BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	:	Case No. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority	:	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules	:	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders	:	Case No. 12-672-EL-RDR

APPLICATION FOR REHEARING OF THE DAYTON POWER AND LIGHT COMPANY AS TO THE SECOND ENTRY ON REHEARING

Pursuant to Ohio Rev. Code § 4903.10 and Ohio Admin. Code § 4901-1-35, The Dayton Power and Light Company ("DP&L") seeks rehearing of the Commission's March 19, 2014 Second Entry on Rehearing on the following grounds:

1. The Commission should grant rehearing on its decision in its Second Entry on Rehearing (pp. 17-18) to accelerate the deadline for DP&L to transfer its generation assets to January 1, 2016. The Commission should

restore the May 31, 2017 deadline that it established in its September 6, 2013 Entry Nunc Pro Tunc.

2. The Commission should grant rehearing on its decision in its Second Entry on Rehearing (pp. 18-19) to accelerate blending in the competitive bidding process. The Commission should restore the blending schedule that it established in its September 6, 2013 Entry Nunc Pro Tunc.

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APPLICATION FOR REHEARING OF THE DAYTON POWER AND LIGHT COMPANY AS TO THE SECOND ENTRY ON REHEARING

TABLE OF CONTENTS

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF THE DAYTON POWER AND LIGHT COMPANY AS TO THE SECOND ENTRY ON REHEARING

Pursuant to Ohio Rev. Code § 4903.10 and Ohio Admin. Code § 4901-1-35, The Dayton Power and Light Company ("DP&L") seeks rehearing of the Commission's March 19, 2014 Second Entry on Rehearing on the following grounds.

I. INTRODUCTION AND SUMMARY

In its Second Entry on Rehearing, the Commission accelerated the deadline for DP&L to transfer its generation assets (pp. 17-18), and accelerated the blending schedule for DP&L to implement competitive bidding (pp. 18-19). The Commission stated that it set the asset transfer deadline and blending schedule in its prior orders in reliance upon testimony by DP&L witness Craig Jackson that DP&L could not transfer its generation assets before September 1, 2016. Id. at 17-19. The Commission further stated that it had decided to accelerate the asset transfer deadline and the blending schedule, due to statements made by DP&L in its Supplemental Application in its generation asset transfer case (Case No. 13-2420-EL-UNC) that DP&L may transfer its generation assets as soon as 2014. Id.

The Commission's decision as to those two items is a result of a miscommunication between DP&L and the Commission. DP&L asks the Commission to grant rehearing, and to restore the asset transfer deadline and blending schedule that the Commission established in its prior orders.

Specifically, at the time of DP&L's ESP hearing, DP&L's strategic plan was to transfer its generation assets to an affiliate. Three DP&L witnesses (Phil Herrington, Craig Jackson and Tim Rice) testified to the Commission that there were both structural and financial obstacles that prevented DP&L from transferring its generation assets to an affiliate prior to the end of the proposed ESP term in 2017. That testimony was true and accurate then, and remains true and accurate now.

Since the hearing, there have been changed circumstances which have forced DP&L to explore different business courses than that which it had planned at the time of the hearing. Among those changed circumstances were further deteriorations in market conditions. For example, the capacity price bid at PJM's auction for the 2016/2017 planning year was one-third of the amount that DP&L projected. Prices of electricity declined further. These changes will have a significant negative impact upon DP&L's projected earnings.

In light of those changes to market conditions, DP&L decided to reconsider its strategic plan and to explore the potential sale of its generation assets to a third party, which sale could happen as soon as this year. However, while DP&L continues to discuss a potential sale with various parties there is no sale agreement in place and whether a third party will offer a price acceptable to the Company is unknown at this time. The reason that DP&L might be able to sell its generation assets to a third party this year, but cannot transfer them to an affiliate before 2017, is that a sale would allow for funds which could then be used to cover the material costs that DP&L would face in order to allow it to redeem its bonds early. Absent a sale, or some other material change in financial circumstances, a transfer of the assets cannot be completed in 2014.

The critical point for this Application for Rehearing is that the Commission's decision to accelerate the asset transfer deadline and the blending schedule was based upon a miscommunication. As DP&L's witnesses explained at the hearing, DP&L cannot transfer its generation assets to an affiliate before 2017 without additional financial resources. Absent a sale to a third party, or other material change in DP&L's immediate financial circumstances, nothing has changed in this regard. Further, whether a sale to a third party can be accomplished, in 2014 or otherwise, is unclear at this time.

The Commission's decisions to accelerate the asset transfer deadline and blending schedule will have significant negative financial effects upon DP&L. DP&L cannot transfer its generation assets (to an affiliate or otherwise) by January 1, 2016 without incurring substantial (and in most cases, incremental) costs necessary to release the generation assets from the Company's mortgage and otherwise restructure/refinance its debt.

DP&L regrets the miscommunication, and asks the Commission to grant rehearing on its decision to accelerate the asset transfer deadline and the blending schedule, and to restore the deadline and schedule from its September 6, 2013 Entry Nunc Pro Tunc in this proceeding.

II. BACKGROUND: DP&L'S DESCRIPTION OF THE REQUIRED TIME TO TRANSFER ITS GENERATION ASSETS TO AN AFFILIATE WAS ACCURATE THEN, AND REMAINS ACCURATE NOW

A. DP&L'S EVIDENCE AT THE HEARING RELATED TO DP&L'S PLAN TO TRANSFER ITS GENERATION ASSETS TO AN AFFILIATE

The hearing in this case occurred in March 2013, one year ago. As DP&L's President Phil Herrington explained, at that time, DP&L planned to transfer its generation assets to an affiliate:

"Q. Section 4928.02(H) states that it is the policy of the state to:

> 'Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retain electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.'
>
> Does DP&L's ESP advance that policy, and if so how?
>
> A. Yes. DP&L's ESP filing advances this policy because DP&L will abide by its filed Corporate Separation Plan as amended and <u>DP&L's filing describes its plan to request a transfer DP&L's generation assets into a separate affiliate</u>."

DP&L Ex. 8, pp. 5-6 (Herrington) (emphasis added). <u>Accord</u>: Tr. 1141 ("Q. Now, recognizing that the details of any transfer may not have been figured out, I'm assuming from your answer that DP&L has, in fact, made a decision that when it transfers generation -- its generation, that that transfer will be to an affiliate; is that a fair characterization of the answer? A. That is our plan at this time.") (Herrington); Tr. 258-59 ("Q. And was there a reason that you did not make an assumption about sales of generation plants when you prepared that exhibit? A. Yes. There was nothing to include. We did not -- don't have anything currently that we were looking at that would suggest that we're going to make a sale of our generation assets.") (Jackson).

The evidence at the hearing showed that DP&L could not transfer its generation assets to an affiliate before 2017 for two reasons: (1) DP&L has terms and conditions in certain Pollution Control Bonds and First Mortgage Bondsthat significantly impede upon its ability to transfer its generation assets before September 1, 2016; and (2) due to adverse market conditions, DP&L would not have sufficient cash flow to refinance the bonds before 2017. DP&L Ex. 16A, pp. 2-4 (Jackson). <u>Accord</u>: Tr. 260-62, 2897, 2911 (Jackson); Tr. 1148-50 (Herrington); Tr. 800-05 (Rice).

Those points remain true and accurate today – absent a sale of the generation assets to a third-party purchaser, DP&L needs the full period of time until May 31, 2017 to transfer its generation assets to an affiliate as a result of the structural limitations associated with its bond financings (where such limitations are related to DP&L's First & Refunding Mortgage) and financial hurdles brought on by adverse market conditions.

B. CHANGING MARKET CONDITIONS HAVE CAUSED DP&L TO CONSIDER SELLING ITS GENERATION ASSETS TO A THIRD PARTY

After the hearing in DP&L's ESP case, there were material and adverse changes in market conditions. Specifically, at the time of the ESP hearing, DP&L projected that prices during the 2016/2017 PJM delivery year would be $174.25/MW-day. FES Ex. 1, p. 53808. DP&L projected that it would earn capacity revenues in 2016 of $146 million and in 2017 of $168 million. Id. However, after the hearing, publicly available market-price data show that the PJM capacity price for the 2016/2017 delivery year cleared on May 24, 2013 at a price of $59.37 (i.e., one-third of DP&L's projected price).[1]

Changes in other commodities markets have also worked to compress DP&L's margin, thereby placing further financial strain on the Company above and beyond that which was expected at the time of the hearing.

[1] http://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/2016-2017-base-residual-auction-report.ashx. The Commission may take administrative notice of published reports of market prices. In the Matter of the Application of The Cincinnati Gas & Electric Company for Authority to Increase its Rates for Electric Service to all Jurisdictional Customers, et al., Nos. 83-1428-EL-AIR and 83-1529-GA-AIR, 1984 Ohio PUC LEXIS 9, *32 (Nov. 20, 1984); In the Matter of the Application of Ohio Edison Company for Authority to Change Certain of Its Filed Schedules Fixing Rates and Charges for Electric Service, No. 89-1001-EL-AIR, 1990 Ohio PUC LEXIS 912, *192-193 (Aug. 16, 1990)

In light of these volatile market conditions, DP&L decided to explore the possibility of selling its generation assets to a third party. That transfer would be accomplished by transferring the assets to an affiliate of DP&L at fair market value, which would then sell the assets to a third party. DP&L described those plans to the Commission in its February 25, 2014 Supplemental Application of The Dayton Power and Light Company to Transfer or Sell Its Generation Assets, ¶¶ 5-7. (Case No. 13-2420-EL-UNC).

It is important for the Commission to understand three points regarding the potential transfer of DP&L's generation assets to an affiliate.

<u>First</u>, DP&L does not know at this time whether a third party would be willing to purchase the assets at a price acceptable to DP&L. As the Commission knows, events in the generation market are unpredictable, and a third party may not be willing to purchase DP&L's generation assets at a price that would allow DP&L to maintain its financial integrity.

<u>Second</u>, the reason that DP&L <u>might</u> be able to transfer the assets as part of a third party sale process as early as 2014, but it cannot transfer to an affiliate before 2017, is that a third party <u>might</u> be willing to purchase those assets at a price that would help DP&L to offset costs of releasing the generation assets from the Company's mortgage and otherwise restructuring/refinancing its debt.

<u>Third</u>, and most importantly, the statements that DP&L's witnesses made to the Commission at the hearing were true and accurate then, and remain true and accurate now. Specifically, as DP&L explained at the hearing, it cannot transfer its generation assets to an affiliate before 2017, due to limitations in certain bond financings (where such limitations are related to DP&L's First & Refunding Mortgage) and adverse market conditions. That statement

was true then, and remains true now. The reason that DP&L recently stated (in its Supplemental Application in Case No. 13-2420-EL-UNC) that it may sell its generation assets in 2014 was that changed market conditions have caused DP&L to explore selling its generation assets to a third party, which was not part of DP&L's strategic plan at the time of the ESP hearing.

III. THE COMMISSION SHOULD GRANT REHEARING TO DP&L AS TO THE DEADLINE FOR DP&L TO TRANSFER ITS GENERATION ASSETS, AND SHOULD RESTORE THE MAY 31, 2017 DEADLINE

DP&L asks the Commission to grant rehearing to it as to the deadline for DP&L to transfer its generation assets. The Commission stated in its Second Entry on Rehearing, pp. 17-18, that the reason it accelerated the deadline for DP&L to transfer its generation assets was the Commission's belief that DP&L could transfer those assets as soon as 2014. However, as DP&L demonstrated at the hearing, there are both structural and financial obstacles which prevent DP&L from transferring its generation assets to an affiliate before 2017. DP&L Ex. 16A, pp. 2-4 (Jackson). Accord: Tr. 260-62, 2897, 2911 (Jackson); Tr. 1148-50 (Herrington); Tr. 800-05 (Rice).[2] The only way that DP&L may be able to transfer its generation assets before 2017 is if it is able to negotiate a sale of those assets to a third party, or there is some other material change in financial circumstances. Whether a third party would be willing to purchase those assets at a price that would be acceptable to DP&L and allow DP&L to maintain its financial integrity is unknown.

The Commission should thus grant rehearing as to its decision in its Second Entry on Rehearing that required DP&L to transfer its generation assets by January 1, 2016. The

[2] DP&L's post hearing briefs addressed this issue, at DP&L Initial Post-Hearing Brief, pp. 68-71 and Reply Brief, pp. 30-32.

Commission should restore the May 31, 2017 deadline established in its September 6, 2013 Entry Nunc Pro Tunc.

IV. THE COMMISSION SHOULD GRANT REHEARING AS TO THE BLENDING SCHEDULE, AND SHOULD RESTORE THE BLENDING SCHEDULE THAT THE COMMISSION ESTABLISHED IN ITS ENTRY NUNC PRO TUNC

In its Second Entry on Rehearing (pp. 18-19), the Commission also altered the blending schedule that it had previously approved. The Commission stated "[i]n determining the CBP blending schedule in the Order, the Commission relied upon the fact that DP&L would be unable to divest its generation assets before September 1, 2016. . . . Based upon the new information contained in DP&L's Supplemental Application in Case No. 13-2420-EL-UNC, we find that DP&L's CBP blending schedule should be accelerated." Id. at 18. The Commission then established a blending schedule that was substantially accelerated from the blending schedule established in its September 6, 2013 Entry Nunc Pro Tunc. Id.

It is important for the Commission to understand that the new blending schedule will cause substantial financial harm to DP&L. The evidence at the hearing showed that DP&L would lose substantial revenue if the blending schedule was accelerated, e.g., Tr. 1849. DP&L demonstrated at the hearing that its financial integrity would be jeopardized if accelerated blending was implemented. DP&L, Ex. 16A, p. 6 and CLJ-6.[3] Accord: DP&L Ex. 14A, pp. 5-9, 28-29 (Malinak Rebuttal); Tr. 637-38, 640-41 ("[A] faster transition to market results in lower revenues . . . . [T]hat factor would tend to lead to, all else equal, point to a higher SSR.") (Malinak); Tr. 1096 ("But certainly to the extent that you move on the blend percentage either to

[3] DP&L's post-hearing briefs address this issue at DP&L Initial Post-Hearing Brief, pp. 63-64 and Reply Brief, pp. 29-30.

accelerate it or decelerate it for that matter, it changes how all of those features hang together and it could have an impact on the SSR.") (Herrington); Tr. 1298 (Seger-Lawson).

The Commission should grant rehearing to DP&L as to the blending schedule because, as explained above, the basis for the Commission's decision on rehearing -- that DP&L could transfer its generation assets sooner than DP&L had stated at the hearing -- is not accurate. As demonstrated above, a sale to a third party is being evaluated but may not be feasible at this point, and absent a sale, those structural and financial obstacles to separation to an affiliate before 2017 remain. Consequently, the Commission should thus restore the blending schedule that it established in its September 6, 2013 Entry Nunc Pro Tunc.

V. CONCLUSION

DP&L regrets the miscommunication as to its future plans. DP&L asks the Commission to restore the asset transfer deadline and the blending schedule that were established in its Entry Nunc Pro Tunc.

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