

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION FOR HEARING AND MEMORANDUM IN SUPPORT BY
INDUSTRIAL ENERGY USERS-OHIO
AND
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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May 30, 2014

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Industrial Energy Users-Ohio ("IEU-Ohio") and the Office of the Ohio Consumers' Counsel ("OCC")¹ hereby file this motion requesting that the Public Utilities Commission of Ohio ("Commission") set the above-captioned matter for a hearing pursuant to Rule 4901:1-37-09(D), Ohio Administrative Code ("O.A.C."), in order to protect the interest of consumers. As discussed in more detail in the attached memorandum in support, the Amended Supplemental Application² filed by The Dayton Power and Light Company ("DP&L") on May 23, 2014 is unjust, unreasonable, not in the public interest, and would divest the Commission of jurisdiction over DP&L's generating assets. Accordingly, Rule 4901:1-37-09(D), O.A.C., requires this matter be set for a hearing.

¹ OCC has authority under law to represent the interests of all of DP&L's residential utility customers, pursuant to Chapter 4911, Revised Code.

² Amended Supplemental Application of The Dayton Power and Light Company to Transfer or Sell Its Generation Assets (May 23, 2014) (hereinafter "Amended Supplemental Application").

Respectfully submitted,

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MEMORANDUM IN SUPPORT

In accordance with Rule 4901:1-37-09(D), O.A.C., IEU-Ohio and OCC request that the Commission set this matter for hearing because DP&L's May 23, 2014 Amended Supplemental Application is unjust, unreasonable, not in the public interest, and would divest the Commission of jurisdiction over DP&L's generating assets.

I. BACKGROUND

DP&L has filed three applications in this proceeding requesting authority to transfer its generating assets. The first application³³ was filed on December 30, 2013. The Commission issued an Entry on January 3, 2014 requesting comments and reply comments on DP&L's December 30, 2013 Application. Through comments and reply comments (filed February 4, 2014 and February 19, 2014, respectively), parties demonstrated that DP&L's December 30, 2013 Application was unjust and unreasonable and was largely devoid of the information necessary to properly analyze DP&L's proposed asset divestiture.

³³ Application of The Dayton Power and Light Company to Transfer or Sell Its Generation Assets (December 30, 2013) (hereinafter "Application").

On February 25, 2014, DP&L filed a Supplemental Application.⁴ The Supplemental Application still failed to provide the necessary information regarding the terms and conditions of a transfer and information regarding the effect of the transfer on the standard service offer (“SSO”). Even though DP&L could not describe the terms of the proposed transfer to meet the minimum requirements of the Commission’s rules, DP&L also sought to secure additional authority to shift economic and environmental risks associated with its generation assets to customers. Specifically, DP&L requested:

- authority to collect the Service Stability Rider (“SSR”) even if DP&L transfers its assets to a third party;
- authority to retain responsibility for future environmental liabilities associated with DP&L’s divested generation assets, as well as authority 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”;⁵
- authority to retain the purchased power contract with the Ohio Valley Electric Corporation (“OVEC”) and to “defer the costs associated with OVEC which are not currently being recovered through DP&L’s fuel rider”⁶ and to recover these expenses from all customers; and
- authority to modify its capital ratio “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,”⁷ which would residually encumber DP&L, the electric distribution utility (“EDU”), with generation-related debt.

On March 4, 2014, the Commission issued an entry seeking comments and reply comments on DP&L’s Supplemental Application. Parties filed comments and reply comments on March 25, 2014, and April 7, 2014, respectively. The March 25, 2014 and

⁴ Supplemental Application of The Dayton Power and Light Company to Transfer or Sell Its Generation Assets (February 25, 2014) (hereinafter “Supplemental Application”).

⁵ Supplemental Application at 4-5.

⁶ *Id.* at 7.

⁷ *Id.* at 8.

April 7, 2014 comments and reply comments identified that DP&L's Supplemental Application was unjust and unreasonable because it still lacked sufficient detail regarding its proposed asset transfer. Additionally, the parties demonstrated that the terms and conditions proposed by DP&L in the Supplemental Application were unlawful and unreasonable.

On May 23, 2014, DP&L filed an Amended Supplemental Application in the above-captioned matter regarding its proposal to transfer its generating assets. While the Amended Supplemental Application contains a few more details than the Supplemental Application, it still falls well short of clearly setting forth the terms and conditions of the proposed asset transfer; still fails to demonstrate how the asset transfer will affect future SSO prices; and retains terms and conditions that the parties demonstrated were unlawful and unreasonable in the March 25, 2014 and April 7, 2014 comments and reply comments.

II. APPLICABLE STANDARD

Section 4928.17, Revised Code, governs an EDU's corporate separation plan, including an EDU's proposal to divest its generating assets. Section 4928.17(A)(2), Revised Code, requires that the Commission find that the EDU's corporate separation plan is in the public interest before it approves the plan. Thus, Section 4928.17, Revised Code, requires the Commission to receive evidence to support a finding that a corporate separation plan is in the public interest.

Additionally, Rule 4901:1-37-09(D), O.A.C., provides:

[u]pon the filing of such application [to transfer generating assets], the commission may fix a time and place for a hearing if the application appears to be unjust, unreasonable, or not in the public interest. The commission shall fix a time and place for a hearing with respect to any

application that proposes to alter the jurisdiction of the commission over a generation asset.

Furthermore, Rule 4901:1-37-09(C), O.A.C., states that an application to sell or transfer generation assets shall, at a minimum:

- (1) Clearly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same.
- (2) Demonstrate how the sale or transfer will affect the current and future standard service offer established pursuant to section 4928.141 of the Revised Code.
- (3) Demonstrate how the proposed sale or transfer will affect the public interest.
- (4) State the fair market value and book value of all property to be transferred from the electric utility, and state how the fair market value was determined.

III. ARGUMENT

IEU-Ohio and OCC request that the Commission set DP&L's Amended Supplemental Application for hearing because it is not just, reasonable, or in the public interest, and because the application proposes to alter the Commission's jurisdiction over DP&L's generating assets.

As demonstrated in the comments and reply comments previously filed by the parties in this case, DP&L's Application and Supplemental Application failed to include the information necessary for the Commission to approve either application. Furthermore, the terms and conditions contained in DP&L's Supplemental Application are unlawful and unreasonable, as the parties previously demonstrated. DP&L's third application (Amended Supplemental Application) suffers from the same flaws as the initial two. The Amended Supplemental Application fails to include sufficient information to find that DP&L's plan is just, reasonable, and in the public interest. Additionally,

DP&L proposes terms and conditions on the asset divestiture that are unlawful and unreasonable.

DP&L's Amended Supplemental Application fails to identify the transferee that will receive the generating assets. Instead, DP&L states that the assets would be transferred to an affiliate or if DP&L receives "an acceptable offer," DP&L would transfer the assets to the third party.⁸ DP&L's Amended Supplemental Application fails to state a transfer date. Instead, DP&L states that the transfer to an affiliate would occur on or before May 31, 2017 and that the sale to a third party could happen "as soon as this year."⁹ DP&L's Amended Supplemental Application fails to state the transfer/sale price. Instead, DP&L states that the transfer price to its affiliate would be the fair market value determined 75 days prior to its proposed transfer on or before May 31, 2017.¹⁰ DP&L does not provide any estimate of a potential sale price.

DP&L's Amended Supplemental Application fails to address the amount of debt associated with the generating plants that it proposes to leave with the EDU. Instead, DP&L states that it currently has \$879 million of long-term debt and hopes to reduce its long-term debt to \$750 million by the end of 2016, and hopes to have sufficient cash flows to reduce its long-term debt by an additional \$150-\$175 million by the end of 2018.¹¹ DP&L's Amended Supplemental Application fails to address the magnitude of the environmental liabilities it requests authority to retain with the EDU following the

⁸ Amended Supplemental Application at 2.

⁹ *Id.* at 2, 6.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 3-5.

asset divestiture and fails to address how and when it would seek recovery of the unidentified costs.¹²

DP&L's Amended Supplemental Application fails to address the costs associated with its request to retain the OVEC contractual entitlements following its generating asset divestiture. Instead, DP&L requests authority to retain the OVEC contractual entitlements, defer unidentified costs associated with the OVEC contractual entitlements, and address the deferred costs at a later date.¹³

DP&L's Amended Supplemental Application fails to provide substantive details regarding its request for authority to collect from customers all of the costs associated with asset divestiture. DP&L's Supplemental Application requests "blank check" authority to collect all of the costs of the asset divestiture from customers.¹⁴ DP&L's Amended Supplemental Application provides few additional details other than DP&L's statement that the costs could range from \$10 million to transfer its assets to an affiliate to \$45 million to sell its assets to a third party.¹⁵

Furthermore, DP&L's Amended Supplemental Application contains the same terms and conditions as the Supplemental Application. As demonstrated in the parties' comments and reply comments filed on March 25, 2014 and April 7, 2014, respectively, those terms and conditions are unlawful and unreasonable. The scant additional details provided in the Amended Supplemental Application do not make the application just, reasonable, or in the public interest, nor do these few additional details render the

¹² *Id.* at 11-12.

¹³ *Id.* at 13-14.

¹⁴ Supplemental Application at 5.

¹⁵ Amended Supplemental Application at 12-13.

proposed terms and conditions of the asset divestiture lawful. Because the parties have already demonstrated that DP&L's proposed terms and conditions are unlawful and unreasonable and not in the public interest, additional comments on the Amended Supplemental Application are unnecessary.

In summary, DP&L has slowly released details about its proposed asset divestiture through its three applications filed over the past six months in this proceeding. In the meantime, parties have sought, to no avail, to independently secure the missing information.¹⁶ Because the Amended Supplemental Application is unjust, unreasonable, and not in the public interest on its face (and as discussed in the March 25, 2014 comments and April 7, 2014 reply comments), and because its request to divest the Commission of jurisdiction over a generating asset, Commission rules as well as Section 4928.17, Revised Code, require the Commission to set the case for hearing. If the Commission does not set the case for hearing, the Commission should allow parties an additional opportunity to demonstrate through comments that the Amended Supplemental Application is unjust, unreasonable, and not in the public interest before ultimately rejecting the application or setting the case for hearing.

¹⁶ For example, OCC served discovery on DP&L to which DP&L refused to provide any substantive response on grounds that all discovery requests were not likely to lead to admissible evidence because DP&L sought a waiver of the requirement for a hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Hearing and Memorandum in Support by Industrial Energy Users-Ohio and the Office of the Ohio Consumers' Counsel* was served upon the following parties of record this 30th day of May 2014, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/30/2014 10:36:14 AM

in

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

Summary: Motion for Hearing and Memorandum in Support by Industrial Energy Users-Ohio and the Office of the Ohio Consumers' Counsel electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio