

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 13-2442-EL-UNC
Authority to Amend its Corporate)
Separation Plan.)

FINDING AND ORDER

The Commission finds:

- (1) The Dayton Power and Light Company (DP&L) is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.
- (2) On December 30, 2013, DP&L filed an application for authority to amend its corporate separation plan in accordance with R.C. 4928.17, Ohio Adm.Code 4901:1-37-06(A), and Ohio Adm.Code 4901:1-37-09. DP&L's fourth amended corporate separation plan recognizes the addition of AES US Services, LLC (AES Services) that will be a new affiliated services corporation of DP&L.
- (3) Pursuant to Ohio Adm.Code 4901:1-37-06(B), a filing to revise and/or amend an electric utility's corporate separation plan shall be deemed approved if it is not acted upon by the Commission within 60 days after it is filed. By Entry issued on February 25, 2014, the attorney examiner suspended DP&L's application to revise its corporate separation plan, until the Commission specifically orders otherwise, to allow additional time to fully evaluate the proposed amendments.
- (4) By Entry issued on January 3, 2014, the attorney examiner established a procedural schedule in this matter with a deadline for comments on February 4, 2014, and reply comments on February 19, 2014.
- (5) Comments were filed in this case by Staff, the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and Direct Energy Services, LLC and Direct

Energy Business, LLC (collectively, Direct Energy). Reply comments were filed by OCC and DP&L.

Comments

- (6) OCC asserts that Staff should exercise its rights to audit DP&L's cost allocation manual (CAM) and the AES US Services cost alignment and allocation manual (CAAM) to ensure compliance with Ohio Adm.Code 4901:1-37-08, which sets the requirements for CAMs. Additionally, OCC asserts that if Staff identifies provisions of the DP&L CAM or the AES US Services CAAM that appear to be deficient or will likely allow cross-subsidization to occur, then an evidentiary hearing should be ordered. (OCC Comments at 4-5.)

Similarly, Staff comments that it is supportive of DP&L's CAM to the extent that it is the same as what the Commission has already approved. However, Staff requested in its comments that the Commission withhold approval of DP&L's proposed corporate separation plan until the AES US CAAM has been filed and Staff has conducted a compliance review. (Staff Comments at 4-5.)

DP&L notes in its reply comments that it does not object to a review of the AES US CAAM. However, DP&L notes that, consistent with prior rulings, DP&L will redact all portions of the AES US CAAM that reflect or include legal advice. (DP&L Reply at 1-2.)

Thereafter, on August 19, 2014, Staff filed a letter in this case indicating that DP&L provided Staff with the AES US Services CAAM, that Staff reviewed the AES US CAAM, and that it is consistent with the Commission's corporate separation rules.

- (7) The Commission finds that, pursuant to Staff's representation, the DP&L CAM and AES US Services CAAM comply with the Commission's rules, and that DP&L's application appears to be in compliance with R.C. 4928.17, Ohio Adm.Code 4901:1-37-06(A), and Ohio Adm.Code 4901:1-37-09.

- (8) OCC argues that improper allocation of costs to DP&L's transmission and distribution services could inappropriately increase distribution customer rates, while improper allocation of costs away from DP&L's generation affiliate or competitive retail electric service (CRES) provider could result in improperly or illegally subsidizing competitive affiliates and harming customers in the retail electric market. Further, OCC avers that as DP&L's structural separation progresses, it will be necessary to ensure that DP&L's retention of generation assets does not affect the rates at which it provides service to SSO customers or provide an unfair competitive advantage to its affiliates in providing service. (OCC Comments at 5-7.)
- (9) The Commission finds that OCC's argument that structural separation should not affect the rates for DP&L to provide service to SSO customers, or provide an unfair competitive advantage to DP&L's affiliates, is better addressed in DP&L's generation asset divestiture case. We note that Ohio Adm.Code 4901:1-37-09(C)(2) requires that an application to sell or transfer generating assets shall, at a minimum, demonstrate how the sale or transfer will affect the current and future SSO established pursuant to R.C. 4928.141.
- (10) Further, OCC argues in its comments that DP&L should be required to maintain separate books and records of accounts for its generation affiliate from its transmission and distribution business. OCC avers that maintaining separate books and records of accounts is necessary to allow parties to determine the profitability of DP&L's transmission and distribution operations for evaluation in proceedings involving the significantly excessive earnings test (SEET). OCC concedes that DP&L's proposed corporate separation plan already describes that DP&L will maintain separate books and records of accounts, but OCC argues that in other proceedings DP&L has demonstrated that it does not maintain separate books and records of accounts for each business unit. (OCC Comments at 6-7.)
- (11) The Commission finds that OCC's argument lacks merit. We note that DP&L's proposed corporate separation plan

already describes the separate accounting practices that perform the separation of competitive versus noncompetitive retail electric service. Further, the proposed corporate separation plan states that DP&L and each affiliate or business unit in the DP&L group will maintain, in accordance with generally accepted accounting principles, an applicable uniform system of accounts, books, records and accounts that are separate from the books, records and accounts of each other affiliate or business unit. Accordingly, we find that DP&L's corporate separation plan already addresses OCC's request.

- (12) Direct Energy argues that no employee providing services for both DP&L and its generation affiliate or CRES provider should be permitted to participate in the drafting of an electric security plan (ESP) or market rate offer (MRO), or tariff filing. Direct Energy asserts that this is necessary to prevent DP&L affiliates from receiving a competitive advantage. Further, Direct Energy avers that any employee that has worked on an ESP or MRO filing for DP&L, or that has worked on a tariff filing, that then moves to a CRES provider or generation affiliate should be logged in DP&L's CAM and noted in the filing. On reply, OCC concurs with Direct Energy's recommendation. (Direct Energy Comments at 1-2.)

DP&L argues that Ohio Adm.Code 4901:1-20-16(G)(1)(b) permits DP&L and its affiliates to share employees, providing that the costs of those employees are allocated on a fully-allocated cost basis. Further, DP&L asserts that as a practical matter, DPL Inc.'s executives provide services to DP&L and its affiliates, and these executives need to be able to review and approve major filings. Finally, DP&L argues that all parties have ample notice of the contents of an ESP or MRO filing, and that no competitive advantage exists if a shared employee learns the contents of an application before it is filed. (DP&L Reply at 4-5.)

- (13) The Commission finds that DP&L should be permitted to share employees to the extent permitted by law. We note that Ohio Adm.Code 4901:1-20-16 permits companies and

their affiliates to share employees, so long as they comply with the conditions provided in the rule. Additionally, we note that the rules require that DP&L allocate the costs of shared employees on a fully-allocated cost basis.

- (14) Staff argues that DP&L should revise sections I.B., page 6, and II.E.9 of its fourth amended corporate separation plan. Specifically, the last sentence of Section I.B., page 6, DP&L references a corporate separation plan, rather than an *approved* corporate separation plan. Staff proposes the addition of the word “approved.” Further, Section II.E.9 states that employees of DP&L shall not indicate a preference for an affiliated company’s services. Staff recommends that this should be expanded to include employees or employees representing DP&L. Staff asserts that this will relieve any confusion between the corporate separation plan and the Commission’s rules. (Staff Comments at 4.)
- (15) DP&L asserts that it agrees to Staff’s proposed revisions to sections I.B., page 6, and II.E.9 of its corporate separation plan (DP&L Reply at 2). Accordingly, the Commission finds that Staff’s proposed revisions should be adopted and incorporated into DP&L’s corporate separation plan.
- (16) Staff notes that in Section II. B., page 8, of DP&L’s corporate separation plan, DP&L struck the requirement that it cannot provide competitive retail electric services as defined by R.C. 4928.01(B)(i) except through a separate affiliate. Staff asserts that Ohio law prohibits DP&L from providing competitive retail electric service, therefore, Staff argues that the language should be reinstated. (Staff Comments at 4.)

IEU-Ohio similarly argues that R.C. 4928.17(A)(2) requires that a corporate separation plan satisfy the public interest by preventing an unfair competitive advantage and preventing the abuse of market power, which is the ability to impose on customers an above-market price. To this end, IEU-Ohio asserts that DP&L has not disclosed how AES will allocate costs to DP&L. IEU-Ohio argues that AES cannot allocate costs to DP&L that exceed prices that

would prevail in a competitive market. IEU-Ohio requests that the Commission require DP&L to more specifically describe the manner in which AES will allocate costs to DP&L and ensure that the methodology complies with Ohio law. (IEU-Ohio Comments at 3-4.)

DP&L asserts that R.C. 4928.17 permits the electric utility to engage in certain behind-the-meter competitive retail electric services, so long as the utility operates under a corporate separation plan approved by the Commission. DP&L asserts that FirstEnergy is permitted to provide such services through its tariff (*See* PUCO Tariff No. 13, Original Sheet No. 4, p. 13). Further, DP&L argues that IEU-Ohio's additional arguments are better addressed in DP&L's generation asset divestiture proceeding. (DP&L Reply at 3-4.)

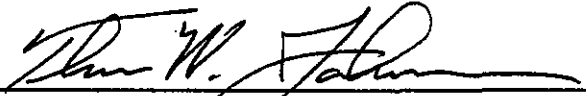
- (17) The Commission finds that DP&L's corporate separation plan should not be required to contain the language in Section II. B., page 8, stating that it cannot provide competitive retail electric service. However, we find that if DP&L proposes to provide any competitive retail electric service, whether behind the meter or otherwise, DP&L must receive Commission authorization to provide such service. We recognize that R.C. 4928.17 permits DP&L to provide certain competitive retail electric services in accordance with an approved corporate separation plan. However, we find that DP&L's corporate separation plan should only permit DP&L to provide such services pursuant to Commission authorization to do so. This finding does not authorize DP&L to offer any competitive retail electric service, but provides DP&L with the opportunity to request Commission authorization to offer competitive retail electric service in accordance with its corporate separation plan.
- (18) Finally, the Commission finds that DP&L should amend its corporate separation plan to reflect the findings in our entries on rehearing in the *ESP II* proceeding, including the authorized competitive blending schedule. *ESP II*, Second Entry on Rehearing, (Mar. 19, 2014), Fourth Entry on Rehearing (June 4, 2014).

It is, therefore,

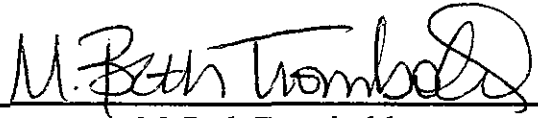
ORDERED, That DP&L's application to amend its corporate separation plan be approved, subject to the conditions set forth in this Finding and Order. It is, further,

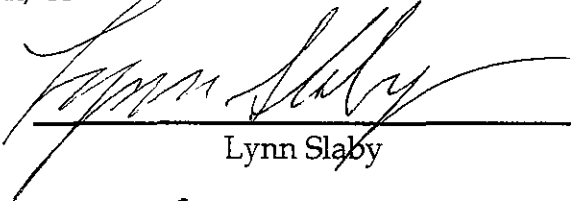
ORDERED, That a copy of this Finding and Order be served upon all parties of record in this case.

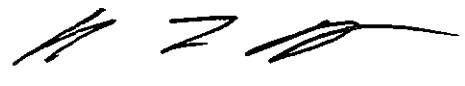
THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman

Steven D. Lesser


M. Beth Trombold

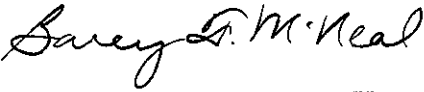

Lynn Slaby


Asim Z. Haque

BAM/sc

Entered in the Journal

SEP 17 2014



Barcy F. McNeal
Secretary