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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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 OF FIRSTENERGY SOLUTIONS CORP.

I. INTRODUCTION

Pursuant to the Commission's Entry of June 1, 2011 (the "Entry"), FirstEnergy Solutions Corp. ("FES") submits its comments to 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 (the "Application") filed on May 18, 2011.

The change in control at issue in the Application, if approved, could have a significant impact on the retail market in The Dayton Power and Light Company's ("DP&L") service territory. In particular, the proposed change in control could impact significantly Competitive Retail Electric Service ("CRES") providers[1] within DP&L's service territory, including FES. Accordingly, FES offers the following comments to highlight issues with DP&L's retail customer choice program as well as the potential impact on competition and, ultimately, on consumers that approval of the Application may have on the retail market within DP&L's service territory. FES respectfully requests that the Commission address these issues within the course of the Application proceedings.

[1] A CRES provider is a supplier of competitive generation and transmission related services to customers in Ohio.

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II. BACKGROUND

The Application seeks Commission approval of the merger of DPL Inc. ("DPL"), the parent corporation of DP&L, with AES, through which AES will ultimately acquire all shares of DPL. The Application provides that, post-merger, DP&L will "continue to exist as an Ohio electric utility, and it will continue to provide reliable service at reasonable rates to its customers." *See* Application, p. 3. Further, DPL Energy Resources, Inc. ("DPLER"), DP&L's CRES service provider affiliate (and a direct competitor of FES), will be acquired by AES if the Commission approves this merger. *Id.*, pp. 4-5.

In the Entry, the Commission requested comments regarding the scope of its merger review from all interested persons:

> [it] is necessary to investigate the proposed transaction more than is possible by merely reviewing the filings by the joint applicant. ... In order to begin the process of determining the nature and scope of our review of this matter, the Commission finds that it is appropriate to allow the filing of comments by interested persons. ... The comments should specifically identify and discuss the issues which the Commission should consider.

Entry, ¶¶ 7, 8. Accordingly, FES' comments are intended to assist the Commission with its review of the Application with particular respect to assessing whether the Application will "promote public convenience and result in the provision of adequate service for a reasonable rate." *Id.*, ¶ 6. *See also* R.C. § 4905.402. To meet this standard, the merger must do more than preserve the status quo. In fact, to promote the public convenience, as required by R.C. § 4905.402(B), the proposed merger must advance the Ohio public's interest. FES submits that the comments set forth below will serve this intended purpose.

III. COMMENTS

As stated above, the merger proposed in the Application may impact significantly the retail market in DP&L's service territory. Accordingly, FES provides the following comments that are designed to illustrate specific current practices of DP&L which should be amended in order to promote competition in the service territory of DP&L, consistent with the state policy of Ohio. Taking these and such other measures as the Commission deems appropriate and necessary in order to determine, as it must, that this merger will "promote public convenience", will address the concerns of CRES providers seeking to provide the customers of DP&L with savings and the benefits of the competitive market and provide a means for the Commission to determine that the merger will inure to the ultimate benefit of electricity consumers. While FES provides very specific examples below, any issues which could negatively impact competition in DP&L's service territory, and thereby inhibit DP&L's customers from fully realizing the benefits of competition, should be considered and remedied.

A. Barriers To Competition Within The DP&L Territory Should Be Eliminated.

DP&L's customer choice program erects unnecessary barriers to competition that, due to the fees involved, hinder competition. Certain of these fees impose an undue burden on consumers. This Application affords the Commission the opportunity to visit and modify these practices of DP&L in order to ensure that the competitive market is not being hindered and that the merger will indeed "promote the public interest". Examples of these inequitable fees and other provisions of DP&L's customer choice follow:

1. Customer information issues.

Unlike other Ohio utilities, DP&L does not provide CRES providers with the capacity and transmission peak load contribution data necessary to properly determine the cost to supply a customer under a retail contract in an easily-accessible format. For instance, AEP provides capacity and transmission data to CRES providers via an electronic data interchange ("EDI"), which automatically transfers key pieces of customer information between AEP and the CRES providers serving customers in its territory. The FirstEnergy Ohio Utilities and Duke Energy Ohio, Inc. provide capacity and transmission data to CRES providers via their customer eligibility file. DP&L, on the other hand, does not automatically provide such information to CRES providers. As a result, CRES providers are required to send email follow-ups to supplier support which adds extra time to the process and may result in customers switching at a later date. Since a customer must enroll with a CRES provider at least twelve days before the customer's next meter read, a delay could force a customer to take service from DP&L for an extra month, which results in less savings for customers and is an unnecessary hindrance to the competitive retail market in Ohio.

2. Customer metering issues.

DP&L's cost of an interval meter, $905, is excessive relative to other Ohio electric distribution utilities ("EDUs"). Specifically, Duke's cost is $446, FirstEnergy utilities' cost is $550, and AEP Ohio's cost is $341 - $497. DP&L's interval meter expense is cost prohibitive for certain groups of customers, thereby potentially limiting the number of customers that shop for electric service. Should the Application be approved, the Commission should direct DP&L to bring its meter cost in line with other Ohio utilities.

Further, DP&L's interval meter threshold is lower than the majority of Ohio utilities. Specifically, all DP&L customers that exceed 100 kW must have an interval meter when shopping. However, there is a 200 kW threshold in the service territories of Columbus Southern, Ohio Power, Ohio Edison, Toledo Edison and CEI. Should the Application be approved, the interval meter threshold should be remedied as, when combined with the meter cost, it further limits the number of customers eligible to reduce their costs through customer choice. In addition, raising the threshold level to 200 kW will remove a financial penalty for the group of customers between 100 and 200 kW, which will promote competition by allowing them to shop for the best available electricity rates.

Further, DP&L requires customers in its service territory, while shopping with a CRES provider, to install an interval meter if they exceed the 100 kW threshold at any point while receiving generation service from a CRES provider. A retail customer whose peak demand rises above 100 kW at any time after it has contracted with a CRES provider is required by DP&L to install an interval meter at the customer's cost. This is inequitable as it changes the economics mid-stream for customers that have signed retail contracts with a CRES provider by reducing, or completely eliminating, the savings that a customer may realize from shopping.

When an interval meter request form is required (due to the customer being over the 100 kW threshold), a CRES provider cannot enroll the customer for 5 business days. Any attempt to enroll a customer during the 5-business-day period results in a rejected enrollment. In other Ohio EDU service territories where a similar form is required, the processing window is only 24 hours. DP&L's enrollment period simply has no legitimate basis. As a result, post-merger, DP&L should adhere to the same schedule utilized by other utilities.

Further, while FES has received notice of customers that require interval meters, *i.e.*, that have exceeded the 100 kW threshold, FES has ***never*** received notice of a customer that has dropped ***below*** the threshold, thereby no longer requiring a meter. If this practice continues post-merger, DP&L should be required to refund the meter fee to any customer that drops below 100 kW.

3. Billing issues.

Unlike Duke and the FirstEnergy Ohio Utilities, DP&L does not offer percentage off billing in its territory. Duke and the FirstEnergy Ohio Utilities offer percentage off price-to-compare ("PTC") rate-ready calculations on billing in their service territories. In contrast, a

CRES provider in DP&L's service territory is unable to serve a customer on a percent off PTC basis. This limits the types of discounts and pricing options that CRES providers are able to offer DP&L's customers, and directly conflicts with Ohio's policy of ensuring that customers are able to choose the electricity supplier that provides them with the "price, terms, conditions, and quality options ... to meet their [] needs."[2] Ironically, the only supplier in DP&L's territory able to offer percentage off billing is DP&L's competitive affiliate.[3] DP&L should be required to create percentage off billing capability in its system so as to provide a level playing field among CRES providers in the territory.

Further, with regard to consolidated billing, which is the inclusion of both supplier and utility charges on the same bill, DP&L's policies impede the ability of CRES providers to offer discounts to customers. For instance, DP&L does not allow for "bill ready" consolidated billing, which allows a CRES provider to compute the amount due and pass the total bill amount to DP&L for inclusion on the customer's bill. Without "bill ready" consolidated billing, a CRES provider is unable to offer certain discounts to its customers and the provider has much less flexibility with the pricing options it may offer customers. The cost of consolidated billing for DP&L's residential customers is also excessive. Specifically, DP&L charges 20 cents per consolidated bill to all customers, compared with 11.2 cents for a residential bill in Duke's service territory, and no charge for any consolidated bill in the FirstEnergy Ohio utilities. DP&L's unjustified addition of 20 cents per bill is cost-prohibitive for many providers and inhibits retail shopping at the residential level. Simply put, DP&L should not charge providers for consolidated bills, and FES submits that this practice should be disallowed.

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[2] See R.C. § 4928.02(B) and (C).

[3] *See* Public Utilities Commission of Ohio, Electric Apples to Apples Chart, *available at* http://www.puco.ohio.gov/puco/index.cfm/apples-to-apples/electric-apples-to-apples-chart.

In addition, it is cost-prohibitive to register rate codes in DP&L's consolidated billing system. Specifically, DP&L charges $1,000 for each change to its billing system – even where only a single rate code is added. ***No other EDU in Ohio applies this charge.*** This is another aspect of DP&L's retail choice program that inhibits competition.

Finally, contrary to the express terms of DP&L's tariff, DP&L does not have a purchase of receivables ("POR") program. DP&L's tariff expressly states that it will purchase receivables for any consolidated billed customers under 3,500,000 kW. FES requests that DP&L be required to institute a POR program.

4. Data issues.

DP&L charges $300 for 12 months of interval meter data, compared to $150 for the FirstEnergy EDUs and $32 for Duke. Consistent with the issues raised above, DP&L has excessive charges levied on providers that inhibit retail competition.

5. Enrollment issues.

As with the issues raised above, DP&L erects barriers to customer enrollment that have a negative effect on competition. For example, the first 4 characters of EDI for enrollment from CRES Suppliers "Account Name" field must match what is in DP&L's billing system for the enrollment to be accepted. Absent a perfect match, the enrollment is rejected. ***No other Ohio utility rejects enrollments from CRES providers on this basis.*** Simply put, the customer account number should suffice.

Further, DP&L's 30-day enrollment window is problematic. DP&L is the only Ohio utility that rejects a customer's attempt to enroll with a CRES provider more than thirty days before the customer's next meter read. If a CRES provider attempts to enroll outside of this bill window, the enrollment is rejected instead of defaulting to the next month. ***No other Ohio utility***

engages in this practice. This enrollment issue has a negative effect on competition and is yet another procedural issue where DP&L differs from the common business practices throughout the electric industry in Ohio. DP&L should be brought in line with statewide business practices in this regard.

In addition, DP&L has accounts with both a residential and a commercial meter; however, DP&L does not allow CRES providers to enroll individual meter accounts. Because rules and pricing are substantially different for these customer groups, the prohibition against individual meter enrollment by a CRES provider erects an undue barrier to customer switching. Switching should be permitted on either a per meter basis, or customers with commercial and residential meters should be split into two accounts, thereby allowing these customers to enjoy one of the fundamental benefits of competition.

Further, large load commercial and industrial customers, *i.e.*, over 700,000 kW, have a 12-month minimum stay. By forcing large load customers to abide by a 12-month minimum stay or possibly face fees for participating in the retail market, DP&L limits competition within its service territory.

6. Customer switching fees.

While all Ohio EDUs charge a switching fee, DP&L charges its $5 switching fee directly to all of its non-governmental aggregation customers rather than the provider. This practice hinders competition by making it more expensive for DP&L's customers to switch to a CRES provider. In furtherance of competition, DP&L should either cease charging the switching fee altogether or allow providers to pay the fee on behalf of a customer, as is done in all other Ohio service territories.

IV. CONCLUSION

FES seeks to ensure that competition and a level playing field exists in the DP&L service territory. The Comments submitted above by FES demonstrate practice and patterns by DP&L that raise real and substantial concerns regarding numerous provisions of DP&L's customer choice program and its standard practices with CRES providers. FES submits that, through the Application process, these and any other issues which could negatively impact competition in DP&L's service territory should be remedied. By doing so, customer choice and competition will be furthered in Ohio, thereby promoting the public convenience and the provision of adequate service for a reasonable rate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of FirstEnergy Solutions Corp.*. was filed this 18th day of July, 2011 with the Public Utilities Commission of Ohio Docketing Information System. Notice of this filing will be sent via e-mail to subscribers by operation of the Commission's electronic filing system.

Kevin P. Shannon /WTH.
One of the Attorneys for FirstEnergy Solutions Corp.