

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The AES ) Case No. 11-3002-EL-MER  
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. )

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STIPULATION AND RECOMMENDATION

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Ohio Administrative Code Rule 4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in that proceeding. This Stipulation and Recommendation ("Stipulation") sets forth the understanding of the parties that have signed below (the "Signatory Parties"). The Signatory Parties recommend that the Public Utilities Commission of Ohio ("Commission") approve and adopt, as part of its Opinion and Order, this Stipulation which will resolve all of the issues in the above-captioned proceeding.

This Stipulation is the product of serious bargaining among capable knowledgeable parties. The following interested persons have each participated, to varying degrees, in negotiations: The City of Dayton, The Ohio Hospital Association, Ohio Partners for Affordable Energy, Industrial Energy Users-Ohio, OMA Energy Group, the Ohio Energy Group, FirstEnergy Solutions<sup>1</sup> and the Commission's Staff. This Stipulation or other Stipulations filed in this case have been signed by the largest municipality in DP&L's service territory (City of Dayton), a low-income residential group (OPAE), commercial groups (OHA and OMA) and the

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<sup>1</sup> FirstEnergy Solutions does not take a position on the merger.

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Commission's Staff. The Stipulations thus represent a wide range of interests, including the interests of all of DP&L's customer classes.<sup>2</sup> Each of the Signatory Parties was represented by counsel who have many years of experience practicing before the Commission. There have been numerous negotiation sessions held and numerous proposals and counter-proposals were exchanged by the Signatory Parties.

The Stipulation will benefit customers and the public interest. In the Stipulation, Applicants have made certain commitments (as more fully described below) to maintain DP&L's operating headquarters in Dayton, to maintain DPL Inc.'s and DP&L's current workforce, not to seek recovery of costs associated with the merger from customers, to maintain DP&L's capital structure, to implement bill-ready capability for DP&L's existing billing system, and to promote and enhance competition in DP&L's service territory through numerous commitments.

The Stipulation does not violate any important regulatory principle or criteria. Ohio Rev. Code Section 4905.402(B) provides that the Commission shall approve a proposed merger if it "will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll or charge." The Stipulation satisfies those criteria for the reasons described in the prior paragraph.

The Signatory Parties agree that the Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this

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<sup>2</sup> Industrial Energy Users-Ohio and the Ohio Energy Group do not oppose the merger.

Commission and undertaken by parties representing a wide range of interests, including the Commission's Staff, to resolve those issues. While the Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission.

WHEREAS, on April 19, 2011, DPL Inc., The AES Corporation, and Dolphin Sub, Inc. ("Merger Sub") signed an Agreement and Plan of Merger;

WHEREAS, as a result of the proposed merger, Merger Sub would merge with and into DPL Inc., Merger Sub would cease to exist and DPL Inc. would survive as a wholly-owned subsidiary of AES;

WHEREAS, on May 18, 2011, Applicants AES, Merger Sub, DPL, and The Dayton Power and Light Company ("DP&L") filed an Application requesting that the Commission approve the merger;

WHEREAS, on July 18, 2011, the Staff of the Public Utilities Commission of Ohio ("Staff") and certain interested persons filed comments regarding the proposed merger, and on August 18, 2011, Applicants and certain interested persons filed reply comments regarding the proposed merger;

NOW, THEREFORE, for the purposes of resolving all issues raised in this proceeding, the Signatory Parties stipulate, agree and recommend as follows:

1. The Signatory Parties agree that the proposed merger "will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll or charge," as required by Ohio Rev. Code § 4905.402(B). It is the Signatory Parties' belief that the commitments made by Applicants in the May 19, 2011 Application, the September 2, 2011 Stipulation and Recommendation with The City of Dayton, the September 19, 2011 Stipulation and Recommendation with Certain Interested Persons and in this Stipulation are sufficient to achieve the

criteria in Ohio Rev. Code § 4905.402 and therefore do not believe that a hearing is necessary in this matter.

2. AES agrees to maintain DP&L's operating headquarters in Dayton, Ohio, and DP&L's name for at least five (5) years following the effective date of the merger. AES may include a designation or line specifying that DP&L is an AES company or affiliate, or member of the AES family of companies.
3. For three (3) years following the effective date of the merger, Applicants agree not to implement any involuntary workforce reductions that result in DPL Inc. and DP&L employing less than ninety percent (90%) of the number of individuals in the aggregate who are employed (exclusive of officers and management employees covered by a change in control agreement) the day before the merger closes.
4. Applicants agree that neither the costs incurred directly related to the negotiation, approval and closing of the merger nor any acquisition premium shall be eligible for inclusion in rates and charges applicable to retail electric service provided by DP&L.
5. DP&L shall maintain a capital structure that includes an equity ratio of at least 50 percent.
6. DP&L agrees to not have a negative retained earnings balance.
7. DP&L will add Utility Consolidated Bill Ready Billing Capability<sup>3</sup> ("Bill Ready Capability") to its existing billing system within six months of the Commission Order approving the merger ("Commission Deadline"). Given the complexity of the work involved and the imperative for Applicants to complete this work correctly, making such modifications may take more time as DP&L's billing system is a custom system. Nonetheless, if the Commission Deadline is missed, DP&L will issue a refund to its customers in the following manner: If Bill Ready Capability is operational on or prior to the Commission Deadline, then no refund is due. If Bill Ready Capability is not operational by the Commission Deadline, then DP&L will issue a refund to its customers in the amount of \$5,000,000 minus the costs DP&L has incurred as of the Commission Deadline to design, develop, and implement Bill Ready Capability. For example, if as of the Commission Deadline, Bill Ready Capability is not operational and DP&L has incurred \$2,000,000 in costs, DP&L will be required to issue a \$3,000,000 refund to its customers. The refund, if any, would be calculated as of the Commission Deadline and will be refunded to DP&L customers in the next practicable billing cycles immediately following that date. DP&L will not seek recovery of the costs

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<sup>3</sup> Utility Consolidated Bill Ready Billing Capability is a process by which DP&L will have the technology and systems in place to exchange EDI transactions with suppliers, which will enable DP&L to render a consolidated bill including both the utility's charges and supplier-calculated charges.

associated with developing and implementing Bill Ready Capability from ratepayers. Should DP&L seek to reduce the refund to customers by the costs already incurred to enable Bill Ready Capability, such costs shall be filed with the Commission to determine the appropriateness of the amount of costs that are to be used as an offset to the refund. Any refunded amounts will not be recoverable from ratepayers or through regulated rates.

8. Within three months of the Commission Order approving the merger, DP&L will implement process changes that will allow it to make customer capacity and transmission peak load contribution data accessible to Competitive Retail Electric Service ("CRES") providers via Electronic Data Interchange ("EDI").
9. Within one week of the Commission Order approving the merger, DP&L will amend its application in Case No. 11-4504-EL-ATA to reduce its charge for 12 months of interval meter data from \$300 to \$150. Approval of this Stipulation constitutes the Commission's approval of this rate reduction.
10. Within one week of the Commission Order approving the merger, for customers receiving competitive services from an Alternate Generation Supplier (AGS) and who are required under DP&L's applicable AGS tariff to have interval meters, DP&L will reduce its charge for the incremental costs of upgrading the present meter plus all incremental costs associated with the installation of an interval meter from \$905 to \$570. Approval of this Stipulation constitutes the Commission's approval of this rate reduction.
11. Within one week of the Commission Order approving the merger, DP&L will amend its application in Case No. 11-4504-EL-ATA to permit CRES providers, under normal circumstances, to enroll a customer more than thirty days prior to the customer's next meter read, with the enrollment defaulting to the following month. Approval of this Stipulation constitutes the Commission's approval of this process change.
12. Within one week of the Commission Order approving the merger, DP&L will amend its application in Case No. 11-4504-EL-ATA to reflect that in instances in which an interval meter request form is required for a customer taking service from a CRES provider, DP&L will enroll customers within 3 business days for accounts with a single service. Approval of this Stipulation constitutes the Commission's approval of this process change.
13. Upon the Commission's Order approving the merger, DP&L will provide percentage off billing if the CRES provider provides to DP&L updated rate factor changes to effectuate this pricing option, similar to the manner in which DP&L provides this service today.

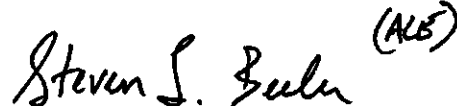
14. In arm's-length bargaining, the Signatory Parties have negotiated terms and conditions that are embodied in this Stipulation. This Stipulation contains the entire Agreement among the Signatory Parties, and embodies a complete settlement of all of their claims, defenses, issues and objections in these proceedings. The Signatory Parties agree that this Stipulation is in the best interests of the public and of all parties, and urge the Commission to adopt it.
15. This Stipulation is submitted for the purposes of this case alone and should not be understood to reflect the positions that an individual Signatory Party may take as to any individual provision of the Stipulation standing alone, nor the position a Signatory Party may have taken if all of the issues in this proceeding had been litigated. Nothing in this Stipulation shall be used or construed for any purpose to imply, suggest or otherwise indicate that the results produced through it represent fully the objectives of any Signatory Party. This Stipulation is submitted for purposes of this proceeding only, and is not deemed binding in any other proceeding, except as expressly provided herein, nor is it to be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation. As with such Stipulations reviewed by the Commission, the willingness of Signatory Parties to sponsor this document currently is predicated on the reasonableness of the Stipulation taken as a whole.
16. The Signatory Parties will support the Stipulation if the Stipulation is contested. This Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification.

IN WITNESS THEREOF, the undersigned parties agree to this Stipulation and Recommendation as of this 26<sup>th</sup> day of October, 2011. The undersigned parties respectfully request the Commission to issue its Opinion and Order approving and adopting this Stipulation.

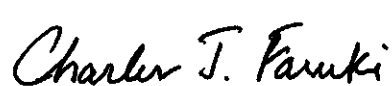
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### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Stipulation and Recommendation has been served via electronic mail upon the following counsel of record, this 26<sup>th</sup> day October, 2011:

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