

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of : CASE NO. 13-2442-EL-UNC
The Dayton Power and Light Company
for Authority to Amend Its Corporate :
Separation Plan :
:

**THE DAYTON POWER AND LIGHT COMPANY'S
MEMORANDUM IN OPPOSITION TO APPLICATION FOR REHEARING**

This proceeding concerns a minor compliance filing to amend the corporate separation plan of The Dayton Power and Light Company ("DP&L"). Pursuant to Ohio Admin. Code § 4901:1-37-06, DP&L sought approval of a Fourth Amended Corporate Separation Plan regarding the formation of AES US Services, LLC, which will provide certain administrative services to DP&L. Dec. 30, 2013 Application of The Dayton Power and Light Company to Amend Its Corporate Separation Plan ("Application").

Shortly after DP&L filed the Application, the Attorney Examiner set a deadline for comments and objections on February 4, 2014, and a deadline for reply comments on February 19, 2014. Jan. 3, 2014 Entry, ¶ 4. The Attorney Examiner further stated that "[a]fter comments and reply comments are received and the issues raised therein considered, a decision will be made whether a hearing is warranted in this matter." *Id.* ¶ 5. The Attorney Examiner later suspended the proceeding for further review by the Commission, and instructed DP&L to submit the AES US Services Cost Alignment and Allocation Manual ("AES US CAAM") to

Staff pursuant to Ohio Rev. Code § 4928.145 and Ohio Admin. Code § 4901:1-37-07. Feb. 25, 2014 Entry, ¶ 5.

DP&L complied with the Attorney Examiner's ruling, and Staff later reported that the provisions of the AES US CAAM "are consistent with the Commission's Corporate Separation Rules." Aug. 19, 2014 Letter Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio. The Commission later found 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." Sept. 17, 2014 Finding and Order, p. 2.

OCC argues (pp. 7-12) that the Commission erred by not granting its motion to compel production of the AES US Services CAAM and by approving the manual based upon a Staff inspection. The Commission should reject that argument for four separate and independent reasons. First, there is no statutory requirement for DP&L to maintain a cost allocation manual. Rather, such manuals are required by Ohio Admin. Code § 4901:1-37-08(A), which provides that "[e]ach electric utility that receives products and/or services from an affiliate and/or that provides products and/or services to an affiliate shall maintain information in [a cost allocation manual], documenting how costs are allocated between the electric utility and affiliates and the regulated and nonregulated operations." As with other requirements under Chapter 4901-1-37 of the Ohio Administrative Code, that requirement can be waived by the Commission. Ohio Admin. Code § 4901:1-37-02(C) ("The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown."). If the Commission has the greater power of waiving the requirement that DP&L maintain a cost allocation manual, it certainly has the lesser power to not grant a motion to

compel and to approve the manual based on a Staff inspection. The Commission thus did not abuse its discretion by not granting OCC's motion to compel production and by approving the manual based upon a Staff inspection.

Second, OCC's argument that an improper allocation of costs in the AES US CAAM could lead to higher transmission and distribution rates is without merit. DP&L's transmission and distribution rates are not established by its cost allocation manual; they are established by rate cases filed with the PUCO, in which OCC could intervene. If OCC wishes to challenge DP&L's transmission and distribution rates, or its allocation of costs, then it will be free to do so in such a proceeding.

Third, the allocation of costs in the AES US Service CAAM could not affect prices in competitive markets. DP&L's CRES affiliate cannot charge above-market generation rates; its customers would switch to other competitors. Conversely, there is no risk that DP&L's CRES affiliate would charge below market rates; the company would lose money. Thus, there is no prospect of customer injury based on how costs are allocated to generation affiliates.

Fourth, the Commission routinely relies upon its Staff to inspect utility records and facilities. There is no prohibition against the Commission doing so, and OCC's argument – that Staff recommendations need to be evidence and subject to cross-examination before the Commission can follow them – would significantly impede the Commission's ability to act efficiently. Further, the case that OCC relies upon, Tongren v. Pub. Util Comm., 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999) is not on point, for two reasons. First, in that case, "the commission's staff filed no comments, testimony, or report." Id. at 90. The Court ruled that the Commission could not rely on Staff's recommendations when they were not in the record. Here,

in contrast, Staff filed its conclusions in the docket in this case. Aug. 19, 2014 Letter. Second, in Tongren, the Commission approved the entry of a new rate. 85 Ohio St.3d at 88. As demonstrated above, the Commission did no such thing here. While a hearing may be required before a new rate is implemented, the Commission has discretion whether to hold a hearing when there is no rate impact. There was thus no need for Staff's recommendation to be entered into evidence at a hearing for the Commission to rely on it.

OCC also argues (pp. 9-10) that the Commission erred by not conducting a hearing. However, there is no hearing required by either the Ohio Revised Code or the Ohio Administrative Code. The Commission thus did not err by not conducting a hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to Application for Rehearing has been served via electronic mail upon the following counsel of record, this 27th day of October, 2014:

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Summary: Memorandum The Dayton Power and Light Company's Memorandum in Opposition to Application for Rehearing electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company