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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

2007 MAY 31 PM 3:01

Docket No. EC07-51-000

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DPL Energy, LLC

Docket No. EC07-51-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued March 12, 2007)

On January 23, 2006, DPL Energy, LLC (DPLE or Applicant) filed an application pursuant to section 203 of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities associated with the sale of the Greenville Generating Station (Facility) to Buckeye Power, Inc. (Buckeye). The jurisdictional facilities involved in the proposed transaction are generation step-up transformers and associated interconnection lines.

DPLE is a limited liability company engaged in the generation and sale of electric power at wholesale and an exempt wholesale generator and a member of PJM Interconnection, LLC (PJM). The Facility, located in Darke County, Ohio, includes four simple-cycle natural gas combustion turbine-generators with a nameplate capacity of 236 megawatts (MWs). DPLE has authority to make wholesale sales of power at market-based rates. DPLE sells all of its electric output to an affiliate, The Dayton Power and Light Company. DPLE owns a 50 percent undivided interest in a 42-mile gas delivery line situated entirely in Ohio extending from an interstate pipeline to the Facility.²

Buckeye is a non-profit Ohio corporation and a member-owned generation and transmission cooperative that produces, procures, and provides at wholesale all of the electric capacity and energy required by its 25 electric distribution cooperative members' Ohio operations. Neither Buckeye nor any of its members is a public utility under the FPA. Buckeye owns two coal-fired generating units with a capacity rating of 1,265 MWs located in Ohio. On behalf of its members, Buckeye has an entitlement to approximately 55 MWs of preference power and energy from the New York Power Authority. Buckeye

¹ 16 U.S.C. § 824b (2000), as amended by Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594 (2005).

² The other 50 percent interest is owned by Vectren, Inc., an unaffiliated company that is a local gas distribution company subject to rate regulation by the Public Utilities Commission of Ohio.

also has rights to electric generation and other services from American Electric Power Service Corporation.

Under the proposed transaction, DPLE will transfer the Facility to Buckeye. The Facility's generation step-up transformers and a short feed to a disconnect switch necessary to interconnect with transmission facilities owed by the local utility company will also be transferred along with the facility. Contracts for capacity in interstate gas pipelines, computer software licenses used in operating the Facility, and easement rights and obligations associated with bringing natural gas and local utility services into the Facility and delivering power out of the Facility to the interstate transmission system will also be transferred. DPLE will also transfer the 50 percent interest that it owns in a gas line that extends from a Panhandle gas pipeline to the Facility.

Applicant states that the proposed transaction is consistent with the public interest and will not adversely affect competition, rates, or regulation and will not result in cross-subsidization. With respect to competition, Applicant states that no horizontal market power concerns are raised by the transaction. Post transaction, Buckeye will continue to own or control a *de minimis* amount of capacity. With respect to capacity markets, Buckeye currently owns or controls only 2,129 MWs of capacity within PJM and 1,920 MWs of net operable summer capacity. With the acquisition of the Facility, it will own or control a total of 2,365 MWs and 2,112 MWs (net operable summer capacity). This is less than 1.3% of the 167,247 MWs of net operable summer capacity (2007) within PJM as a whole. Further, because Applicant and Applicant's affiliate Dayton Power, currently own or control approximately 5,144 MWs of capacity within or deliverable into PJM, this transaction will slightly reduce market concentration.

Applicant argues that no vertical market power concerns arise either. Buckeye will not own or control fuel supplies or fuel delivery systems in PJM except to the limited degree necessary to fuel its generating facilities. Further, Applicant states that Buckeye does not control new generating plant sites within PJM to an extent that would allow it to raise barriers to entry by competing generators. Other than incidental interconnection facilities, neither DPLE nor Buckeye owns any transmission facilities.

Applicant states that the transaction will have no adverse affect on rates. Buckeye is a non-profit cooperative that sells power to its 25 members. Neither Applicant nor Buckeye operates any transmission facilities subject to an open-access tariff requirement.

Applicant states that the transaction will have no affect on regulation. DPLE will continue to be subject to the Commission's requirements with respect to its remaining generation and any wholesale sales of power it may make. As a generation owner, Buckeye will continue to be subject to Commission regulations regarding reliability. Applicant states that neither it nor Buckeye is subject to state utility commission rate regulation.

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Applicant further states that the proposed transaction will not result in, at the time of the transaction or in the future, cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicant states that the proposed transaction will not result in any: (1) transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) new issuances of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

This filing was noticed on January 30, 2007, with comments, protests or interventions due on or before February 13, 2007. None were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

After consideration, it is concluded that the proposed transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may become before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;

- (5) If the transaction results in changes in the status or the upstream ownership of an Applicant's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the transaction;
- (7) Applicant shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.



Steve P. Rodgers
Director
Division of Tariffs and Market Development - West