stipulation will support the development of the competitive market, and RESA and IGS would like to see even more enhancements to the competitive market through this proceeding. The Stipulation, however, represents a comprehensive resolution on several different issues, and the above four competitive market enhancement provisions of the Stipulation (collectively “Competitive Retail Market Provisions”) represent a negotiated compromise. RESA and IGS respectfully request that the Commission support these Competitive Retail Market Provisions and find that they are just, reasonable, beneficial, and warrant Commission approval.

II. FURTHER DESCRIPTION OF THE COMPETITIVE RETAIL MARKET PROVISIONS

Given the length of this proposed ESP (six years), it is important that the ESP allows for the continued evolution of the competitive marketplace and the development of innovative products. The Stipulation (Joint Exhibit 1) accomplishes this in part by including the following Competitive Retail Market Provisions:

(1) Supplier Consolidated Billing Pilot Program – Stipulation IX(2)

A cornerstone of the retail provisions in the Stipulation is a two-year, supplier consolidated billing pilot that will provide the industry with data and information on the practicality of supplier consolidated billing implementation in the Ohio electric choice market. This pilot will be open for *any* CRES provider that is “qualified and interested” and will be defined in scope.

⁶ Joint Exhibit 1 at 19-20.

DP&L, Staff, RESA, and IGS will work to determine the general parameters of the pilot,⁷

but several parameters are written into the Stipulation. For example:

- Participating CRES providers will agree to comply with all bill requirement administrative code rules and work with Staff and DP&L on consumer safeguards, including Ohio Administrative Code Chapter 4901:1-21 (without waiver unless recommended by Staff).
- Participating CRES providers agree to provide Staff and DP&L any and all information related to the pilot.
- The supplier consolidated billing pilot will be limited to 2,500 customers per CRES provider for the first six months of active implementation and incrementally increased upon biannual review and approval by Staff, DP&L and participating CRES providers. The incremental increases will not exceed 10,000 customers for any individual CRES provider, except as noted in the Stipulation, and the total customers participating in the pilot shall not exceed 60,000 customers (unless approved by Staff and DP&L).
- Participating CRES providers shall not prohibit a customer from returning to DP&L for consolidated billing.
- Participating CRES providers shall not charge a late payment fee greater than DP&L's tariffed late payment fee.

The Stipulation also addresses implementation costs for the supplier consolidated billing pilot program. Those costs will be shared 50 percent by DP&L and 50 percent by participating CRES providers, with the exception that DP&L will provide a credit of \$150,000 toward the CRES provider portion of these costs (funded through shareholder dollars). DP&L's 50 percent share will be recovered from ratepayers through the Regulatory Compliance Rider ("RCR") but subject to a cap of \$1.5 million. If that cap is exceeded, DP&L must apply for Commission permission to recover amounts above the cap from ratepayers.

⁷ Per the Stipulation, this includes the appropriate implementation timeline in which participating CRES providers may begin billing under the pilot and metrics for studying the results of the pilot program.

(2) Non-Commodity Rule Review – Stipulation IX(1)

Another important part of the Stipulation is the commitment for Staff to ask the Commission to conduct a rule review to establish parameters for non-commodity billing in all electric distribution utility service territories. That request will be made within 60 days after a Commission order approving this Stipulation with or without modifications. If the Commission conducts that rule review and rules are issued, DP&L has agreed in the Stipulation to implement non-commodity billing on customer's utility bills in its service territory. If the Commission fails to act or implement a rule review within 18 months after the Commission issues an order approving this Stipulation with or without modification, DP&L would then submit an application to establish both the non-commodity billing and parameters, and any terms for cost recovery.

No costs are recovered to implement non-commodity billing through the Stipulation. Any costs to implement that billing program would be the subject of another proceeding before the Commission, with the expectation that costs would be recovered in part from CRES providers utilizing non-commodity billing and other third parties and ratepayers equally.

(3) Reconciliation Rider – Bypassable – Stipulation VI(1)(a)

Making DP&L's proposed Reconciliation Rider bypassable is also a competitive market enhancement. Under the rider, DP&L will either recover or credit the net of proceeds from selling OVEC energy and capacity into the PJM marketplace and OVEC costs. Importantly, this rider will be charged on a bypassable basis with an allocation method of 50% demand and 50% energy, with demand allocated on a five Coincident Peak basis and charged on a kilowatt-hour basis. Under this cost recovery structure, shopping customers will not pay for generation they do not receive, and likewise, shopping customers would not receive any credit that becomes available during the period the rider is in place. DP&L shall annually file a report during the

term of the ESP that outlines the efforts made in the prior 12 months to relieve itself of its OVEC obligations.

(4) Review of Allocation of Costs to SSO – Stipulation III(1)(d) and Stipulation VI(1)(f)

What should be a non-controversial provision of the Stipulation is the Signatory Parties' agreement that there will be an evaluation of costs contained in distribution rates that may be necessary to provide SSO service and that such evaluation should take place in DP&L's filed distribution rate case (Case No. 15-1830-EL-AIR). All interested parties can have a discussion and debate (if any) in DP&L's companion distribution case. Also fair and reasonable is the recovery through the Uncollectible Rider of uncollectible expense associated with bypassable SSO charges, with that recovery to be on a bypassable basis. Other uncollectible expenses associated with non-competitive service will continue to be recovered on a non-bypassable basis.

III. THE COMPETITIVE RETAIL MARKET PROVISIONS SHOULD BE ADOPTED AS PART OF DP&L'S ESP

In considering the reasonableness of a stipulation, the Commission has used the following criteria, commonly referred to as the three-prong test:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?⁸

The Competitive Retail Market Provisions satisfy these criteria. Given the record in this proceeding regarding the negotiations, RESA and IGS will focus in this Initial Brief specifically on the second and third prongs of the Commission's criteria.

⁸ See *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm'n*, 68 Ohio St.3d 559 (1994).

A. The Supplier Consolidated Billing Pilot is Reasonable, is in the Public Interest and Promotes Regulatory Policies and Principles.

An important retail market component of the Stipulation is the supplier consolidated billing pilot that is intended to run for two years and will have Staff oversight. As Matthew White of IGS testified, “[m]ore and more customers are demanding value added products and services with their electric commodity. Therefore, it is important to be able to bill for value added products and services in a way that is convenient for customers.”⁹

Supplier consolidated billing provides that billing opportunity and is convenient for customers. Customers will not want separate bills for each individual product offered by CRES providers as the competitive markets continue to develop. For example, Mr. White noted that “if a customer enrolls in a product with a CRES provider that includes the electric commodity, a smart-thermostat, energy monitoring, energy efficiency and demand response, the customer does not want separate bills for each individual component of that product.”¹⁰

Importantly, the development of new products is quickly advancing. Mr. White gave an example of how in Illinois, IGS installs smart thermostats in customers’ homes and IGS is able to directly reduce residential customer usage during peak-times, providing customers with a credit on their bill.¹¹ Mr. White also noted that in Texas where SmartGrid has been deployed, products include time-of-use pricing, residential demand response, residential peak load control and distributed generation using two-way metering.¹² The supplier consolidated billing pilot offered in the Stipulation will allow DP&L, Staff and CRES providers the opportunity to work with a subset of customers to determine the best way to fully implement supplier consolidated billing which will lead to the development of new and innovative products.

⁹ Direct Testimony of Matthew White, RESA Ex. 1 at 8.

¹⁰ Id.

¹¹ Tr. Vol. II at 430-431.

¹² Tr. Vol. II at 426.

OCC can also rest assured that consumer protections are in place. First, per Section IX(2)(f) of the Stipulation, no more than \$1.5 million in costs of the pilot can be charged to customers without further Commission approval. CRES Providers are to pay one-half of the costs subject to a credit from DP&L's shareholders with DP&L paying the remaining 50%, up to a cap of \$1.5 million. Any cost recovery by DP&L for amounts above the \$1.5 million must be approved by the Commission, providing a limit on how much customers will pay for the pilot absent further Commission review.

Second, Staff will be involved in determining the parameters of the program with RESA, DP&L and IGS. Protective parameters also already exist in the Stipulation and include:¹³

- Participating CRES providers will agree to comply with all bill requirement rules, and work with Staff and DP&L on consumer safeguards;
- Participating CRES providers will provide Staff and DP&L with any and all information related to the pilot;
- The program will be capped at 60,000 customers unless otherwise approved by Staff and DP&L;
- Participating CRES providers must be interested and qualified to participate in the pilot;
- Participating CRES providers cannot prohibit customers from leaving the pilot; and
- Participating CRES providers cannot charge late payment fees greater than DP&L's tariffed late payment fee.

The framework of the DP&L supplier consolidated billing pilot reflects a well thought-out outline that has been agreed upon by DP&L, Staff, the City of Dayton, DPL Inc., RESA, the Edgemont Neighborhood Coalition, IGS, People Working Cooperatively, the Ohio Energy Group, the Kroger Company, Ohio Partners for Affordable Energy and the Ohio Hospital

¹³ See Section IX(2) of the Stipulation, parts 2, 2a, 2b, 2e, 2h and 2i.

Association. As well Enernoc, Inc., the Industrial Energy Users-Ohio, Honda of America Mfg. Inc. and the Ohio Manufacturer's Association Energy Group do not oppose the pilot program.

This support and non-opposition should be considered by the Commission along with Mr. White's testimony to support a finding that "[a]s DP&L rolls out smart grid and supplier products continue to evolve, the need for supplier consolidated billing will only increase. Therefore in order for CRES providers to offer value added products and services that customers prefer, it is important to implement supplier consolidated billing and that can be started through a pilot program."¹⁴

Moreover, the supplier consolidated billing pilot program does not violate any regulatory policy or principle; rather, it promotes the state policy contained in R.C. 4928.02. The state policy is undeniably procompetitive—it favors innovation and retail electric choice. The supplier consolidated billing pilot will enhance the competitive market by enabling the delivery of innovative products and services.

B. A State-Wide Rule Review with Subsequent Implementation of Non-Commodity Billing in DP&L's Territory is Reasonable, is in the Public Interest, and Promotes Regulatory Policies and Principles.

Just as important as supplier consolidated billing is allowing for non-commodity charges on utility bills. The adoption of non-commodity billing will lead to a more robust, competitive retail electric market which will benefit customers regardless of whether they choose a particular non-commodity product or not.¹⁵ As Mr. White noted, "[t]he Commission should not only authorize DP&L to implement supplier consolidated billing but *also* authorize steps leading to a rulemaking to establish rules so that CRES providers may utilize the bill-ready function to bill for a more diverse range of products. This will allow a CRES provider to utilize the billing

¹⁴ Direct Testimony of Matthew White, RESA Ex. 1 at 8.

¹⁵ Tr. Vol. II at 443.

model best suited for its business model.”¹⁶ It would also allow CRES providers to use utility consolidated billing during the time it takes for DP&L to build-out its systems to implement supplier-consolidated billing.¹⁷

There is no reason to delay conducting a rule proceeding on non-commodity billing especially as non-commodity billing exists today in the Vectren Energy Delivery of Ohio and Columbia Gas service territories.¹⁸ Moreover, although the electric utilities currently do not permit CRES providers to place non-commodity charges on electric utility bills,¹⁹ electric utilities already allow select third-party providers to bill non-commodity products through the utility bills. For example, AEP Ohio has selected one third-party company, called HomeServe, to bill home warranty products.²⁰ Likewise, Duke Energy Ohio and FirstEnergy only allow certain select third-party companies to place non-commodity charges on their utility bill.²¹

Importantly, RESA and IGS are not asking this Commission to immediately order DP&L to implement non-commodity billing. Instead, RESA and IGS ask the Commission through the Stipulation to conduct a rule review process that would result in parameters for non-commodity billing for the electric industry. This would create consistent rules throughout Ohio for non-commodity charges on electric utility bills. It also would create a new avenue for CRES providers to provide new and innovative products to customers without the hassle of multiple bills.

As Mr. White testified, implementing non-commodity billing along with supplier consolidated billing will lead to the “ability to offer a more diverse range of products and

¹⁶ Direct Testimony of Matthew White, RESA Ex. 1 at 10.

¹⁷ Id.

¹⁸ Id. at 11.

¹⁹ Tr. Vol. II at 446.

²⁰ Tr. Vol II at 445.

²¹ Direct Testimony of Matthew White, RESA Ex. 1 at 11.

services that help customers use energy more efficiently.”²² The Commission should move forward with a non-commodity billing rule review and implementation of that program after the rule review is completed.

Finally, like supplier consolidated billing, non-commodity billing has the potential to enable the deployment of additional products and services that will enhance the retail electric market. Therefore, this provision promotes state policy.

C. The Reconciliation Rider Should be a Bypassable Charge.

Another important retail component and provision important to RESA and IGS is the commitment by DP&L to only collect or credit net proceeds of its OVEC entitlement on a bypassable basis. DP&L has proposed a Reconciliation Rider as a way to recover the net of proceeds from selling OVEC energy and capacity into the PJM marketplace and OVEC costs. RESA and IGS have agreed to not oppose it as part of the overall Stipulation package.

Making the Reconciliation Rider bypassable is important to RESA and IGS. As Mr. White testified, “[b]y setting OVEC cost recovery as a bypassable charge, it preserves the right of shopping customers to select their choice of competitive generation supply.”²³ He also noted that “[m]aking any cost recovery related to DP&L’s OVEC entitlement bypassable avoids an anticompetitive subsidy that would result from collecting generation related costs through nonbypassable charges imposed on shopping customers.”²⁴

The parties to this Stipulation have agreed that the Reconciliation Rider can be bypassable, including the Edgemont Neighborhood Coalition, People Working Cooperatively, and the Ohio Partners for Affordable Energy. This means that customers that shop will only purchase their generation from CRES providers who in turn purchase supply from the wholesale

²² Tr. Vol. II at 451.

²³ Direct Testimony of Matthew White, RESA Ex. 1 at 12.

²⁴ Id.

markets. Shopping customers will not be forced to also pay for DP&L's generation supply from OVEC, and will only pay for the generation that they use, avoiding a violation of state policy. Making the Reconciliation Rider bypassable is reasonable, was negotiated and is in the public interest.

D. Committing to Review Distribution Charges that Should be Allocated to SSO Services in DP&L's Distribution Case is Reasonable, is in the Public Interest, and Promotes Regulatory Policies and Principles.

An important principle in developing the competitive retail market is that customers must be engaged in the market in order to be more willing to adopt value-added products and services that enable them to use and consume energy more efficiently.²⁵ One way to engage customers is to ensure that costs are properly allocated to the SSO and avoiding an SSO product that is subsidized or otherwise inappropriately advantaged in the market.²⁶

As Mr. White testified at the hearing, DP&L's SSO price today is a pass-through of wholesale capacity and electric costs.²⁷ However, DP&L incurs a number of other actual costs required to support SSO service, but those costs are not reflected in the SSO price; instead they are recovered through DP&L's distribution rates.²⁸ These costs include:²⁹

- (1) Call center infrastructure and employees to maintain appropriate customer service for SSO customers;
- (2) Outside and inside legal, regulatory, and compliance personnel to comply with the regulatory rule requirements for the SSO;
- (3) IT employees, infrastructure, and software;
- (4) Office space for employees;
- (5) Administrative and human resources staff to support the employees;

²⁵ Direct Testimony of Matthew White, RESA Ex. 1 at 3.

²⁶ Id.

²⁷ Id. at 4.

²⁸ Direct Testimony of Matthew White, RESA Ex. 1 at 4.

²⁹ Id. at 5-6.

- (6) Office supplies;
- (7) Accounting and auditing services;
- (8) Printing and postage to communicate with customers;
- (9) Uncollectible expense; and
- (10) The regulatory assessments for the PUCO and the Ohio Consumers' Counsel that are based on SSO generation revenue, but are recovered through distribution rates.

CRES providers incur all of the above costs too when serving shopping customers. As

Mr. White testified:³⁰

For instance, CRES providers incur legal and compliance expenses to meet a variety of regulatory requirements to offer a product in the market. CRES providers must pay the PUCO and OCC assessments based on their generation revenues. CRES providers incur uncollectible expense and collection costs. CRES providers must maintain a call center, and provide other account management services to customers. CRES providers have overhead expense including IT and office space. All of these expenses are required to make a retail product available in the market. Moreover, CRES providers must pay switching fees each time a customer switches, although no fees are assessed to initially activate default service or revert to default service. CRES providers must reflect these costs directly in the prices they charge customers.

Conversely, SSO service incurs these similar costs, but the utility's costs are being recovered from all distribution customers, including shopping customers.³¹ With the SSO price being the product that all products compete against, it results in a subsidized SSO product that as of today, has by far the largest market share for the residential customer class in DP&L's service territory (52.8% as of 4th quarter 2016).³²

Properly allocating costs SSO-related costs to that product and service will ensure that the SSO price is a fair comparison between the SSO product and all other products and promote the state policy of promoting unbundled, comparable rates. Consequently, it will result in more

³⁰ Id. at 6-7.

³¹ Id. at 7.

³² Direct Testimony of Matthew White, RESA Ex. 1 at 7.

consumers being engaged in the competitive market.³³ In other states such as Pennsylvania, Maryland, Texas, New York and Illinois, a number of non-commodity costs required to support default service are charged to default service.³⁴ Those costs include costs for IT, legal fees, infrastructure, customer service, cost of working capital and employee time.³⁵ Like these other states, the Commission should start evaluating a proper allocation of costs to the SSO product. A first step is the allocation of uncollectible expense related to SSO charges for recovery through the Uncollectible Expense Rider on a bypassable basis. A second step, as noted in Section III(1)(d) of the Stipulation is to use DP&L's filed distribution rate case (Case No. 15-1830-EL-AIR) to evaluate costs contained in distribution rates that may be properly allocated to the SSO product. Both of these steps are fair and reasonable, and should not be controversial.

IV. CONCLUSION

All of the Competitive Retail Market Provisions were negotiated by the parties to the Stipulation and all of the provisions will help lead to the development of innovative products to the benefit of consumers. Moreover, the provisions are not wholesale changes to the competitive market. Rather, the provisions are steps that will lead to changes and advancements in the competitive market. The Stipulation provides for a supplier consolidated billing pilot, a commitment to request a state-wide rule review on non-commodity billing with possible implementation after that rule review, a commitment to charge OVEC costs to only those customers taking generation from the utility and a commitment to use a separate proceeding to determine costs that properly belong in SSO rates in addition to recovering SSO uncollectible expense on a bypassable basis. These are reasonable provisions of the Stipulation that were negotiated, are in the public interest and do not violate any policy or regulation of the

³³ Id. at 4.

³⁴ Id.

³⁵ Id.

Commission. The Competitive Retail Market Provisions should be adopted and approved as part of this Stipulation.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that this document is also being served electronically on the following parties on this 5th day of May 2017.

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