

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

- (1) The Dayton Power and Light Company (DP&L or the Company) is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.
- (2) On September 17, 2014, the Commission issued its Finding and Order (Order) in this case. Pursuant to the Order, the Commission granted DP&L's application, as amended, to divest its generation assets.
- (3) Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (4) On October 14, 2014, the City of Miamisburg, Ohio (Miamisburg) filed an application for rehearing. On October 17, 2014, the Industrial Energy Users - Ohio (IEU-Ohio), the Ohio Consumers' Counsel (OCC), and DP&L filed applications for rehearing. On October 27, 2014, DP&L filed a memorandum contra the applications for rehearing.
- (5) On October 29, 2014, the Commission issued an Entry on Rehearing granting rehearing for further consideration of the matters specified in the applications for rehearing.

I. Waiver of Ohio Adm.Code 4901:1-37-09(D)

- (6) Miamisburg, IEU-Ohio, and OCC assert that the Commission's Order was unlawful and unreasonable because it granted DP&L's motion for waiver of Ohio Adm.Code 4901:1-37-09(D) to conduct a hearing in this matter. Miamisburg asserts that a hearing is necessary to

determine whether a transferee of DP&L's assets will have sufficient financial ability to satisfy environmental liabilities. IEU-Ohio argues that a hearing is necessary because DP&L's application fails to provide the minimal amount of information required by Commission rules and will alter the Commission's jurisdiction over the generation assets. OCC avers that a hearing must be held because, in its opinion, DP&L's application appears to be unjust, unreasonable, or not in the public interest.

DP&L argues in its memorandum contra that the Commission should deny rehearing on this assignment of error because the Commission's waiver of Ohio Adm.Code 4901:1-37-09(D) is justified. DP&L notes that its request for waiver of hearing was consistent with the Commission's Orders in AEP's and Duke's generation asset transfer cases, in which no hearing was required. *In re Ohio Power Company*, Case No. 12-1126-EL-UNC, Finding and Order (Oct. 17, 2012) at 11; *In re Duke Energy Ohio*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (Nov. 22, 2011) at 46. DP&L asserts that there is no need or reason for the Commission to conduct a hearing in this matter because DP&L has provided all of the information that it can provide at this time. DP&L argues that the applications for rehearing fail to explain what additional evidence could be gained from a hearing or why a hearing would be beneficial.

- (7) The Commission notes that pursuant to R.C. 4928.17(E), the Commission must approve any proposal by an electric distribution utility to sell or transfer any generating asset that it wholly or partly owns. Additionally, R.C. 4928.17(B) provides that the Commission shall afford a hearing upon those aspects of a plan that the Commission determines reasonably require a hearing. These provisions are reflected in Ohio Adm.Code 4901:1-37-09(D), which provides that the Commission may schedule a hearing if an application appears to be unjust, unreasonable, or not in the public interest. However, we note that R.C. 4928.17 and Ohio Adm.Code 4901:1-37-09 both provide that the determination of whether to conduct a hearing is based upon whether the Commission finds that the application appears to be unjust, unreasonable, or not in the public interest. While the parties assert that the application is unjust, unreasonable, or not in

the public interest, the Commission finds that their arguments lack merit. The Commission finds that no aspect of DP&L's plan reasonably requires a hearing, and that DP&L's plan is not unjust, unreasonable, or not in the public interest. Additionally, our decision not to hold a hearing in this matter is consistent with Commission precedent. See *In re Ohio Power Company*, Case No. 12-1126-EL-UNC, Finding and Order (Oct. 17, 2012) at 11; *In re Duke Energy Ohio*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (Nov. 22, 2011) at 46. Accordingly, we find that rehearing is denied on this assignment of error.

II. Deferral Authority

- (8) OCC and IEU-Ohio assert that the Commission's Order was unlawful and unreasonable because it permitted DP&L to defer costs associated with the transfer or sale of its generation assets. IEU-Ohio argues that the costs are generation-related and the Commission does not have a lawful basis to authorize deferral accounting of these generation-related costs. IEU-Ohio notes that pursuant to R.C. 4905.13, the Commission has authority to address an electric utility's accounting procedures for noncompetitive services, but IEU-Ohio argues that this does not apply to the generation-related costs in this case. Additionally, IEU-Ohio avers that the Commission may exercise authority over competitive retail generation service, but only over the electric utility's accounting to deferrals related to a phase-in of a rate or price established as a provision of a standard service offer under R.C. 4928.141 to 4928.143. OCC argues that the Commission's Order failed to set forth the reasons for its decision, as required by R.C. 4903.09.

DP&L asserts that the Commission should deny rehearing on the assignment of error raised by OCC and IEU-Ohio. DP&L argues that the expenses that the Commission has allowed DP&L to defer are expenses that DP&L must incur pursuant to R.C. 4928.17 and *ESP II*. *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, et al., (*ESP II*), Entry Nunc Pro Tunc (Sept. 6, 2013) at 2. DP&L asserts that these expenses should be borne by DP&L and are recoverable pursuant to R.C. 4928.143(B)(2)(h). DP&L avers that these costs are related to distribution service since the very reason

for these costs is for DP&L to become a company that provides only distribution service.

- (9) The Commission finds that the assignment of error raised by OCC and IEU-Ohio lacks merit. As we found in the Order, DP&L should be permitted to defer all financing costs, redemption costs, amendment fees, investment banking fees, advisor costs, taxes, and related costs that it incurs to transfer its generation assets, however, these costs will be subject to Staff review to determine if they are reasonable and prudently incurred. Order at 13. Pursuant to R.C. 4905.13, the Commission has general supervisory authority over the system of accounts to be kept by a public utility, and may authorize deferral of such costs as the Commission deems appropriate. We find no merit to IEU-Ohio's assertion that R.C. 4905.13 applies only to noncompetitive services and, regardless, we find that the costs in this case are noncompetitive distribution costs recoverable by the distribution utility. These are distribution costs to the utility of rendering to the public a utility service and will enable DP&L to divest its generation assets to become a regulated distribution company. The prudence of the recoverable amount of these costs will then be reviewed in an audit pursuant to DP&L's next distribution rate case. Accordingly, rehearing on this assignment of error is denied.

III. Debt to Equity Ratio

- (10) OCC argues that the Commission unlawfully and unreasonably permitted DP&L to temporarily maintain total long term debt of \$750 million or total debt equal to 75 percent of rate base, whichever is greater. OCC asserts that this conflicts with the Commission's Order and the stipulation in the *DP&L Merger* case. *In re Approval for a Change of Control of The Dayton Power and Light Company*, Case No. 11-3002-EL-MER (*DP&L Merger*), Finding and Order (Nov. 22, 2011) at 9.

DP&L argues that the Commission should reject OCC's assignment of error because the divestment of DP&L's generation assets will be a significant change in circumstances for the Company. DP&L notes that the Commission may reconsider its prior order, provided that it explains its reason for doing so. *Citing Ohio Consumers'*

Counsel v. Pub. Util. Comm., 114 Ohio St.3d 340, 2007-Ohio-4276, 872 N.E.2d 269, ¶14. In this case, DP&L argues that it is reasonable for the Commission to reconsider its order because the Commission ordered DP&L to divest its generation assets in *ESP II*. *ESP II*, Entry Nunc Pro Tunc (Sept. 6, 2013) at 2. DP&L asserts that this is a significant change in circumstances for the company. DP&L argues that the *DP&L Merger* case did not establish DP&L's capital ratio into perpetuity without any consideration of future events, and that the Commission should uphold its finding in the Order that divesting generation assets with a net book value of \$1,576,440,886 is a significant change in circumstances for the company. DP&L avers that this significant change in circumstances makes it necessary for DP&L to temporarily maintain an adjusted capital structure.

- (11) The Commission finds that rehearing on the assignment of error raised by OCC should be denied. As we found in the Order, divesting generation assets with a net book value of \$1,576,440,886 is a significant change in circumstances for the company, which makes it necessary for DP&L to temporarily maintain an adjusted capital structure. Order at 18. OCC has presented no new or novel arguments that were not fully addressed by the Commission in the Order.

IV. Service Stability Rider

- (12) IEU-Ohio argues that the Commission's Order is unlawful and unreasonable because it permits DP&L to collect the SSR after the transfer of its generation assets is complete. Further, IEU-Ohio asserts that the SSR itself is unlawful.

DP&L argues that the Commission has already rejected this assignment of error in *ESP II*. *ESP II*, Fourth Entry on Rehearing (June 4, 2014) at 7-9. Further, DP&L notes that the Commission authorized AEP to continue to collect its stability rider after its generation assets were transferred. *In re Columbus Southern Power Company*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 36, 57.

- (13) The Commission finds that IEU-Ohio's assignment of error lacks merit. The Commission has already denied IEU-Ohio's assignment of error in *ESP II*. *ESP II*, Fourth Entry on Rehearing (June 4, 2014) at 7-10. We noted there that IEU-

Ohio's argument rests on the false premise that the SSR is a generation-related charge, when, in fact, it is a financial integrity charge intended to maintain the financial integrity of the entire company, not just the generation business. Therefore, we held that when DP&L divests its generation assets, it may continue to collect the SSR. *ESP II*, Fourth Entry on Rehearing (June 4, 2014) at 7-9. IEU-Ohio has not presented any new arguments or reasons for us to reverse our prior decision on this issue. The Commission fully addressed the lawfulness of the SSR in *ESP II*, and we will not now reconsider that decision.

V. Environmental Liabilities

- (14) Miamisburg asserts that the Commission's Order is unlawful and unreasonable because it fails to ascertain whether DP&L or its transferee will have sufficient financial and legal resources to properly decommission the O.H. Hutchings Generating Station (Hutchings Station). Miamisburg notes that without sufficient financial and legal capacity, there is a risk that environmental liabilities at Hutchings Station will become orphaned liabilities.

DP&L asserts that the Commission should deny rehearing on the assignment of error raised by Miamisburg because the information it seeks cannot be known. DP&L avers that if the Commission were to adopt Miamisburg's position, then the Commission would be unable to approve DP&L's application to divest its generation assets until a buyer/transferee was identifiable. Further, the amount and nature of future liabilities is unknown and are subject to change.

- (15) The Commission finds that rehearing on the assignment of error raised by Miamisburg should be denied. The Commission notes that it would be outside the scope of its jurisdiction to determine who DP&L should transfer or sell its generation assets to. Accordingly, rehearing on Miamisburg's assignment of error is denied.

VI. OVEC

- (16) IEU-Ohio asserts that DP&L should not be permitted to retain its interest in the Ohio Valley Electric Cooperative (OVEC). IEU-Ohio argues that DP&L has the current legal means to assign the OVEC entitlement without consent of the other OVEC companies. IEU-Ohio avers that under Section 9.182 of the Inter-Company Power Agreement (ICPA), a sponsoring company may assign its ownership interest to a permitted assignee upon thirty-days' notice. Further, IEU-Ohio alleges that under Section 9.183 of the ICPA, DP&L may transfer its ownership interest in OVEC to a third party upon notice to the sponsoring companies, subject only to a thirty-day right of first refusal. Additionally, IEU-Ohio asserts that by requiring DP&L to immediately divest its OVEC entitlement will prevent future requests from DP&L to secure above-market compensation or to recover its out-of-market OVEC related costs.

DP&L argues that both Sections 9.181 and 9.182 of the ICPA require OVEC approval for DP&L to transfer its interest in OVEC. DP&L asserts that Section 9.181 permits transfer of the interest upon written consent of all the other parties, and Section 9.182 requires that an assignment must be in form and substance acceptable to the OVEC companies. Additionally, DP&L avers that Section 9.183 grants the OVEC companies the right of first refusal if DP&L should attempt to sell its interest in OVEC to a third party. Finally, DP&L notes that if it is unable to obtain consent from the OVEC companies to transfer its interest in OVEC, then selling its OVEC power into the PJM marketplace is a reasonable requirement that should satisfy IEU-Ohio's concerns.

- (17) The Commission finds that the assignment of error raised by IEU-Ohio lacks merit. As we found in the Order, DP&L must make a good faith effort to divest its interest in OVEC. Further, if DP&L is not permitted to transfer its ownership interest in OVEC, it should cause the energy from its OVEC contractual entitlements to be sold into the day-ahead or real-time PJM energy markets, or on a forward basis through a bilateral arrangement. Order at 15. We will not interfere with the contractual terms of the ICPA. However, if DP&L

is capable of divesting its interest in OVEC or, at least, seeking the consent of the other OVEC companies to divest its interest, then it must do so as part of a good faith effort to divest its interest in OVEC.

VII. Procedural Matters

- (18) DP&L requests that the Commission correct a typographical error and clarify that the sale or divestiture of DP&L's generation assets constitutes an extraordinary event that should be excluded from the significantly excessive earnings test. No party filed a memorandum contra in opposition to DP&L's request. Accordingly, the Commission amends its Order, nunc pro tunc, to clarify that the sale or divestiture of the generation assets constitutes an extraordinary event and will be excluded from the significantly excessive earnings test. We note that this is consistent with the Commission's original intent in the Order and Commission precedent. *See In re Ohio Edison Co., Cleveland Elec. Illum. Co., and Toledo Edison Co.*, Case no. 10-1265-EL-UNC, Opinion and Order (Nov. 22, 2010) at 3.
- (19) Miamisburg asserts that the Commission did not rule on Miamisburg's motion to intervene. Miamisburg argues that it moved to intervene in this proceeding and that no party file a memorandum contra to Miamisburg's motion to intervene. Miamisburg requests that its motion to intervene be granted on rehearing.
- (20) We find that rehearing should be granted and the motion to intervene filed by Miamisburg on May 14, 2014, should be granted. We note that the comments and reply comments filed by Miamisburg in this proceeding were considered by the Commission and cited in the Order. Additionally, the motions to intervene filed by the Ohio Energy Group (OEG), FirstEnergy Solutions (FES), Interstate Gas Supply (IGS), the Ohio Consumers' Counsel (OCC), Duke Energy Ohio, Inc. (Duke), the OMA Energy Group (OMA), Industrial Energy Users - Ohio (IEU-Ohio), Duke Energy Commercial Asset Management (DECAM), AEP Generation Resources (AEP Gen), Ohio Partners for Affordable Energy (OPAE), and Retail Energy Supply Association (RESA) have been granted or are hereby granted. No memoranda contra were filed to any of the motions to intervene.

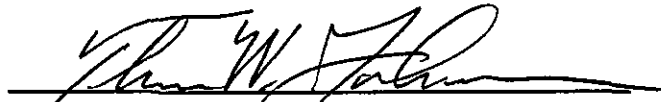
It is, therefore,


ORDERED, That the application for rehearing filed by Miamisburg is granted, in part, and denied, in part, and the applications for rehearing filed by OCC, IEU-Ohio, and DP&L are denied. It is, further,

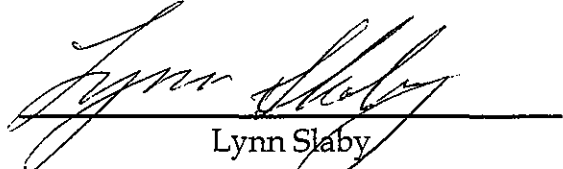
ORDERED, That the motions to intervene filed by the parties in this case are granted, pursuant to Finding (20). It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser

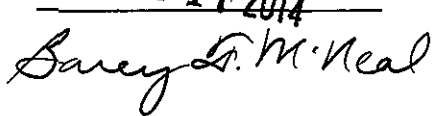

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Secretary