BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MOTION TO INTERVENE, MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE, AND COMMENTS ON THE SUPPLEMENTAL APPLICATION

MOTION TO INTERVENE

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully moves for leave to intervene in the above-captioned matter pursuant to R.C. 4903.221 and Section 4901-1-11 of the Commission's Code of Rules and Regulations with full powers and rights granted by the Commission specifically, by statute or by the provisions of the Commission's Code of Rules and Regulations to intervening parties. The reasons for granting this motion are contained in the memorandum attached hereto and incorporated herein. Comments on the supplemental application are also including in this pleading.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Ohio Partners for Affordable Energy ("OPAE") requests permission to intervene in this matter pursuant to Section 4903.22.1, Revised Code, and the Commission's Rules and Regulation contained in Section 4901-01-11 of the Ohio Administrative Code. The Commission, in ruling upon a motion to intervene in its proceedings, shall consider the following criteria:

(1) The nature and extent of the intervenor's interest.
(2) The legal position advanced by the prospective intervenor and its probable relationship to the merits of the case.
(3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding.
(4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

As an Ohio non-profit corporation with a stated purpose of "advocating for affordable energy policies for low and moderate income Ohioans", OPAE has a real and substantial interest in this proceeding. Moreover, the membership of OPAE includes a number of nonprofit organizations with facilities receiving electric service from The Dayton Power and Light Company ("DP&L").[1] Residential customers, including OPAE's low-income bill payment assistance

[1] OPAE's membership list can be found at: www.ohiopartners.org.

and weatherization clients, will be affected by DP&L's application. Non-residential customers, such as nonprofit organizations, will also be affected.

OPAE was an intervenor in DP&L's Standard Service Offer ("SSO") proceedings, which gave rise to this application. Case No. 12-426-EL-SSO, et al. In those cases, the Commission required DP&L to file a plan for corporate separation by December 31, 2013. On December 30, 2013, DP&L filed an application to transfer or sell its generation assets. In its application, DP&L sought multiple waivers, including a waiver of any requirement that the Commission conduct a hearing in this matter and a waiver of the requirement to state the fair market value of the generation assets to be transferred.

The Commission called for comments on the application to be filed on February 4, 2014, and reply comments on February 19, 2014. The comments and reply comments generally objected to DP&L's requests to waive a hearing and to waive the requirement to state the fair market value of the assets to be sold or transferred. The comments stated that it was premature and unwarranted for the Commission to act upon the application given that there was no detailed plan to divest of the generation assets. Generally, the comments considered it impossible to address the merits of DP&L's plan until a supplemental application was filed.

On February 25, 2014, DP&L filed a supplemental application to transfer or sell its generation assets. On March 4, 2014, the Commission issued an Entry calling for comments on the supplemental application on March 25, 2014.

Attached to this memorandum in support of the motion to intervene, OPAE includes comments on the supplemental application.

OPAE's participation in this matter will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues and concerns raised in this proceeding. Furthermore, other parties to the proceeding will not adequately represent the interests of OPAE. The extensive background of OPAE and its membership provides a unique and important viewpoint on matters at issue in this docket.

Therefore, OPAE is entitled to intervene in this proceeding with the full powers and rights granted by the Commission specifically, by statute, and by the provisions of the Commission's Codes of Rules and Regulations, to intervening parties.

Respectfully submitted,

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COMMENTS ON THE SUPPLEMENTAL APPLICATION

The Supplemental Application intends to provide more detail on the transfer of DP&L's generation assets but fails to do so. DP&L seeks authority to transfer the generation assets to an unregulated affiliated generation company at fair market value on or before May 31, 2017. The fair market value will be determined approximately 90 days before the transfer date and the value will be stated no later than 75 days before the transfer. Supplemental Application at 10. In the Supplemental Application, DP&L states the net book value of the assets as of November 30, 2013, but does not state the fair market value or the terms and conditions of the sale or transfer as required by the administrative code rule. The terms under which the transfer of the assets will take place are still unknown.

DP&L also continues its request for a waiver of the hearing. Nothing provided in the Supplemental Application should convince the Commission to waive its rules with regard to a determination of the fair market value of the assets to be transferred, the terms and conditions of the transfer, or the need for a hearing. The waiver requests should be denied.

Rather than providing the necessary information, the Supplemental Application only serves to alarm OPAE with its requests regarding environmental

liabilities related to the rendering of service to standard service offer customers. After the transfer of the assets, DP&L proposes to retain responsibility for these environmental liabilities and to seek recovery for prudently incurred environmental clean-up costs for real property that **had been** used and useful for the production of electricity. Supplemental Application at 4; Emphasis Added. This proposal is simply unlawful. First, these are generation facilities that will no longer be owned by DP&L. They are not used and useful to DP&L, a distribution utility. There is no legal basis under which DP&L's current distribution customers should pay these costs.

DP&L claims that to the extent it finds itself under a legal mandate to perform environmental investigation and remediation activities for these generation facilities or sites, DP&L should be authorized to recover all prudently incurred costs associated with these clean-up activities. Supplemental Application at 4. There is no doubt that any legal mandate to clean up the sites will be reflected in their fair market value at the time of transfer; however, once the transfer has occurred, DP&L's distribution customers cannot be responsible for paying these costs.

DP&L also requests that the Commission grant accounting authority to permit DP&L to defer the costs associated with environmental clean-up incurred by DP&L because of its ownership or operation of the electric generation assets. DP&L would defer these expenses for future recovery from all [distribution] customers. DP&L would apply a carrying cost based on its most recently approved cost of debt. Supplemental Application at 5.

Again, the Commission has no statutory authority to grant a public utility distribution company such as DP&L deferral authority for costs that are associated with generation plant that will be transferred to an unregulated affiliate or a third party. Financial accounting standards only permit deferrals when it is reasonable that recovery will be authorized. As recovery of environmental remediation funds for generation plants no longer owned by a distribution utility is unlawful, the criteria for a deferral are not met. DP&L's request for accounting authority is beyond the scope of the Commission's regulatory authority.

OPAE strongly opposes DP&L's request to retain responsibility for environmental clean-up of generation plants that will be transferred to another entity. Likewise, OPAE opposes allowing DP&L to seek recovery from its current distribution ratepayers for environmental clean-up costs associated with the former-DP&L generation plants. OPAE also opposes granting DP&L accounting authority to defer environmental clean-up costs for future recovery and carrying charges on any unrecovered deferred amounts. The costs are generation costs and the Commission cannot grant accounting authority for such costs to a distribution utility.

Conclusion

OPAE recommends that the Commission deny DP&L's waiver and accounting authority requests and set this matter for hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum of Support and Comments on the Supplemental Application was served by electronic mail upon the persons identified below on this 25th day of March 2014.

/s/Colleen Mooney
Colleen L. Mooney

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Summary: Motion to Intervene, Memorandum in Support, and Comments on the Supplemental Application electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy