**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of The Dayton Power and Light Company for Authority to Amend its Corporate Separation Plan. | )))) | Case No. 13-2442-EL-UNC |

**REPLY COMMENTS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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# I. INTRODUCTION

On December 30, 2013, Dayton Power & Light Company (“DP&L” or “Utility”) filed its Fourth Amended Corporate Separation Plan (“Fourth Amended Plan”). A number of parties filed comments, along with the Office of the Ohio Consumers’ Counsel (“OCC”). Limited comments were filed by Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”), Industrial Energy Users-Ohio (“IEU-Ohio), and the Staff of the Public Utilities Commission of Ohio (“PUCO Staff”).

Direct Energy commented that employees shared by DP&L and an affiliate should not be permitted to participate in the drafting of an electric security plan (“ESP”), market rate offer (“MRO”), or tariff filing.[[1]](#footnote-2) Direct Energy also recommended that DP&L’s Cost Allocation Manual (“CAM”) include a log, regularly updated, to reflect any employee who has previously worked on a DP&L ESP, MRO, or tariff filing and later becomes an employee of a CRES provider affiliate or broker.[[2]](#footnote-3)

Both IEU-Ohio and PUCO Staff, like OCC, point out the shortcomings of DP&L’s Application, in that DP&L has not filed its AES US Services (DP&L’s new affiliated service corporation) Cost Alignment and Allocation Manual (“CAAM”) for review. PUCO Staff states that “without the detailed AES US CAAM itself, and thus being unable to review its implementation, Staff recommends that the Commission withhold its approval until the manual has been filed and Staff has conducted a compliance review,” before the CAAM is implemented.[[3]](#footnote-4) PUCO Staff also proposes some limited textual changes to the Fourth Amended Plan. IEU-Ohio also comments on the absence of the AES US CAAM.[[4]](#footnote-5) Finally, both PUCO Staff and IEU-Ohio recommend that DP&L’s Fourth Amended Plan be further amended at the time DP&L files the specific details of its plan.

OCC now files these limited Reply Comments addressing Direct Energy, IEU-Ohio and PUCO Staff Comments.

# II. COMMENTS

**A. The PUCO Should Require Submission and Review of the AES US Services Cost Alignment and Allocation Manual Prior to Approval of DP&L’s Application.**

As discussed in OCC’s Comments, the primary objective of corporate separation plans is to prevent unfair competitive advantage and the abuse of market power.[[5]](#footnote-6) The ability of a utility or its CRES affiliate(s) to gain an unfair competitive advantage or to abuse market power could harm customers by producing higher distribution rates or reducing competition for generation supply. Since DP&L’s new affiliated services corporation, AES US Services, may provide services to as many as 13 affiliates, including DP&L and DPL Energy Resources, Inc. (“DPLER”),[[6]](#footnote-7) it is essential that AES US Services’ Cost Alignment and Allocation Manual be reviewed.

If the Cost Alignment and Allocation Manual does not properly allocate costs between DP&L affiliates, then DP&L’s CRES affiliates may gain an unfair competitive advantage and be improperly subsidized by regulated services. The result is that regulated utility customers could subsidize competitive services, paying higher distribution rates. They could also pay higher generation rates because subsidization would result in a less competitive retail generation market. That is why it is so important to review the CAAM. OCC agrees with IEU-Ohio and PUCO Staff that a thorough review of the manual is necessary prior to PUCO approval.

Further, the PUCO Staff should exercise its right to audit the DP&L CAM and AES US Services CAAM to ensure compliance with Ohio Adm. Code 4901:1-37-08, which sets forth the requirements for CAMs. Finally, if parties, including the PUCO Staff, identify provisions of the CAM or CAAM that appear to be deficient or may allow cross-subsidization to occur, then an evidentiary hearing should be ordered, with opportunities for all parties to present testimony.

**B. The PUCO Should Ensure That Generation Sales to DP&L’s Affiliate, DPLER, Comply with Statutory Requirements.**

Additionally, OCC agrees with IEU-Ohio that the PUCO should specifically review the contract between DP&L and DPLER, to ensure that it complies with R.C. 4928.17(A)(3).[[7]](#footnote-8) That section of the Revised Code requires that generation sales to an affiliate be at fully loaded embedded cost.[[8]](#footnote-9) If the PUCO determines that such sales have been at less than fully loaded embedded cost, the Commission should take action to remedy any such violations by requiring adjustment of prices paid by DP&L’s CRES affiliates for power purchased from DP&L. It is important that DP&L’s affiliates pay fully loaded embedded cost to ensure that SSO customers are not harmed by subsidizing CRES affiliates and so CRES affiliates do not gain an unfair competitive advantage, impacting on rates available in the competitive generation market.

## C. The PUCO Should Adopt a Recommendation Made by Direct Energy.

OCC also concurs with Direct Energy’s recommendations that shared employees not participate in DP&L’s ESP or tariff filings and that shared employee logs prepared in accordance with DP&L’s CAM or AES US Services CAAM reflect employees who have worked on such filings and subsequently gone to work for a CRES affiliate.

**III. CONCLUSION**

 The PUCO should act to protect consumers. In this regard, OCC agrees with IEU-Ohio and PUCO Staff that the PUCO should require DP&L to submit the AES US Services’ Cost Alignment and Allocation Manual for review prior to approval. Further, the PUCO should ensure that generation sales to DP&L’s affiliate, DPLER, are made at fully loaded embedded costs as required under R.C. 4928.17(A)(3).

Respectfully submitted,

 BRUCE J. WESTON

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 */s/ Edmund “Tad” Berger*

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of *Comments* was served on the persons stated below via electronic transmission to the persons listed below, this 19th day of February, 2014.

 */s/ Edmund “Tad” Berger*

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**SERVICE LIST**

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1. Direct Energy Comments at 1. [↑](#footnote-ref-2)
2. Direct Energy Comments at 2. [↑](#footnote-ref-3)
3. Staff Comments at 3-.4 [↑](#footnote-ref-4)
4. IEU Ohio Comments at 4-5. [↑](#footnote-ref-5)
5. R.C. 4928.17(A)(2) and (A)(3). [↑](#footnote-ref-6)
6. DP&L Application at 12. [↑](#footnote-ref-7)
7. IEU Ohio Comments at 3-4. [↑](#footnote-ref-8)
8. *Id.* [↑](#footnote-ref-9)