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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of The AES)
Corporation, Dolphin Sub, Inc., DPL Inc.)
and The Dayton Power and Light)
Company for Consent and Approval for a)
Change of Control of The Dayton Power and)
Light Company)

Case No. 11-3002-EL-MER

**COMMENTS
AND
RECOMMENDATIONS**
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

July 18, 2011

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INTRODUCTION

On May 18, 2011, The AES Corporation (AES), and its subsidiary, Dolphin Sub, Inc. (Merger Sub), along with DPL Inc., and its subsidiary, The Dayton Power and Light Company (DP&L), jointly filed an application for the Commission's approval of a merger of Merger Sub and DPL Inc.¹

BACKGROUND

According to the application, the change of control transaction will result in the acquisition of DPL Inc. as a wholly owned subsidiary of AES. The Applicants state that Merger Sub, a wholly owned subsidiary of AES, formed for the purpose of completing the merger, would merge with and into DPL Inc. As a result, Merger Sub would cease to

¹ On May 26, 2011, DPL Inc., DP&L, AES, and Merger Sub filed a joint motion to establish deadlines for interested persons to file initial and reply comments, and to hold motions to intervene in abeyance.

exist, and DPL Inc. would survive as a wholly owned subsidiary of AES. Following the completion of the transaction, according to the application, AES shall own all of DPL Inc.'s outstanding shares of common stock. As consideration for the proposed merger, DPL Inc.'s current shareholders would receive \$30 in exchange for each DPL Inc. share. DPL Inc.'s shares would no longer be publicly traded.

Section 4905.402(B), Revised Code, states in pertinent part:

No person shall acquire control, directly or indirectly, of . . . a domestic electric utility or a holding company controlling a domestic electric utility unless that person obtains the prior approval of the public utilities commission under this section. To obtain approval the person shall file an application with the commission demonstrating that the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge. The application shall contain such information as the commission may require. If the commission considers a hearing necessary, it may fix a time and place for hearing. If, after review of the application and after any necessary hearing, the commission is satisfied that approval of the application *will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge*, the commission shall approve the application and make such order as it considers proper. If the commission fails to issue an order within thirty days of the filing of the application, or within twenty days of the conclusion of a hearing, if one is held, the application shall be deemed approved by operation of law. [Emphasis added].

The proposed transaction will result in a change in the control of a holding company controlling a domestic electric utility. Therefore, the Commission is statutorily required to determine whether or not approval of the application will promote public convenience and result in the provision of adequate service for a reasonable rate. In order to begin the process of determining the nature and scope of our review of this matter, the

Commission, in its July 1, 2011 Entry, found that it is appropriate to allow the filing of comments by interested persons.

STAFF COMMENTS

Staff, with one additional element, agrees with DP&L's assessment of the key elements and benefits to the merger. However, Staff believes it is necessary to clarify how these benefits can be achieved and, in some cases, extended to ensure equality to all stakeholders. Staff also believes that the additional element of sharing or targeted investment of savings generated by the merger should be added to the proposed plan.

For guidance, Staff reviewed the Duke-Cinergy merger (Case No. 05-732-EL-MER) stipulation, the last electric merger the Commission approved. Staff also reviewed other pertinent documents and agreements, including the National Association of Regulatory Utility Commissioner's (NARUC), *Ring Fencing Mechanisms for Insulating a Utility in a Holding Company System* and agreements related to the First Energy-Alleghany merger, among others.

A. DP&L's Proposed Elements

For simplicity, Staff will list each element proposed by the Applicants, and then respond as to how each element can be clarified or extended to ensure equality to all stakeholders.

1. AES is committed to preserving DP&L's local decision making authority, including its commitment to maintain DP&L's operating headquarters in Dayton, Ohio and DP&L's name, for at least two years following the merger.

Staff continues to believe that the five-year timeframe as agreed to in the Duke-Cinergy merger is the more appropriate timeframe for maintaining DP&L's operating headquarters in Dayton, Ohio and DP&L's name.² Furthermore, Staff believes the bifurcated compensation provision, which pays more money to DP&L corporate executives if the corporate headquarters is moved out of Dayton, creates a perverse incentive to move the headquarters from Dayton. Therefore, Staff also recommends that the bifurcated compensation provision be removed from the agreement.

2. Customers will continue to receive the same high-quality service at reasonable rates that they received before the merger. DP&L's rates are currently fixed through 2012 and were approved by the Commission. Post 2012 rates will also be subject to approval by the Commission.

Staff believes no merger related costs (long or short term) should be recovered through regulated rates and recommends the Commission include this requirement in any approval of the merger.

3. AES is committed to meeting customers' energy demands, and it contributes to communities' capability to grow by providing reliable and responsible electric power. Customers will benefit from the extensive technical expertise and resources of the AES group. The merger will allow DP&L to build on what has made it a reliable, efficient utility while receiving the benefits of being a part of a larger global company. AES owns Indianapolis Power & Light Company ("IPL"), and IPL's close proximity to DP&L will allow each company to provide better emergency response services.

Staff believes that the recent adoption of the DP&L's Consumer Average Interruption Duration Index (CAIDI) and System Average Interruption Frequency Index (SAIFI) performance targets and various Electric Service and Safety Standards (ESSS)

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Cinergy-Duke Merger Settlement Document, Attachment 1.

rule requirements provide adequate provision to ensure that DP&L's electric service does not deteriorate. Therefore, Staff has no additional recommendations at this time with respect to the provision of reliable electric service.

4. The merger will not result in further consolidation among Ohio utilities.

Staff concurs that this merger has little bearing on any future merger activity among Ohio utilities.

5. Following the merger through December 31, 2013, AES has committed to cause DPL Inc. and DP&L not to implement any involuntary workforce reductions that would result in DPL Inc. and DP&L employing substantially fewer individuals in the aggregate than are employed immediately before the merger.

The Duke-Cinergy merger called for various provisions such as minimum income tax amounts paid by the merged company to the City of Cincinnati and minimums on office space occupied for up to three years. Similar to the Duke-Cinergy merger, Staff believes that three years is a more appropriate timeframe for workforce commitments. Staff also suggests defining *substantially fewer* as less than ten percent.

6. For at least two years following the merger, DP&L will continue to provide corporate contributions and community support in the Dayton, Ohio area at levels substantially consistent with its current levels of charitable contributions and community support. In addition, because The DP&L Foundation is an independent entity, it will not be affected by the merger. It will continue their communities focus, as it has for over 25 years.

Staff believes this commitment is adequate.

7. Upon consummation of the merger, DP&L's credit rating will remain investment grade.

Staff believes it is necessary to incorporate additional ring-fencing provisions. First, Staff recommends that the Commission include a requirement that DP&L maintain a capital structure of at least 45 percent equity. In addition, Staff recommends that DP&L should maintain a retained earnings to total utility plant ratio of at least ten percent. Staff believes these additional measures should allow DP&L to remain viable even if its affiliated companies become financially unstable.

B. Staff's Additional Element

Staff believes that an additional element or benefit should be added with respect to sharing or targeted investment of savings generated by the merger. In the Cinergy-Duke merger the Applicants agreed to a \$35,785,700 rate credit. While this merger involved larger entities with high costs saving projections the Applicants have also stated in public forums that substantial cost savings are projected. AES estimates a \$0.05-\$0.07 anticipated earning per share accretion beginning in the first year after the close of the merger, with operational savings expected to be achievable.³ Staff believes that in this case at least a portion of the shared savings should be directed to the implementation of a new billing system. Staff expressed its concerns with the current billing system in its Comments in DP&L's previous ESP Case wherein the Staff said, "[w]e recommend the Company immediately commence implementing a new billing system fully capable of handling time differentiated rates and other capabilities as may be needed to exploit the

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The AES Corporation acquisition of DPL Inc. held on April 20, 2011.

full value of an AMI deployment and related programs, and other billing requirements,”⁴

The Staff recommends that this billing system be funded through merger savings, the associated costs would be non-recoverable from DP&L customers. Staff believes the investment in the billing system will have the best long-term benefit for consumers.

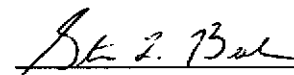
SUMMARY

Staff believes with its enhancements to the Applicants’ listed elements, as well as the additional shared savings element proposed by Staff, that the application can meet the criterion of promoting public convenience and results in the provision of adequate service for a reasonable rate.

Respectfully submitted,

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief



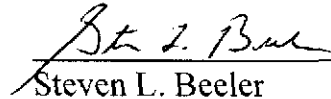
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In the Matter of the Application of The Dayton Power and Light Company for a Standard Service Offer, Case No. 08-1094-EL-SSO, (Staff Comments, December 15, 2009) at page 7.

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Comments and Recommendations, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered; and/or sent via electronic mail to the following parties of record, this 18th day of July, 2011.


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