

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton)
Power and Light Company for Authority to) Case No. 13-2420-EL-UNC
Transfer or Sell its Generation Assets.)

INITIAL COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

I. Introduction

On December 30, 2013, the Dayton Power & Light Company (“DP&L”) filed an application (the “Application”) for approval of the transfer, sale, or decommissioning of its generation assets. FirstEnergy Solutions Corp. (“FES”) supports DP&L’s corporate separation. However, there is not enough information provided in the Application for the Commission to grant the proposed transfer or to approve DP&L’s request for waivers from the Commission’s rules. The Application does not identify what DP&L proposes to do with the generation assets, when DP&L will complete corporate separation, how this will impact the anticipated competitive auctions or non-auction load, or the potential market distorting effect of DP&L’s transfer of generation assets. DP&L apparently recognizes this, indicating that it intends to file a supplemental application when it completes its analysis. It appears that the Application is intended only to comply superficially with the Commission’s direction that DP&L file an application for corporate separation by no later than December 31, 2013.¹

As the Application is nothing more than a placeholder, FES respectfully requests that intervenors be provided the opportunity to comment on the substance of DP&L’s proposal when

¹ Case No. 12-426-EL-SSO, Opinion and Order dated September 4, 2013, p. 27.

it is eventually made. This will allow all parties to provide meaningful comment on DP&L's proposal, and will avoid providing DP&L with "blank check" authority to complete corporate separation in a manner that could distort Ohio's wholesale and retail markets. The Commission should also reject DP&L's waiver requests as premature – they are internally inconsistent, and a hearing cannot be waived before DP&L's corporate separation plan is known. FES also requests that the Commission fix a date certain on which DP&L is required to file its anticipated supplemental application in order to accomplish complete corporate separation by December 31, 2016.² In the event the Commission is inclined to take substantive action at this point, at minimum the Commission should make clear that DP&L must meet the corporate separation requirements which were recently imposed on AEP Ohio and Duke Energy Ohio.

II. Factual Background

DP&L's Application purports to address the potential separation of its generation assets, after having operated under functional separation for more than a decade. According to DP&L, this could include the transfer of those assets to an affiliate, the sale of the assets, or the decommissioning of some or all of its generation assets.³ The transfer could be at either book or market value, and could take place "in the relatively near future."⁴ DP&L has also requested that the Commission waive hearing both now and after the supplemental Application is filed.⁵

DP&L's Application acknowledges that it fails to provide any significant information about DP&L's corporate separation, and indicates that DP&L will file a supplemental application at an unspecified future date.⁶ DP&L also indicates that it will inform the

² Case No. 12-426-EL-SSO, Opinion and Order dated September 4, 2013, p. 27.

³ Application, p. 1.

⁴ Application, p. 2.

⁵ Application, p. 9.

⁶ Application, p. 2.

Commission of its progress on a quarterly basis until a supplemental application is filed.⁷ DP&L then requests several waivers, including the waiver of an evidentiary hearing, on the grounds that DP&L “has not yet determined its final plan for separation and intends to supplement this application.”⁸

III. FES Comments

A. Intervenor Should Be Given The Opportunity To Comment When DP&L’s Substantive Proposal Is Filed.

As DP&L admits that its plan is not yet finalized, FES respectfully requests that the Commission grant intervenors the ability to comment on the Application after the supplemental application has been filed. It is impossible to evaluate DP&L’s proposal and provide substantive comments when DP&L has not provided even general information about its proposed corporate separation. Therefore, the Commission should make clear that intervenors will be able to comment on the supplemental application and should refrain from substantive determinations until it has a chance to consider those comments.

B. The Commission Should Provide A Date Certain On Which DP&L Is Required To File Its Supplemental Application.

Though DP&L has indicated that it intends to file a supplemental application, it has not stated when it expects that supplemental application to be filed.⁹ In order to comply with the mandatory deadline for corporate separation by no later than December 31, 2016, it is important that DP&L start obtaining the required regulatory approvals in the near future. This may implicate cases and potential hearings at both FERC and the Commission, as well as potential debt refinancing, and therefore the corporate separation process should start in the near future.

⁷ Application, p. 2.

⁸ Application, p. 9.

⁹ See Application, p. 2 (“DP&L intends to file a supplement to this application. . . once the Company has had the opportunity to complete its review of the pending issues and their operational and financial impacts.”)

In order to ensure sufficient time for intervenor comment and well-reasoned Commission and FERC review, FES asks that the Commission set a date certain on which DP&L is required to file its supplemental application.

C. The Commission Should Not Grant Any Waiver Requests At This Time.

DP&L's waiver requests should be denied at this time. While the parties may stipulate to certain waivers once DP&L makes its substantive filing, it is premature to rule on waivers when DP&L has not even generally described the nature of the transaction it contemplates. For example, DP&L has indicated that it may seek to transfer its assets to an affiliate at market value.¹⁰ This could be appropriate, and all interested parties could potentially consent to waiving hearing on this topic. However, this request is inconsistent with a later request in the Application which seeks a waiver of the requirement that the Application state the fair market value of the assets to be transferred.¹¹ Obviously, these two positions cannot be reconciled; DP&L cannot both transfer the assets at market value and refrain from calculating the market value of the assets transferred. As DP&L's waiver requests are premature, the Commission should reject them until DP&L files its supplemental application and provides more detail on its plans.

D. The Commission Should Not Waive Hearing At This Time.

Similar to DP&L's waiver requests, DP&L has asked that the Commission waive hearing now for both this Application and the supplemental application. FES does not oppose waiving hearing for this Application, because it contains almost no information. However, FES currently opposes waiving hearing for the supplemental application. While waiving this hearing may

¹⁰ Application, p. 2.

¹¹ Application, p. 8; O.A.C. 4901:1-37-09(C)(4).

eventually be appropriate, it would be inappropriate to waive an evidentiary hearing before knowing what issues may be raised in DP&L's supplemental application.

E. At Minimum, The Commission Should Make Clear That DP&L Is Required To Comply With The Same Corporate Separation Standards As Were Imposed On AEP Ohio And Duke Energy Ohio.

If the Commission is inclined to take some action in response to the Application, then at minimum the Commission should make clear that DP&L is obligated to meet the same corporate separation standards as were recently imposed on AEP Ohio and Duke Energy Ohio.¹² As DP&L has not identified how it will complete corporate separation, it is impossible at this point to identify what provisions of the AEP Ohio and Duke Energy Ohio orders may be applicable to DP&L. Accordingly, if the Commission intends to take a substantive step at this time, it should make clear that DP&L will be required to comply with the same standards as were imposed on AEP Ohio and Duke Energy Ohio.

IV. Conclusion

FES respectfully requests that the Commission direct DP&L to complete corporate separation expeditiously in a manner consistent with these comments.

¹² See Case No. 12-1126-EL-UNC, Opinion and Order dated October 17, 2012 (AEP Ohio); Case No. 11-3549-EL-SSO, et al., Opinion and Order dated November 22, 2011 (Duke Energy Ohio).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of FirstEnergy Solutions Corp.* was served this 4th day of February, 2014, via e-mail upon the parties below.

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Summary: Comments of FirstEnergy Solutions Corp. electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.