

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**SUPPLEMENTAL APPLICATION OF THE DAYTON POWER
AND LIGHT COMPANY TO TRANSFER OR SELL ITS GENERATION ASSETS**

I. SUMMARY OF RELIEF SOUGHT IN APPLICATION

1. Pursuant to Ohio Rev. Code § 4928.17(E) and Ohio Admin. Code § 4901:1-37-09, The Dayton Power and Light Company ("DP&L") seeks the Commission's authorization to transfer, on or before May 31, 2017, its generation assets to an affiliate at fair market value. DP&L's plans for the transfer are described below.

2. Pursuant to Ohio Admin. Code § 4901:1-37-09(D), DP&L seeks a waiver of any requirement that the Commission conduct a hearing in this matter.

II. TRANSFER OF GENERATION ASSETS

**A. PURPOSE, TERMS AND CONDITIONS OF ASSET TRANSFER
(PURSUANT TO OHIO ADMIN. CODE § 4901:1-37-09(C)(1))**

3. In DP&L's most recent Electric Security Plan proceeding (Case No. 12-426-EL-SSO, et al.), the Commission ordered DP&L to transfer its generation assets by May 31, 2017. September 6, 2013 Entry Nunc Pro Tunc, p. 2. DP&L has filed this Application because it was ordered to do so in that proceeding.

4. DP&L seeks Commission authority to transfer its generation assets to an affiliated GenCo at fair market value (FMV) on or before May 31, 2017.

5. DP&L will transfer its generation assets at a FMV that will be determined approximately 90 days before the transfer date. DP&L will comply with the requirement in Ohio Admin. Code § 4901:1-37-09(C)(4) that it state the fair market value of the generation assets to be transferred no later than 75 days before the transfer date. Determining FMV proximally to the time of separation will allow for the most accurate valuation of the assets.

6. Prior to the separation date, DP&L will transfer its generation assets to an unregulated affiliate via an internal restructuring involving a distribution and contribution of those assets. The entity will be a GenCo subsidiary of DPL, Inc. on the separation date.

7. To insure that all potential options for separation have been considered and that the optimal solution for both DP&L and its customers is found, DP&L and its indirect parent, The AES Corporation ("AES"), have recently begun to evaluate the transfer of DP&L's generation assets to an unaffiliated third party through a potential sale. A sale to a third party could occur as early as 2014.

8. In the event of a separation by a sale to an unaffiliated third party, the FMV shall be the sale price of the assets. DP&L will comply with the requirement in Ohio Admin. Code § 4901:1-37-09(C)(4) that it state the FMV of the generation assets to be transferred by no later than 75 days before the transfer date.

9. DP&L seeks the Commission's approval of the following requests in association with the transfer:

- (a) Service Stability Rider ("SSR"): Regardless of the specific timing or mechanics of divestiture, the underlying legal basis supporting the Commission's Order in DP&L's ESP case (Case No. 12-426-EL-SSO) outlining the need for DP&L's Service Stability Rider during the entire term of the ESP remains unchanged. Indeed, given current poor market conditions, DP&L's need for the SSR continues. As the Commission stated in its ESP decision, "DP&L is not a structurally separated utility; thus, the financial losses in the generation, transmission, or distribution businesses of DP&L are financial losses for the entire utility. Therefore if one business suffers financial losses, it may impact the entire utility, adversely affecting the ability to provide stable, reliable, or safe retail electric service." September 4, 2013 Opinion and Order, p. 22. The Commission has ordered the divestiture of the generation assets without regard for market conditions. Given current poor market conditions, DP&L could sustain a serious, continuing financial loss that strongly supports the ongoing need to recover the SSR throughout the term of the ESP. For these reasons, DP&L asks the Commission to find in this matter that collection of the SSR as authorized in the September 4, 2013 Opinion and Order and September 6, 2013 Entry *Nunc Pro Tunc* shall continue regardless of the actual divestiture path taken or the timing involved.
- (b) Environmental Liabilities: DP&L asks the Commission to authorize DP&L to retain responsibility for future environmental liabilities associated with DP&L's historic ownership of its generation facilities.

The Commission should grant DP&L's request because DP&L's incurrence of these liabilities is directly related to the rendering of service to standard service offer customers.

Moreover, DP&L proposes retaining responsibility for these environmental liabilities in order to allow it to seek recovery for prudently incurred environmental clean-up costs for real property that had been used and useful for the production of electricity for the benefit of the customers of DP&L, in compliance with federal and state rules and regulations. To the extent that DP&L finds itself under a legal mandate to perform environmental investigation and remediation activities as to these generation facilities or sites, DP&L should be authorized to recover all prudently incurred costs associated with such environmental investigation and remediation activities.

The remediation process typically takes years to complete and involves significant expenditures, for which DP&L will seek cost recovery, since such environmental liabilities are imposed by law, and constitute prudently-incurred costs of providing utility service.

For this reason, DP&L requests that, pursuant to Ohio Rev. Code § 4905.13, the Commission grant accounting authority to permit DP&L to defer the costs associated with environmental clean-up or remediation incurred by DP&L because of its ownership or operation of the electric

generating assets, and imposed in the future pursuant to federal or state law, rules or regulations.

DP&L proposes to defer these expenses for future recovery from all customers, beginning at a date determined in another Commission proceeding. Until fully recovered, DP&L will apply a carrying cost based on its most recently approved cost of debt. The carrying cost will be applied to the unrecovered deferral balance and such carrying costs will be deferred for future recovery.

At this time, DP&L is not seeking to commence recovery of these future expenses. DP&L seeks only the authority to defer these costs as they are incurred, along with the resultant carrying costs as described above.

- (c) Cost of Sale: DP&L asks that it be permitted to recover all financing costs, redemption costs, amendment fees, investment banking fees, advisor costs, taxes, and related costs that it incurs to comply with the Commission's Order that DP&L separate its generation assets. The Commission should grant DP&L's request because DP&L will incur those costs to comply with that Order. Costs related to separation incurred exclusively by the GenCo will be borne by the newly formed GenCo entity.
- (d) Ohio Valley Electric Corporation ("OVEC"): DP&L owns 4.9% of OVEC. There are lengthy and complex contractual provisions (filed with FERC) associated with OVEC. Each of the owners (called "Sponsoring

Companies") is entitled to its specified share of all net power and energy produced by OVEC's two generating stations, and must pay their respective share of OVEC's costs resulting from ownership, operation and maintenance of its generation and transmission facilities (except those costs that were paid by DOE). The Sponsoring Companies currently purchase power from OVEC pursuant to terms of an Amended and Restated Inter-Company Power Agreement dated September 10, 2010 and as part of that amendment and restatement, the term of the Inter-Company Power Agreement was extended from March 13, 2026 to June 30, 2040.

Given recent experience of other OVEC Sponsoring Companies being unable to obtain the necessary consents from other OVEC members to allow a member to transfer its ownership interest in OVEC to a stand-alone GenCo, DP&L has no expectation that it will be successful in obtaining these required consents. For this reason, DP&L asks that it be permitted to retain its interest in OVEC, since DP&L cannot transfer its interest in OVEC without the consent of the remaining members of OVEC. DP&L therefore asks the Commission to allow DP&L to retain the OVEC contractual entitlements, leaving DP&L retaining the rights and obligations under the Restated Inter-Company Power Agreement.

DP&L does not propose that any of the retail rate issues relating to OVEC be resolved in this proceeding, but rather will seek resolution of rate matters in a separate proceeding. DP&L does, however ask that the Commission grant accounting authority pursuant to Ohio Rev. Code

§ 4905.13, to permit DP&L to defer the costs associated with OVEC which are not currently being recovered through DP&L's fuel rider.

DP&L proposes to defer these expenses for future recovery from all customers, beginning at a date determined in another Commission proceeding. Until fully recovered, DP&L will apply a carrying cost based on its most recently approved cost of debt. The carrying cost will be applied to the unrecovered deferral balance and such carrying costs will be deferred for future recovery.

- (e) Capital Ratio: DP&L asks that after the transfer of its generation assets it be permitted to temporarily maintain total long term debt of \$750 million or total debt equal to 75% of rate base – whichever is greater. In its Finding and Order dated November 22, 2011 in Case No. 11-3002-EL-MER, 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, the Commission approved several Stipulations entered into by the various parties. In a Stipulation dated October 26, 2011 among DP&L, Ohio Manufacturers Association Energy Group and the Commission Staff, the signatories agreed to, among other points, the following requirement: "DP&L shall maintain a capital structure that includes an equity ratio of at least 50 percent."

In the years following the merger, DP&L has adhered to this commitment. However, circumstances have changed since this Commission's approval of the merger, because the Commission subsequently ordered DP&L to separate its generation assets. Given that the Commission has ordered DP&L to separate its generating assets by May 31, 2017, DP&L now seeks Commission temporary relief from this commitment. In order to effectuate full legal separation of its generating assets, it is likely that DP&L's equity ratio will fall below the 50% level in the course of the debt restructuring necessary to achieve separation. For this reason, DP&L asks that the Commission authorize the Company to maintain the greater of, (i) total debt of up to \$750 million or (ii) total debt equal to 75% of ratebase at the time of separation. DP&L asks that the Commission allow the Company to maintain these debt levels for a limited period of time in order to allow DP&L to restructure its debt and effectuate the full legal separation of its generation assets, regardless of whether that transfer is made to an affiliate or a sale to a third party. DP&L asks that it be permitted to maintain this debt level and implied capital structure through at least 2018, after which further debt reductions will be conditioned on market recovery and an ability to reallocate debt to its non-regulated affiliate.

10. So that DP&L is in a position to transfer all of its generation assets no later than May 31, 2017, DP&L makes the following commitments:

- (a) DP&L shall not take on any new debt with terms that would preclude DP&L from transferring or selling its generation assets.
- (b) DP&L will use cash flows in excess of those necessary for the ordinary operation of the business to pay down debt between today and the Separation Date.
- (c) DP&L shall ensure that all new generation-related contracts that it signs have a successor-in-interest clause that permits DP&L to transfer all of DP&L's responsibilities and obligations under such contracts and relieves DP&L from any performance or liability under the contracts upon the transfer of DP&L's generation assets.

11. The expectation is that transmission and distribution assets that are currently owned by DP&L will not be transferred through this proceeding.

**B. EFFECT OF TRANSFER ON SSO SERVICE
(PURSUANT TO OHIO ADMIN. CODE § 4901:1-37-09(C)(2))**

12. DP&L expects that the transfer of its generation assets will not have a material effect on the terms and conditions under which it will provide a standard service offer ("SSO"). Specifically, in DP&L's ESP case, the Commission ordered DP&L to provide SSO service to customers at prices set through a blend of DP&L's then-existing rates and the rates established through a competitive bidding process. Opinion and Order, p. 15. Under that Order, 100% of DP&L's SSO rates will be established through competitive bidding starting June 1, 2017. Assuming that all generation assets that are currently owned by the utility are transferred

or sold as of May 31, 2017, DP&L anticipates that the asset transfer will have no material effect on SSO rates.

C. THE PUBLIC INTEREST (PURSUANT TO OHIO ADMIN. CODE § 4901:1-37-09(C)(3))

13. The Commission found in DP&L's ESP case that DP&L separating its generation assets was a benefit of DP&L's ESP and was in the public interest. September 4, 2013 Opinion and Order, p. 51.

D. BOOK VALUE AND FAIR MARKET VALUE (PURSUANT TO OHIO ADMIN. CODE § 4901:1-37-09(C)(4))

14. The net book value of DP&L generating assets as of November 30, 2013 is approximately \$1,576,440,886.

15. DP&L will comply with the requirement in Ohio Admin. Code § 4901:1-37-09(C)(4) that it state the FMV of the generation assets to be transferred when the time of the actual transfer is known, and in no event, no later than 75 days prior to May 31, 2017.

E. NO HEARING IS REQUIRED (PURSUANT TO OHIO ADMIN. CODE § 4901:1-37-09(D))

16. DP&L asks the Commission to waive a hearing under Ohio Admin. Code § 4901:1-37-09(D). The Commission should grant DP&L's waiver request, because the Commission has already conducted an extensive evidentiary hearing in DP&L's recent ESP case regarding whether DP&L should be ordered to transfer its generation assets, and issued an Order in that proceeding that required DP&L to transfer its generation assets. In that proceeding, the issue of the separation of DP&L's generation assets was addressed by numerous witnesses, and the Commission conducted a hearing that lasted almost three weeks at which a substantial

amount of testimony on the subject was introduced. There is therefore no need to conduct another hearing on that issue.

17. DP&L's request that the Commission waive a hearing in this matter is consistent with the Commission's Orders in AEP's and Duke's generation asset transfer cases, in which no hearing was required. In the Matter of the Application of Ohio Power Company for Approval of an Amendment to Its Corporate Separation Plan, Case No. 12-1126-EL-UNC, Opinion and Order, p. 11 (October 17, 2012) ("The Commission finds good cause exist to waive any requirement to hold a hearing on the corporate separation application. Given the fact that we have already approved the divestiture of OP's generation assets as a component of the modified ESP 2 cases, subject to approval of the amended corporate separation plan, and that such decision was reached following an extensive hearing, which included testimony in support of divestiture of the generation assets, we find that the requirement of Rule 4901:1-37-09(D), O.A.C., do not apply to this proceeding."); In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service, Case No. 11-3549-EL-SSO, et al., Opinion and Order, p. 46 (Nov. 22, 2011).

WHEREFORE, DP&L asks the Commission to:

1. Approve DP&L's plan to transfer its generation assets, as described in this Application;
2. Grant DP&L a waiver of any requirement that a hearing be conducted in this matter;
3. Grant to DP&L the accounting authority that it needs to transfer its generation assets, including the deferrals described in this Supplemental Application;

4. Grant such other and future relief as is necessary and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Supplemental Application of The Dayton Power and Light Company to Transfer or Sell Its Generation Assets has been served via electronic mail upon the following counsel of record, this 25th day of February, 2014:

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/25/2014 4:31:52 PM

in

Case No(s). 13-2420-EL-UNC

Summary: Application Supplemental Application of The Dayton Power and Light Company to Transfer or Sell Its Generation Assets electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company