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. 16-0395-EL-SSO
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF REVISED TARIFFS	)	CASE NO. 16-0396-EL-ATA
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY PURSUANT TO R.C. 4905.13	)	CASE NO. 16-0397-EL-AAM

JOINT POST-HEARING BRIEF SUBMITTED BY
INTERVENORS MURRAY ENERGY CORPORATION
AND THE CITIZENS TO PROTECT DP&L JOBS

I. INTRODUCTION

On February 22, 2016, pursuant to R.C. 4928.141 and 4928.143, the Dayton Power and Light Company ("DP&L") filed an Application For Approval of Its Electric Security Plan (the "Original Application") with the Public Utilities Commission of Ohio (the "Commission"), Case No. 16-0395-EL-SSO. In its Original Application, DP&L stated that it owned significant electric generating assets which were, "[d]ue to adverse conditions in the energy and capacity markets, and a series of new and upcoming environmental regulations, . . .at a risk of closure." Original Application at ¶4. DP&L candidly explained why the "premature" retirement of the five listed coal-fired generating plants in which it holds an interest would be disastrous for DP&L, its ratepayers, local communities where the plants were located and the entire State of Ohio:

- *"This Application is designed to promote economic growth and stability in Ohio by allowing at-risk generation plants to remain operational. If these plants were to close, then the adverse effects would include $26.5 billion in economic losses,*

the loss of almost 19,000 jobs, and a significant increase in reliability risks." Original Application, p. 1.

- *"Baseload generation plants are critical to Ohio's economic stability because they are necessary to ensure the reliability of the economic grid, ensure fuel diversity of Ohio generation plants, keep prices low and produce millions of dollars of benefits in the state and in the local communities."* Original Application, p. 1.

- *"The closure of the plants in Ohio would significantly decrease supply, and cause a corresponding increase in market prices."* Original Application, p. 2.

Because of these acknowledged adverse consequences, DP&L, in its Original Application, sought the Commission's approval of a ten-year Reliable Electric Rider to ensure that these critical coal generation plants would continue operating through December 31, 2026. Original Application at ¶¶6, 9.

On January 30, 2017, DP&L filed a proposed Stipulation and Recommendation which constitutes a complete reversal of its position regarding continued operation of its generation assets expressed in the Original Application. Instead of continuing the uninterrupted, more than 30 year operation, of the critical coal generation plants, DP&L now proposes to transfer these plants to an affiliated company and to sell DP&L's ownership interest in the Conesville, Miami Fort and Zimmer stations. Subsequently, the January 30, 2017 Stipulation and Recommendation was replaced by the Amended Stipulation and Recommendation filed on March 14, 2017. Paragraphs 1(c), (d) and (e) provide:

> c. Assuming FERC approval, DP&L agrees to transfer its generation assets and non-debt liabilities to AES Ohio Generation, LLC, an affiliated subsidiary of DPL Inc. within 180 days following final Commission approval of this Stipulation, provided that the Commission approves this Stipulation without material modifications.
>
> d. DP&L (or the affiliate to whom the generation assets are transferred) will commit to commence a sale process to sell to a third party its ownership in Conesville, Miami Fort and Zimmer stations.
>
> e. AES Corporation will use all proceeds from any sale of the coal generation assets to make discretionary debt repayments at DP&L and DPL Inc.

The Stuart and Killen stations are conspicuously absent from Paragraph 1(d) of the Amended Stipulation, which addresses a proposed sale process for only the Conesville, Miami Fort and Zimmer stations. Both DP&L witnesses Schroder and Malinak confirmed DP&L's intention to close the Stuart and Killen plants by June, 2018 without including these plants in the proposed sale process provided in Paragraph 1(d). (Schroder, Tr. Vol. II, 402; Malinak, DPL Ex. 2A, p. 27)

As the Commission is no doubt aware, on April 25, 2017, Dynergy filed a Form 8-K with the SEC disclosing that on April 21, 2017, Dynergy affiliates, AES Ohio Generation LLC and DP&L entered into an Asset Purchase Agreement whereby the Dynergy affilates would acquire DP&L's 28.1% interest in Zimmer and its 36% interest in Miami Fort Units 7 and 8 for a purchase price of $50 million plus assumption of certain liabilities. (See Appx. A). DP&L should be required to supplement the record in this case to reflect the sale and explain any impact on the Amended Stipulation and Recommendation. At this juncture, Intervenors assume for purposes of this Brief that the Amended Stipulation and Recommendation will not be modified.

Significantly, DP&L seeks authority in the Amended Stipulation to transfer the generation assets to AES Ohio Generation but to leave behind the generation debt with DP&L. The net book value of these generation assets is $545.8 million and the associated debt totals $938.7 million. (Malinak, DPL Ex. 2A, pp. 27, 68; RJM – 19A). Transferring the generation assets but leaving the associated debt with DP&L will increase DP&L's leverage ratio which will be a credit negative. (Malinak, DPL Ex. 2A, p. 68). Further, DP&L ratepayers will be required to provide the funds to service the debt associated with the transferred generation assets which will no longer provide service to these ratepayers. (Malinak, DPL Ex. 2A, p. 30). Indeed, DP&L represents that cash flow from the Distribution Modernization Rider (DMR) will be used to pay interest obligations on

existing debt at DPL Inc. and DP&L. (Amended Stipulation and Recommendation, Paragraph 2(b)). DP&L resorts to this rider in lieu of any cash infusion by AES.

The supposed benefit of any sale of the generating plants provided in the Amended Stipulation is that AES Corporation will use the proceeds from any sale to make discretionary debt repayments at DP&L and DPL Inc. However, outright closure of the Stuart and Killen stations, without first undergoing a possible sale in the sale process, will obviously generate no sale proceeds to apply to the debt. Jurisdictional customers will be required to provide revenues to service the debt associated with these plants that will not provide any service to them. (Malinak, DPL Ex. 2A, p. 68; Tr. Vol. I, 221, 222).

Following the filing of the January 30, 2017 Stipulation, Murray Energy Corporation and the Citizens To Protect DP&L Jobs filed motions to intervene and were ultimately permitted intervention in this case. (Tr. Vol. I, 18). Murray Energy supplies coal to the Stuart and Killen plants. Murray Energy is the largest underground coal mining company in the United States with headquarters in St. Clairsville, Ohio. Murray Energy is the largest employer of coal workers in the underground mining industry in the United States, with over 6000 employees. The company has over 1,300 employees throughout Ohio and is engaged in the mining, processing, loading and transportation of coal in the Ohio Valley region. The Citizens To Protect DP&L Jobs is an unincorporated association whose individual members include business people, residents and taxpayers in Adams County, Ohio who are very concerned with the possible closure of the Stuart and Killen plants and the devastating consequences to Adams County and the surrounding communities which are heavily dependent on the continued operation of those plants. Separate intervenors sharing similar interests include the Utility Workers Union of America Local 175, the Adams County Commissioners, Monroe and Sprigg Townships and the Manchester Local and Adams County Ohio Valley School Districts.

Murray Energy Corporation and the Citizens To Protect DP&L Jobs oppose the Amended Stipulation and Recommendation to the extent the Amended Stipulation fails to include the Stuart and Killen plants in the proposed sale process addressed in Paragraph 1(d). There is absolutely no justification for the outright closure of these plants without first exhausting an open and legitimate sale process for these plants. This is particularly true given the extraordinary circumstance that DP&L proposes in the Amended Stipulation to transfer the generation assets but to leave behind the associated debt at DP&L for servicing by the jurisdictional customers. Outright closure of these plants, without at least pursuing a possible sale process, is not in DP&L's interest, is not in the ratepayers interest, is not in the interest of Ohio's coal production industry and is not in the interest of the local communities and the State of Ohio. DP&L's own expert testified that any sale of the Stuart and Killen plants would produce sale proceeds to reduce DP&L debt which benefits both DP&L and ratepayers. (Malinak, Tr. Vol. I, 213, 215). There is no harm to DP&L to include the Stuart and Killen stations in the sale process since DP&L proposes to continue operation of the plants until June, 2018 anyway.

The evidence in this case convincingly establishes that there is no rational justification for outright closure of the Stuart and Killen stations without at least attempting a sale through the sale process already provided in Paragraph 1(d) of the Amended Stipulation. DP&L witnesses failed to justify omission of the Stuart and Killen stations from the sale process. Intervenor witness Emily Medine, on the other hand, explained why DP&L's unilateral decision to close the Stuart and Killen power plants, omitting the plants from the sale process, has not been justified, is not in the public interest and is likely to have extreme negative economic consequences for DP&L ratepayers and the public interest. (Direct Medine, Int. Ex. 2, p. 2). Specifically, Ms. Medine concludes:

- The closure of Killen and Stuart is likely to increase power prices to DP&L customers.

- The closure of Killen and Stuart will have severe economic consequences on the communities in which the plants reside.

- Both the Killen and Stuart stations could be sold. Potential buyers include private equity, merchant generators, and strategic players including coal producers.

- There is no reason why a sales process to which DP&L has agreed for its other coal assets cannot be extended to include Killen and Stuart.

- Absent a demonstration by DP&L that including Killen and Stuart in a sale process is not in the public interest, the Amended Stipulation should be revised to include an obligation by DP&L to commence a sale process for these units as well.

(Direct Medine, Int. Ex. 2, p. 7).

The unrebutted evidence also firmly establishes that the closure of the Stuart and Killen generating plants will not only severely harm coal production and destroy jobs in the Ohio Valley region but will absolutely devastate Adams County and the local communities where the plants are located. The Stuart and Killen stations are the largest employer in Adams County and provide significant tax revenues to the county, townships, and school districts. The loss of these plants is particularly devastating to Adams County which is a rural, sparsely populated county. The closure of these plants will have a rippling effect throughout the community impacting businesses, commercial enterprises, health care, schools and education and governmental resources. Ultimately, the entire State of Ohio will be impacted as the State will be required, one way or the other, to step in to provide unemployment and welfare benefits, to support the local schools, to support health care through Medicaid or other sources and to support the local infrastructure, including roads and other resources that cannot be supported any more through local tax revenues.

This Commission has previously recognized that the "public interest" encompasses more than just the interests of the utility or ratepayers. See In re the Application of Ohio Edison et al., Case No. 14-1297-EL-SSO, Opinion and Order dated March 31, 2016, p. 88:

> The testimony in this case establishes that the plants to be included in the Economic Stability Program have a significant economic impact upon the regions in which the plants are located . . . The Commission

> also notes that we have received numerous public comments from governmental entities near where the plants are located and from businesses which supply goods and services to the plants verifying the economic impact of the plants . . . The economic impact of plant closures and the impact on local communities is of concern to the Commission. (emphasis added).

See also, Concurring Opinion of Commissioner Haque, Case No. 14-1297-EL-SSO, at page 3:

> . . . Thus, public interest is broader than ratepayers, and has the potential to include person and entities beyond those who pay rates within the subject utility's service territory.

In his Concurring Opinion, Commissioner Haque noted the importance of coal production and coal-fired generation in the State of Ohio:

> Coal has a rich history here in Ohio. It has supported Ohio communities and families. It has helped preserve reliability of the grid and the cost effectiveness of power. (Concurring Opinion, Case No. 14-1297-EL-SSO at p. 11).

This Commission has jurisdiction to not only approve a transfer or sale of generation assets under R.C. 4928.17(E) but to also review the particular circumstances of a proposed transfer or sale, to address necessary conditions to the proposed transfer or sale, and to assess the financial impact and costs associated with such proposed transfer or sale. This Commission has jurisdiction to review a proposed transfer or sale of generating assets under OAC Rule 4901:1-37-09(C) which requires the Commission to review the object and purpose of the sale or transfer, the impact on a standard service offer, how the sale or transfer will affect the public interest and the basis for determination of fair market and book value of the transferred assets. The Commission also has jurisdiction under OAC Rule 4901:1-37-04(C) to review transactions between an electric utility and its affiliates. Indeed, this Commission has previously addressed the proposed transfer of DP&L generation assets to an affiliate with certain conditions imposed. See In the Matter of the Application of Dayton Power and Light Company for Authority To Transfer Or Sell Its Generation Assets, Case No. 13-2420-EL-UNC, Finding and Order dated September 7, 2014 at ¶¶22, 27-29,

and 33 where the Commission directed the transfer of DP&L generation assets at net book value with environmental liabilities, set a deadline of January 1, 2017 for the transfer, approved the deferral and staff review of separation costs and authorized a temporary adjusted capital structure until January 1, 2018. The Amended Stipulation inserts new conditions to the transfer and sale of generation assets which were not previously approved by the Commission and which are at odds with the Commission's prior order.

Finally, and most importantly, this Commission has jurisdiction to review the Amended Stipulation and Recommendation, including the transfer and sale of generation assets as addressed in Paragraphs 1(c), (d) and (e) and specifically the omission of the Stuart and Killen stations from the proposed sale process for the plants in Paragraph 1(d). As with any stipulation, this Commission must consider whether the settlement, as a package, violates any important regulatory principle or practice and benefits ratepayers and the public interest. Indus. Energy Consumers of Ohio Power v. Pub. Util. Comm., 68 Ohio St. 3d 559, 629 NE, 2d 423 (1994).

II. FACTS

A. The Procedural History of the Divestiture of Generation Assets

On March 30, 2012, DP&L filed an application for a standard service offer (SSO) pursuant to R.C. 4928.141. In the Matter of the Application of Dayton Power and Light Company for Approval of its Electric Security Plan, Case No. 12-426-EL-SSO. On June 4, 2013, the Commission issued its Opinion and Order in Case No. 12-426-EL-SSO. The Commission agreed with DP&L's contention that due to constraints under the refunding mortgages, DP&L could not reasonably divest generation assets until December 31, 2016. The Commission directed DP&L to file a generation divestment plan to divest all of its generation assets by December 30, 2016. (Opinion and Order, p. 16, Case No. 12-426-EL-SSO).

In its Second Entry On Rehearing in Case No. 12-426-EL-SSO dated March 19, 2004, the Commission noted that DP&L filed an application to divest its generation assets on December 30, 2013 in Case No. 13-2420-EL-UNC. In Case No. 13-2420-EL-UNC, DP&L filed a supplemental application representing that it had begun to evaluate the divestiture of its generation assets to an unaffiliated third party that could occur as early as 2014. Accordingly, the Commission granted an extension of the deadline to divest generation assets to no later than January 1, 2016. Second Entry On Rehearing, Case No. 12-426-EL-SSO, March 19, 2014.

In its Fourth Entry On Rehearing in Case No. 12-426-EL-SSO dated June 4, 2014, the Commission again extended the deadline for divestiture to January 1, 2017. The Commission stated:

> ***We intend to provide DP&L with the flexibility to transfer its generation assets to an affiliate or to a third-party while retaining our oversight over the divestiture as provided by R.C. 4928.17(E).*** At the hearing in this case, DP&L witnesses testified that there are terms and conditions in certain bonds that significantly impede upon its ability to transfer its generation assets to an affiliate before September 1, 2016, and, due to adverse market conditions, DP&L will not have sufficient cash flow to refinance the bonds before 2017. DP&L Ex. 16A at 2-4; Tr. Vol. I at 260-262. Tr. Vol. III at 800-805; Tr. Vol. Vat 1148-1150; Tr. Vol. XI at 2897. ***Therefore, a modified deadline of January 1, 2017, for the asset divestiture should alleviate any existing obstacles regarding the terms and conditions in DP&L's bonds and its ability to refinance such bonds. Further, a deadline of January 1, 2017, should allow DP&L to obtain terms and conditions to divest its generation assets while ensuring that the assets are divested during the period of this electric security plan.*** The Commission will review the specific terms and conditions of any proposed generation asset divestiture in DP&L's generation asset divestiture proceeding. In re The Dayton Power and Light Co., Case No. 13-2420-EL-UNC. ***Accordingly, the Commission will modify our decision in the Second Entry on Rehearing and direct DP&L to divest its generation assets no later than January 1, 2017.***
>
> (Fourth Entry on Rehearing, p. 5, ¶12).

Meanwhile, on December 30, 2013, DP&L filed an initial application for Commission approval to transfer or sell its existing generation assets. In the Matter of the Application of The Dayton Power and Light Company for Authority to Transfer or Sell its Generation Assets, Case No.

13-2420-EL-UNC. In its Finding and Order dated September 7, 2014, the Commission approved DP&L's application to transfer its generation assets to an affiliate by January 1, 2017 pursuant to R.C. 4928.17(E) and OAC Rule 4901-1-37-09(C). This approval was subject to several conditions.

> First, the generation assets would be transferred at net book value, which at the time of the order was $1,576,440,886. (Finding and Order, p. 9, ¶22; p. 18, ¶33).
>
> Second, "environmental liabilities" would transfer with the generation assets. The Commission directed DP&L to ". . . include provisions in any contract or other agreement to divest the generation assets which transfer all environmental liabilities with the assets and which fully insulates ratepayers from any potential recovery of the costs of such environmental liabilities." (Finding and Order, p. 12, ¶27).
>
> Third, the Commission approved deferral of any financing costs, redemption costs, amendment fees, investment banking fees, advisor costs, taxes and related costs incurred in connection with any transfer of generation assets for possible recovery in a separate case, subject to Staff review and capped at $10 million. (Finding and Order, p. 12, 13, ¶¶28, 29).
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> Fourth, the Commission excused the requirement for stating the fair market value of the assets transferred as otherwise required under OAC Rule 4901:1-37-09(C)(4). The Commission noted that the fair market value could be relevant to whether the transfer was in the public interest but of little value where the transfer is to an affiliate at net book value. In the event DP&L decides to sell generation assets to a third-party, DP&L was directed to supplement its application with the fair market value, no less than 30 days prior to the transaction. (Finding and Order, p. 22, ¶42).

As discussed, on February 22, 2016, well over a year after the Commission issued its Finding and Order in Case No. 13-2420-EL-UNC approving divestiture of generation assets, DP&L filed its application for approval of its Electric Security Plan which proposed continued operation of DP&L's generating plants through December 31, 2016. The March 14, 2017 Amended Stipulation completely reverses DP&L's position and now seeks approval of the transfer of generation assets to an affiliate, AES Ohio Generation, LLC, commencement of a sale process to sell to a third party DP&L's ownership interest in the Conesville, Miami Fort and Zimmer stations and commits AES to

use proceeds from any sale of the coal generation assets to make discretionary debt repayments at DP&L and DPL Inc.

By submitting the Amended Stipulation, DP&L has essentially reopened the Commission's review of the divestiture of generating assets by imposing new conditions on the DP&L's divestiture not previously addressed by the Commission. Indeed, the March 14, 2017 Amended Stipulation is at odds with this Commission's prior orders, particularly the September 7, 2014 Finding and Order in Case No. 13-2420-EL-UNC. Most notably:

1. DP&L now proposes to transfer the generation assets at an unspecified "net book value" and does not explicitly address the transfer of "environmental liabilities" associated with these assets. The generation assets to be transferred are not specified in any detail. The proposed set off to debt from sale proceeds is of questionable enforceability since AES is not a party to the Amended Stipulation.

2. DP&L proposes to transfer undefined "non-debt liabilities" but proposes to leave at DP&L all generation associated debt. This was neither addressed nor authorized in Case No. 13-2420-EL-UNC.

3. The proposed transfer is now explicitly conditioned on FERC approval. There is no indication if, or when, FERC will approve the transfer and under what terms and conditions.

4. DP&L now proposes to extend the deadline for transfer of facilities to 180 days after final Commission approval of the Stipulation without material modification. There is no indication as to treatment of closing costs for the Stuart and Killen stations if the plants are closed prior to Commission or FERC approval of the transfer.

5. DP&L, or the affiliate, commits to an undefined sale process to an unaffiliated third party without determination of fair market value thirty (30) days prior to any sale as previously directed by the Commission. Any sale process should be bona fide, open and legitimate.

B. DP&L Has Failed To Address The Material Issues Regarding The Proposed Transfer Or Sale Provisions Of The Amended Stipulation

1. Testimony of Schroder

Sharon R. Schroder is DP&L's Director of Regulatory Affairs. She is responsible for overall regulatory operations. She addresses the issue of whether the Amended Stipulation and

Recommendation, including the provisions relating to the transfer and sale of generating assets, is in the public interest. (Tr. Vol. II, 386, 388, 389).

Ms. Schroder confirms that the generation assets, including the five (5) generating stations, have not yet been transferred from DP&L to any entity. (Tr. Vol. II, 294). She did not know what FERC approval for the transfer was required but no FERC approval had yet occurred. (Tr. Vol. II, 389, 390). She did not know if the 180 days to commence a sale process was driven by any market condition or regulatory requirement. (Tr. Vol. II, 392). She did not know what the "non-debt" liabilities were or what were the "environmental liabilities" addressed in the September 17, 2014 Finding and Order in Case No. 13-2420-EL-UNC. (Tr. Vol. II, 296, 398). She was not familiar with the operation of the plants or permit compliance status. (Tr. Vol. II, 400). She did not address in her testimony the operational profitability of any plants or the capacity utilization factors for the plants. (Tr. Vol. II, 406). She performed no study or analysis of the operating cash flow less capital expenditures for any plant on an annual basis. She did not know of the required approval by PJM of a request for deactivation of any plant. (Tr. Vol. II, 404). She did not address any negative impacts of the announced closure of the Stuart and Killen stations by June, 2018 on the local community. (Tr. Vol. II, 407, 410, 412).

Ms. Schroder had no knowledge of any prior attempt by DP&L to sell any plants. (Tr. Vol. II, 305). DP&L reserved the right to accept or reject any offer to buy any of the plants. (Tr. Vol. II, 305). She testified that a sale of a station could occur before any transfer of generation assets to the affiliate. She testified that if this occurred, the sale proceeds would still be applied under the Amended Stipulation to pay discretionary payments of debt that would remain with DP&L. (Tr. Vol. II, 305, 307, 389). However, this is not addressed in the Amended Stipulation itself. Presumably, this commitment applies to the sale of the Miami Fort and Zimmer stations to Dynergy as disclosed on April 25, 2015.

2. Testimony of Malinak

Mr. Malinak is not an employee of DP&L and testified as a consulting expert concerning the issue of whether the Amended Stipulation is more favorable in the aggregate compared to a hypothetical MRO. (Direct Malinak, DPL Ex. 2A, p. 2).

Mr. Malinak confirmed that DP&L currently has a fractional ownership interest in the five (5) generating stations with a recorded net plant in service value of $545.8 million as of December 31, 2016. The summary ownership interest, plant capacity and net plant in service value is:

	Ownership (percent)	Summer Capacity (MW)	Gross Plant in Service ($ mil.)	Net Plant in Service ($ mil.)
Coal-fired generating fleet				
Conesville Unit #4	17	129	26.3	16.6
Killen Unit #2	67	402	78.2	77.5
Miami Fort Units #7 & 8	36	368	376.6	192.4
Stuart Units #1-4*	35	808	163.9	158.2
Zimmer Unit #1	28	371	105.5	101.1
OVEC	5	103		
Total		*2,181*	*750.4*	*545.8*

*Includes diesel.

(Direct Malinak, DPL Ex. 2A, p. 27).

Mr. Malinak testified that DP&L has announced plans to close the Stuart and Killen stations by June, 2018 and committed in the Amended Stipulation to commence a sale process to sell its interests in the remaining plants. (Direct Malinak, DPL Ex. 2A, p. 27). Notwithstanding this provision of the Amended Stipulation, Mr. Malinak's financial analysis assumes that the generation assets remain assets of DP&L, including the revenues, costs of operation and CAPEX for generation assets. He testified:

> (Malinak) Yeah, I've not tried to model the sale of assets. It would be speculative to try to figure out when and how they will be sold and for how much. Same is true of the shutdown of the plants. (Tr. Vol. I, 149).

Mr. Malinak did not know what FERC approval for the transfer of assets was required (Tr. Vol. I, 194), did not know what "generation assets" were included with proposed transfer (Tr. Vol. I, 194), did not know if any land would transfer or whether coal and handling or landfill facilities would be included in the transfer (Tr. Vol. I, 195) and did not know what "non-debt" liabilities would transfer (Tr. Vol. I, 196).

Mr. Malinak testified that under the Amended Stipulation, the generation assets would be transferred without the transfer of any associated debt. That is, the debt associated with generation assets would be left behind with DP&L. (Direct Malinak, Ex. 2A, p. 68). The timely and full service of this debt would depend heavily on the cash flow from DP&L. (Direct Malinak, Ex. 2A, p. 30). Indeed, the cash flow expected from the proposed DMR Rider will be used to pay interest obligations on existing debt at DP&L and DPL Inc. (Amended Stipulation, ¶2(b); Jackson, Tr. Vol. I, 35).

Mr. Malinak testified that since the generation assets would be transferred without the associated debt, the effect would be to increase DP&L's leverage ratio which would be a credit negative, all else equal. He testified:

> I understand that the Companies have agreed that DP&L will transfer its generation assets to another DPL subsidiary and initiate a process to divest itself of its interest in certain of the transferred coal generation assets. This can be expected to have two offsetting effects on DP&L's credit ratings. First, I understand that the generation assets will be transferred without debt. That is, the debt will be left behind. This will increase DP&L's leverage ratio, which would be a credit negative, all else equal. However, the rating agencies also have described DP&L's co-ownership of coal assets as a "credit negative," separate from their near-term impact on DP&L's financial metrics, presumably due to their perceived riskiness. Furthermore, while the assets would be transferred out of DP&L, they still would be part of DPL until they are sold. Because DPL and DP&L are linked from a credit rating perspective, the assets still would have some effect on DP&L's credit ratings.

> Therefore, while DP&L's indicated credit rating in my model would decline, perhaps significantly, upon transfer, the credit rating that would be assigned to DP&L by the agencies is difficult to predict.

(Direct Malinak, DPL Ex. 2A, p. 68).

Indeed, on March 20, 2017, Standard & Poors downgraded DP&L's credit rating to BB-. (Tr. Vol. I, p. 114; DP&L Ex. 105). The downgrade was in part due to DP&L's announced closure of the Stuart and Killen plants. (Tr. Vol. I, 200).

Mr. Malinak testified that debt liabilities associated with generation assets on the balance sheet, whether fungible or not and whether allocated or not, remain with DP&L. (Tr. Vol. I, 198 199). Mr. Malinak made no effort to allocate any debt to generation assets. (Tr. Vol. I, 210). This debt is significant – a total of $938,691,000 as of December 31, 2016 (Direct Malinak, Ex. 2A, RJM – 19A). Of this $938 million in debt, $300 million is in State of Ohio, Ohio Air Quality Development Authority, 2006 and 2015 debt and directly relating to pollution control debt attributable to generation assets. (Tr. Vol. I, 221, 222).

Mr. Malinak testified that if Stuart and Killen are closed, the plants would not undergo the sale process in the Amended Stipulation and would generate no sale proceeds which could be used to pay debt left behind with DP&L. (Tr. Vol. I, 202, 203). However, if Stuart and Killen were not closed and generated some sale proceeds in a sale process, those sale proceeds would be used to pay debt – benefitting both DP&L and ratepayers. (Tr. Vol. I, 213, 215). What a potential buyer would be willing to pay for Stuart and Killen assets would depend on what generation assets were actually put up for sale (Tr. Vol. I, 213). And the price a willing buyer would be willing to pay would depend on the motivation of that buyer. (Tr. Vol. I, 214). That can only be determined at an actual sale. Absent a sale process, the financial results are speculative. (Tr. Vol. I, 149, 225).

No DP&L witness, including Mr. Malinak, addressed the economic detriment resulting from closure of the Stuart and Killen stations to Adams County, the local communities or the State of

Ohio generally (Tr. Vol. I, 192, Tr. Vol II, 412). No DP&L witness, including Mr. Malinak, addressed any impact on reliability of the grid due to closure of the Stuart and Killen stations. (Tr. Vol. I, 193).

C. Intervenor Witness Emily Medine's Testimony Establishes That Closure of The Stuart and Killen Stations And Omission of Those Stations From The Sale Process Addressed In the Amended Stipulation Is Not In The Public Interest.

Intervenor Witness Emily S. Medine is a Principal with Energy Ventures Analysis in Arlington, Virginia. Ms. Medine has extensive experience in coal procurement, fuel procurement audits, utility generation analysis, regulatory matters, load forecasting, market strategy development, bankruptcy support and acquisition and investment analysis. Ms. Medinie develops forecasts of U.S. and global solid fuel demand and price for alternative coal types, coke and market segment. These forecasts are provided to individual clients and documented in various FUELCAST/COALCAST reports. Ms. Medine has testified as an expert witness for the Department of Justice in a major bankruptcy proceeding and has testified in support of clients involved in regulatory and legal proceedings. Most notably, Ms. Medine has performed over 25 fuel procurement audits of utilities regulated by the PUCO and managed numerous fuel procurement practice audits involving Ohio utilities, including DP&L, on behalf of the PUCO Staff. Ms. Medine received a B.A. from Clark University in 1976 and an M.P.A. from the Woodrow Wilson School of Public and International Affairs, Princeton University in 1978. Ms. Medine's complete Resume is attached to her Direct Testimony, Appendix A. (Direct Medine, Int. Ex 2, p.2, 3).

The purpose of Ms. Medine's testimony was to explain why DP&L's unilateral decision to close the Stuart and Killen power plants has not been justified, is not in the public interest and is likely to have extreme negative economic consequences for DP&L ratepayers and the public interest. (Direct Medine, Int. Ex 2, p. 2). Specifically, Ms. Medine concludes:

- The closure of Killen and Stuart is likely to increase power prices to DP&L customers.

- The closure of Killen and Stuart will have severe economic consequences on the communities in which the plants reside.

- Both the Killen and Stuart stations could be sold. Potential buyers include private equity, merchant generators, and strategic players including coal producers.

- There is no reason why a sales process to which DP&L has agreed for its other coal assets cannot be extended to include Killen and Stuart.

- Absent a demonstration by DP&L that including Killen and Stuart in a sale process is not in the public interest, the Amended Stipulation should be revised to include an obligation by DP&L to commence a sale process for these units as well.

(Direct Medine, Int. Ex. 2, p. 7).

In 2011, AES acquired 100% of the common stock of DPL for an approximate payment of $3.5 billion plus the assumption of $1.255 billion in liabilities. AES paid an approximate $1.8 billion premium with approximately $2.5 billion in "goodwill" to advance its U.S. platform in previously acquiring Indianapolis Power & Light, a regulated utility. In 2012, AES took a goodwill impairment charge of $1.82 billion for DP&L. (Direct Medine, Int. Ex. 2, pp. 8-11).

By all accounts, DP&L is now in a precarious financial position. (Jackson, Tr. Vol. I, 28-29). At least $780 million in debt load borne by DP&L results from the AES acquisition. (Jackson, Tr. Vol. I, 30). The purpose of the DMR rider is to generate revenues so DP&L can meet its debt obligations. (Jackson, Tr. Vol. I, 35). Incredibly, although Sharon R. Schroder is DP&L's Director of Regulatory Affairs, she provides literally no justification whatsoever for the decision to close and shutter the Stuart and Killen stations without at least going through the sale process provided in Paragraph 1(d) of the Amended Stipulation. (Tr. Vol. I, 305, 400, 406, 410).

Most of DP&L's coal generating capacity was developed in concert with Columbus Southern Power and Cincinnati Gas & Electric (the "CCD" plants). Currently, DP&L owns a 35%

share of Stuart Units 1-4, a 67% share of Killen, Unit 2, a 17% share in Conesville Unit 4, a 36% share in Miami Fort, Units 7 and 8 and a 28% share of Zimmer, Unit 1. (Direct Medine, Int. Ex. 2, pp. 11-13).

The Stuart and Killen stations are base load generating plants. Killen has had a capacity factor greater than 60% in every year during the 1999 through 2016 period. Stuart historically had a capacity factor greater than 60% but has had challenges in recent years. Capacity factor is the ratio of actual generation to potential generation and a good indicator of plant performance. (Direct Medine, Int. Ex. 2, p. 13). Stuart's operating challenges in 2014 are being addressed by DP&L including a significant restructuring of DP&L's management team. (Direct Medine, Int. Ex. 2, p. 14-15).

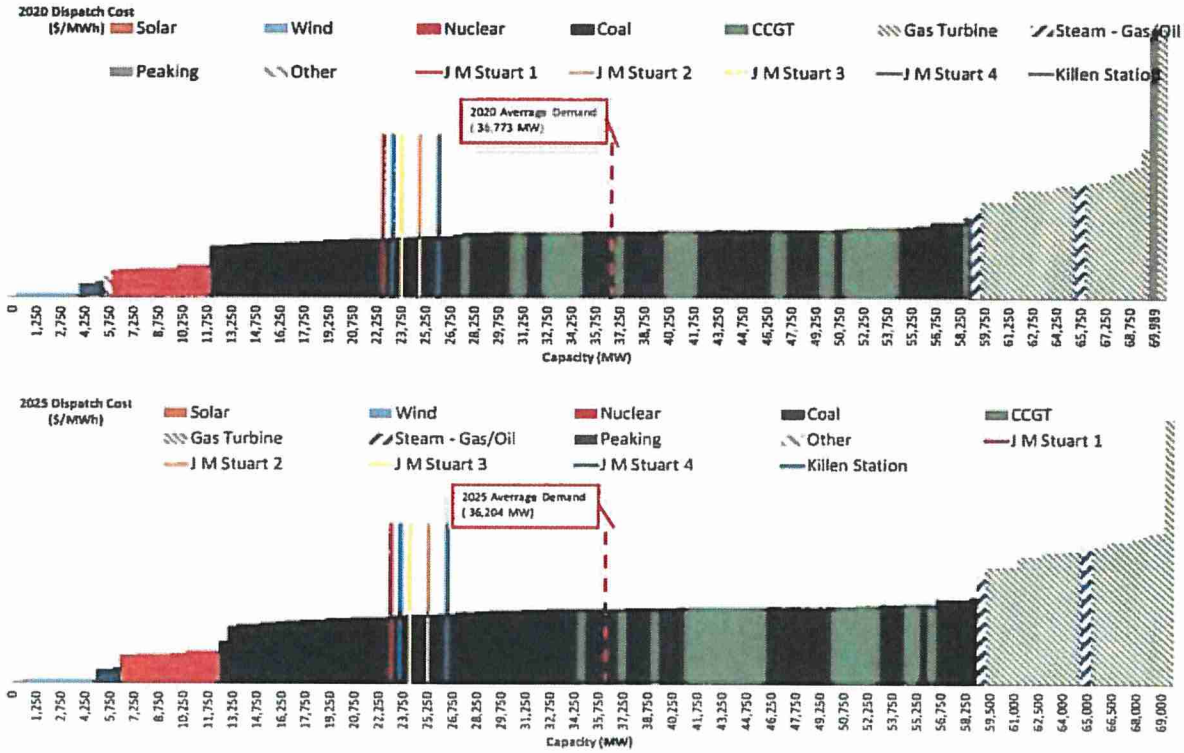
The recent, temporary reduction in natural gas prices have not adversely impacted Killen's capacity factor. The capacity factor for Killen in 2014 was over 70% which was not only high but higher than the capacity factor in 2013. Had low prices been an issue in 2014, Killen's capacity factor would have been adversely impacted. (Direct Medine, Int. Ex. 2, p. 15).

Ms. Medine concludes that the closure of Killen and Stuart without first attempting a sale of the units through the sale process is not in the public interest. She testified:

> There are two aspects of the closure economics that I question are in the best interest of DP&L ratepayers. First, a sale of these assets should generate positive value to DP&L both through a payment and a transfer of costs related to the ultimate closing of the plants thereby reducing the revenue needed to support DPL's heavy debt load. Second, while DP&L may own only 1100 MW of the two stations, including the ownership of other parties, the stations account for almost 3000 MW of generation. Historically and prospectively, this capacity has at most times been "in the money". If the capacity is retired, the supply curve contracts and power prices would be higher.
>
> (Direct Medine, Int. Ex. 2, pp. 22-23).

Ms. Medine sponsored the following chart to establish that the Stuart and Killen station fall within the lower cost part of the PJM West Stack.

PJM WEST DISPATCH STACK IN 2020 AND 2025 (REVISED)



(Int. Ex. 2A)

Ms. Medine explained this chart:

> EVA develops market forecasts regularly for its multi-client services COALCAST and FUELCAST. In addition, EVA prepares customized forecasts for clients incorporating their preferred scenarios. In EVA's most recent multi-client forecast, the Stuart and Killen plants fall in lower cost part of the supply curve in PJM. The PJM West "stack" for two years: 2020 and 2025 are shown below. The stack provides lowest to highest cost generators based upon their dispatch cost in dollars per megawatt-hour ($/MWH) with includes fuel and variable O&M. Stuart and Killen are in the lower cost half of the supply curve in both 2020 and 2025. The curve, which was prepared before DP&L's January 30, 2017 announcement, includes all announced plant retirements as well as economic plant retirements. Stuart and Killen are included as their retirements had neither been announced nor evaluated to be economic.
>
> (Direct Medine, Int. Ex. 2, p. 23).

A major issue relating to DP&L's recently announced closure of the Stuart and Killen stations without going through the sale process is an issue of timing. As discussed above, DP&L has delayed divestiture of its generating assets for years. At one point in 2014, DP&L requested a delay in divestiture to facilitate a sale to an unaffiliated third party. Second Entry On Rehearing, Case No. 12-426-EL-SSO, March 19, 2014. Ms. Medine testified that the risk of delay in divesting assets is a risk properly borne by AES, not the ratepayers or the public. She testified:

> It appears the delay was related to AES deciding it wanted to hold out for higher prices for the generation. DP&L is believed to have periodically solicited bids for these assets from third parties. As noted above, in a supplemental filing on February 25, 2014 in Case No. 13-2420-EL-UNC, DP&L indicated that AES had "recently begun to evaluate the transfer of the DP&L's generation assets to an unaffiliated third party through a potential sale." At that time, DP&L said the "sale could occur as early as 2014". Not long thereafter, on July 2014 AES issued a press release saying it had decided to retain the generation because "of the potential recovery of power prices, as well as PJM capacity prices." AES stated it believed "that this business has additional value that can be captured by continuing to own and operate these generating assets." AES further said it would transfer the generation to an affiliate by January 1, 2017.
>
> ***
>
> In my opinion, while AES hoped the value of the plants would increase, it knew that there was the potential for the value of the plants to decrease. By delaying what appeared to be a potential sale, it was accepting the risk of a decline in value as the divestment was a known regulatory obligation.
>
> (Direct Medine, Int. Ex. 2, pp. 26-27).

DP&L witnesses could not explain the reason for the timing of a June, 2018 closure of the Stuart and Killen stations. The date may relate to PJM requirements. PJM provides capacity support for generators based on prices three (3) years in advance. The winners of each auction are not identified by PJM so the results of the capacity auction for 2018/2019 is unknown. AEP, however, has announced its bid for Stuart cleared the auction for 2018/2019. The next capacity auction is in May, 2017. If DP&L fails to offer the generating plants in this auction, the value of the plants may be impacted. (Direct Medine, Int. Ex. 2, p. 32).

Further, the divestiture of generating assets removes a source of revenue to service DP&L debt left behind at the operating company. The timing of the divestiture, and announced closing, could not occur at a worse time given DP&L's precarious financial situation. The negative credit impact addressed in Mr. Malinak's direct testimony was evident in the market place as early as September, 2014. Ms. Medine testified:

> Not unrelated, AES was concerned about the downgrades for DP&L and DPL that would likely occur with the divestiture of generating assets. Moody's Investor Service placed DP&L and DPL long-term debt ratings under debt ratings under review for downgrade in September 2014. Moody's noted:
>
> > *The review for downgrade of DP&L's Baa1 senior secured debt rating is prompted by the possibility that the Public Utility Commission of Ohio (PUCO) could authorize the generation asset separation plan as requested by DP&L. This includes transferring the generation assets not later than January 1, 2017 to an affiliate that would result in a significant decrease in the amount of collateral that currently supports the utility's outstanding secured debt. As a result, Moody's believes that if approved it would be appropriate to reduce the notching different between DP&L's secured and unsecured ratings from our typical two to one alpha-numeric rating differential given the expected lower amount of asset coverage.*
>
> (Direct Medine, Int. Ex. 2, pp. 27-28).

Other Ohio electric utilities completed the divestiture of their generation assets before the end of 2014. First Energy completed asset transfer in the fourth quarter of 2005. AEP formed AEP Generation Resources (AEPGR) in 2013 to take ownership and operate the generation assets owned by Ohio Power. FERC approved the affiliate transfer on April 29, 2013 and the transfers were completed by December, 2013. The Amos station was transferred to Appalachian Power and the Mitchell plant was transferred to Kentucky Power and Wheeling Power. Other generating assets were transferred to AEPGR. In January 2017, AEP completed the sale of Gavin to Lighthouse Generation, LLC a joint venture of Blackstone Group LP and an ArcLight Capital Partners affiliate.

These electric generation assets transferred at approximately $200/kw. (Tr. Vol. III, 558, 567). Duke Energy transferred generation assets to Duke Energy Commercial Asset Management during the second quarter of 2014. On August 21, 2014, Duke Energy entered into an agreement with Dynergy, Inc. to sell its non-regulated Midwest generation business for $2.8 billion in cash. The sale closed in 2015. (Direct Medine, Int. Ex. 2, pp. 28-30).

Timing is also critical given recent political and regulatory events. With the recent election of President Trump, the energy industry is changing dramatically with elimination of many of the Obama-era EPA regulations inimical to the interests of coal and coal-fired generation. The EPA Clean Power Plan was stayed by the U.S. Supreme Court in February, 2016. President Trump has directed the EPA Administrator to reassess the Clean Power Plan. In the recently released 2017 Annual Energy Outlook, the Energy Information Administration forecasts a rebound in coal generation without the Clean Power Plan. The Stuart and Killen stations are already compliant with MATS regulations and the Coal Combustion Residuals (CCR) regulations. (Tr. Vol. III, 512). The Effluent Limitation Guidelines (ELG) are currently in litigation are also subject to reassessment by the U.S. EPA. (Direct Medine, Int. Ex. 2, pp. 24-26).

The fact remains that there are potential buyers in the market for coal-fired generation. This is demonstrated by the divestiture and sale activities of other Ohio utilities and in the market generally. Potential buyers include private equity, merchant generators and strategic players such as coal producers interested in vertical integration within their markets. (Direct Medine, Int. Ex. 2, p. 31). The potential buyer motivation may vary. Certainly putting assets up for sale at less than perceived value will only serve to increase buyer interest. The price that may be achieved can only be determined if a legitimate and open sale process occurs. Ms. Medine testified:

> There has been considerable market interest in existing coal-fired plants for several reasons including those listed below:

a. A third party may have a different market view regarding coal price differentials which would result in higher generation assumptions for coal units and hence higher value.

b. A third party may believe the regulatory environment for coal-fired power plants will be different due to the change in administration and the likely demise of the Clean Power Plan.

c. Coal producers and transporters are increasingly flexible with respect to their pricing structure to improve the dispatch of coal plants. In some markets, coal producers have been known to provide discounts and premiums to the coal price based upon real-time power pricing. Depending upon the discounts, this could reduce the fuel cost to very low levels during off-peak periods allowing plants to dispatch ahead of gas.

d. Coal producers are concerned about maintaining market. With increased numbers of plant retirements, they are looking to maintain the demand for their coal through plant acquisitions.

(Direct Medine, Int. Ex. 2, p. 31).

Indeed, as noted above, Dynergy affiliates have agreed to purchase DP&L's interest in the Miami Fort and Stuart stations on April 21, 2017. (Appx. A) This establishes convincingly that there are merchant generators interested in coal-fired generation and a market for such generation assets.

There are many benefits for ratepayers (and DP&L) if the Stuart and Killen stations are subject to the sale process rather than an outright closure. There is no downside. Ms. Medine testified the advantages of including Stuart and Killen in the site process are::

a. Possible positive value which would reduce DP&L's request for ESP riders

b. Transfer of plant closing costs

c. Reduced power costs to ratepayers

d. No economic destruction in the counties in which the power plants reside

e. Transfer of risk related to plant performance from DP&L or AES Ohio Generation LLC to a third party

(Direct Medine, Int. Ex. 2, p. 31, 32)

Ms. Medine was cross-examined by the Sierra Club. Whether by tacit agreement or otherwise, the Sierra Club is not a signator to the Amended Stipulation. The Sierra Club's interest relates solely to closing the coal fired generating plants. (Int. Ex. 2, p. 19). The Sierra Club does not speak for ratepayers or the local communities that will be devastated by the closure of the Stuart and Killen plants. The Sierra Club was unable to establish in cross examination of Ms. Medine any justification for not including Stuart and Killen in the proposed sale process applicable to the other coal-fired generating plants.

On cross-examination, Ms. Medine testified that there was an element of cross-subsidization in that DP&L proposes to transfer generating assets but proposes to leave the associated debt with DP&L. This is an imposition of costs, the debt service, on jurisdictional customers that will no longer benefit from the transferred generation assets. Ms. Medine did not suggest that this was an abuse of market power but there would be an impact on the competitive market. (Tr. Vol. III, 555).

Ms. Medine was steadfast in her position that there was no justification for DP&L's exclusion of the Stuart and Killen stations from the proposed sale process in the Amended Stipulation.

> Q. All right. In summary at this point, Ms. Medine, do you see any justification for not including Stuart and Killen in a sale process?
>
> A. I see no justification. The only justification that's been provided is that there has been a negative cash flow, but the reality is that's not how third parties would typically value that plant based upon their own synergistic, their own assumptions with respect to regulation, with respect to the price they can buy their coal for, with respect to the power market. So as far as I'm concerned, for a company that's looking to add value, simply closing them without testing the market to see what somebody would pay is not a prudent strategy.
>
> (Tr. Vol. III, 567-568).

The only way to determine if the Stuart and Killen plants had value on the market is to test the market by going to a legitimate, open sale process. (Tr. Vol. III, 569). DP&L's purported valuation of the plants at zero is irrelevant. (Tr. Vol. III, 523).

> But more importantly its your own set of assumptions and analysis related to what you think the outlook is for coal generation both from a regulatory perspective as well as from a fuel perspective as well as from a power market. So each individual player has different opinions on that subject, and so you cannot with any certainty come up with a value based upon your own analysis of negative cash flow. (Tr. Vol. III, 569).

The sale process must be legitimate and open. A potential buyer needs to know exactly what generation assets are put up for sale and must know exactly what liabilities track those assets – including both environmental liabilities and debt. (Tr. Vol. III, 569, 570).

D. Intervenors' Direct Testimony Establishes The Devastating Impact on Adams County If The Stuart and Killen Plants Are Closed.

Intervenors' Direct Testimony firmly establishes the devastating impact on Adams County if the Stuart and Killen plants are closed. The testimony was not challenged by any party.

Michael P. Pell is President/CEO of First State Bank in Winchester, Adams County, Ohio. Mr. Pell is a life-long resident of Adams County. Mr. Pell is a member and spokesperson of the Citizens To Protect DP&L Jobs (the "Citizens Group"), an unincorporated association whose members include business owners, property owners, taxpayers and residents in and around the Adams County area. The primary mission of the group is to protect and preserve local jobs that are directly and indirectly impacted by the DP& L's proposed closing of the Stuart and Killen generating stations. Additionally, the group is working with local officials, residents and the business community in Adams County to protect and promote the existing local tax base, school districts, local infrastructure and the local economy from the adverse consequences of the proposed closing of these generating plants. (Direct Pell, Citizens Ex. 1, p. 1).

The membership of the Citizens Group is currently a core group of influential business and community leaders in Adams County who are extremely concerned with the threatened closing of the Stuart and Killen plants which have been a major employer in Adams County and the region for years and which constitute a major component of the property tax base in Adams County. Members include property owners, business owners, taxpayers, residents and parents of school-aged children in Adams County. Members include retirees of DP&L, members of the Manchester Local School District Board of Education, members and managers of the Adams County Regional Water District, and the Superintendent of the Adams County Board of Development Disabilities. (Direct Pell, Citizens Ex. 1, p. 2).

The purpose of Mr. Pell's testimony is to present the position and concerns of the Citizens Group with respect to DP&L's threatened closure of the Stuart and Killen generating stations and the enormous adverse impact that closing will have on all facets of the Adams County community. The Stuart and Killen stations have played an important role in the Adams County community for over 40 years. Adams County was an advantageous location for the two power plants, over 5000 acres of land bordering the Ohio River and providing a roadway for coal transportation and an abundant water supply. The plants were welcomed by the citizens of Adams County who provided a dedicated and skilled work force that kept these plants in operation 24 hours a day, seven days a week for years. Generations of Adams County residents worked at the plants and associated facilities. (Direct Pell, Citizens' Ex. 1, p. 3).

Exhibit A attached to Mr. Pell's Direct Testimony is a profile of the Adams County demographics prepared by the Ohio Office of Research. This public information gives information concerning the Adams County demographics, tax base, education and infrastructure. Adams County is a very rural county and has a poverty rate of 25.3%, second only to Athens County with the state average of 15.9%. (Direct Pell, Citizens' Ex. 1, pp. 3-4; Ex. A).

Mr. Pell testified that the direct and indirect consequences of closure of the Stuart and Killen plants will cripple Adams County for years to come. These consequences impact not just Adams County residents, business owners and taxpayers, but the region and state as a whole. The cascading adverse consequences will create a huge vacuum in southern Ohio that will necessitate a major commitment from state, regional and federal agencies to correct. (Direct Pell, Citizens; Ex. 1, p. 4).

First, DP&L directly or indirectly employs nearly 700 persons at the Stuart and Killen plants including 490 DP&L employees and 200 employees of contractors retained by DP&L to provide services at the plants. DP&L is Adams County largest employer and the lost annual payroll would approximate $35 million annually. This employment base is a major component of the Adams County work force as Adams County is a rural county with only 28,000 residents. With such a small population, the adverse effects of the closure cannot be absorbed in the local economy. (Direct Pell, Citizens' Ex. 1, p. 4).

Second, the Stuart and Killen stations generate approximately $9,000,000 in annual property tax for Adams County and other political subdivisions, accounting for over 25% of the subdivisions' annual revenue of approximately $31 million. The Manchester Local School District alone receives $5,600,000 of that tax revenue. Adams County received over $750,000 in tax revenue from the facilities accounting for 32% of the County's general fund. (Direct Pell, Citizens' Ex. 1, pp. 4, 5).

Third, the threatened closing would also damage the local economy and business. Lost local sales tax revenue would cause substantial harm to Adams County and the surrounding areas. The loss of jobs and local income will have cascading effects on all local business, will likely lead to local business failures, will impose financial hardships on families and will disrupt not only the local economy but the social fabric of the community as well. (Direct Pell, Citizens Ex. 1, p. 5).

The Citizens Group is also concerned that the closing would impact not just the two generating stations but also over 5000 acres of land along the Ohio River, coal handling and transportation infrastructure, transmission lines and other infrastructure. DP&L has not addressed the true full cost of closing these plants, including on-going maintenance, environmental clean-up and decommissioning. Mr. Pell testified that these plants should not be allowed to become "zombie plants", shuttered, rusting and decaying facilities with environmental consequences and potential contamination of soil and drinking water. Such blighted facilities will constitute a drag on future economic development and deepen the loss of tax revenues in Adams County. (Direct Pell, Citizens' Ex. 1, p. 5).

The Citizens Group urges the Commission to fully investigate and scrutinize DP&L's unilateral shuttering of these plants without any effort undertaken to transfer the plants to another affiliate or third party or sell the plants to a competitive bidder. The Commission should consider the implications on Ohio ratepayers, Ohio taxpayers, Ohio businesses and state and federal agencies. The Citizens Group also urges the Commission to fully investigate and scrutinize the threatened closure on Ohio's coal fired generation and the impact on grid portfolio reliability not just in Ohio but throughout the region. Finally, the Citizens Group urges the Commission to require DP&L to fully address all the costs of plant closure including on-going maintenance, environmental compliance and decommissioning of the plants. Ultimately, the Citizens Group urges the Commission to deny any request or action by DP&L to shut down the Stuart and Killen plants under the present circumstances.

Rick Adamson is the General Manager of the Adams County Regional Water District (ACRWD). He has held several positions at the Water District for the past 30 years and is also a certified Class III Water Supply Operator through Ohio EPA. The Adams County Regional Water District is an organization responsible for providing safe drinking water to four villages and 18,000

people throughout the county. This water is supplied by 75 foot deep wells drilled into the county's greatest natural resource, the Ohio River Valley Aquifer bordering the Ohio River. Mr. Adamson is a life-long resident of Adams County and is a member of the Citizens to Protect DP&L Jobs. (Direct Adamson, Citizens' Ex. 2, p. 1).

Mr. Adamson testified that the adverse economic impact to Adams County resulting from the potential plant closings of the Stuart and Killen generating stations will be enormous. The loss of revenue from Killen Station, one of the Adams County Regional Water District's largest consumers, will likely result in higher water rates for customers of the District throughout the county. Mr. Adamson believes that the Stuart and Killen power plants should be kept open and operating for as long as possible to preserve local jobs and give Adams County leadership an opportunity to develop and implement plans to replace lost tax revenue needed to provide a solid future for the citizens of Adams County. (Direct Adamson, Citizens' Ex. 2, pp. 1-2).

Mr. Adamson is also concerned that DP&L has not addressed the true full cost of closing the Stuart and Killen plants, including the environmental maintenance of the plants as well as decommissioning costs. The ACRWD water well fields are adjacent to the Killen Power Plant and the plant is in close proximity to the aquifer that supplies the ACRWD wells and public water supply. The Killen plant has a 230 acre ash pond that sits directly above this aquifer. The Stuart Station is just twelve (12) miles West of the ACRWD's wells and directly in line with the Ohio River Valley Aquifer. The Stuart Station has several ash ponds totaling nearly 200 acres. DP&L is also constructing the Carter Hollow Landfill directly across from the Stuart Station with the capacity to hold approximately 20 million tons of gypsum. Mr. Adamson is concerned that DP&L has not addressed any decommissioning plan that would protect these public water supplies and the required environmental maintenance to protect the water supply. Nor has DP&L addressed the costs of environmental compliance to guard against environmental risks should these plants be

closed. These are real concerns as an ash pond at the recently closed Beckjord power plant leaked selenium and sulfate that contaminated a public water source in Clermont County. (Direct Adamson, Citizens' Ex. 2, pp. 2-3). The ACRWD is further concerned with "zombie" plants decaying and rusting without proper maintenance. The ACRWD hopes to continue its partnership with DP&L to ensure that these generating stations continue in operation to best serve the public interest and not become blighted, closed facilities. (Direct Adamson, Citizens' Ex. 2, p. 3).

Other Intervenors from Adams County share the concerns of the Citizens Group and address the adverse consequences of closing the Stuart and Killen stations from the perspective of local government and the Adams County schools.

Brian Baldridge is a seventh generation owner of a family farm in Adams County and is currently serving his fourth term on the Board of Commissioners of Adams County. A significant percentage of the tax revenues to operate the county come from the Stuart and Killen stations. Closure of these stations would devastate essential services to the most vulnerable people in the county – the disabled, to children and to senior citizens. The County would have to cut emergency medical and fire protection services. The rippling effects of closure of the plants would cripple the local economy. (Direct Baldridge, County Ex. 1).

Floyd Charles Hayslip is a life-long resident of Adams County and is currently a Sprigg Township Trustee in Adams County. Of the township tax revenues, 78% comes from the Stuart and Killen plants. Closure of these plants would devastate Sprigg Township and its residents. There is no possible replacement for tax revenue from these plants. There is no other source of tax revenues. (Direct Hayslip, Sprigg Township Ex. 1).

Brenda Emery is a life-long resident of Adams County and currently serves as a Monroe Township Trustee. Of the total township tax revenues, 89% comes from the Stuart and Killen plants. Closure of these plants will absolutely devastate township services and the residents in the

township. Monroe Township is a remote, rural community with no villages or municipalities to help support infrastructure. The loss of tax revenue from the closure of the two plants would drastically impair emergency medical care and fire protection. Without funds, the township cannot maintain roads and infrastructure. There is no other source of tax revenue to make up the loss if the plants close. (Direct Emery, Monroe Township Ex. 1).

Rich Seas is a member of the Adams County Ohio Valley School District. The district has over 4000 students in three schools: Peebles, West Union and North Adams. There is also a Vocational School in West Union, the Ohio Valley Career Technical Center. The district encompasses 467 square miles, the second largest district in Ohio with 53 bus routes over 4600 miles per day. Seventy percent of the students are on free or reduced cost lunch programs. The schools and Career Technical Center offer hope for employment and education for Adams County students. Closure of the Stuart and Killen stations would make a tough situation bleak. The Career Technical Center is a compact with the Manchester School District. Without the two plants, the district itself would become the largest employer in Adams County. The district could teach all skills to students but there would be no jobs. This would result in a sense of hopelessness in the community, increased drug use and other adverse health and social consequences. (Direct Seas, Adams County Ohio Valley School District Ex. 1).

Finally, Dr. Charles J. Schreve is the Superintendent of the Manchester Local School District. The district serves 930 residents in the southern portion of Adams County. The Stuart and Killen stations provide $7 million of the $11 million in tax revenue for the district. Closure of these plants would drastically impact the district threatening the education requirements to meet Minimum Standards. (Direct Shreve, Manchester Local School District Ex. 1).

III. LAW AND ARGUMENT

A. THIS COMMISSION HAS JURISDICTION TO REVIEW THE PROPOSED AMENDED STIPULATION AND TO REQUIRE THAT THE STUART AND KILLEN STATIONS BE INCLUDED IN THE PROPOSED SALE PROCESS AS A CONDITION OF APPROVAL OF THE AMENDED STIPULATION.

DP&L will likely contend that the announced closure of the Stuart and Killen plants by June, 2018 is not the subject of the Amended Stipulation and is not reviewable by the Commission. However, given the peculiar circumstances of this case, DP&L's omission of the Stuart and Killen plants from the proposed sale process provided in Paragraph 1(d) of the Amended Stipulation is subject to this Commission's review and jurisdiction. Significantly, DP&L proposes to transfer these generating assets to an affiliate but proposes to leave the associated debt with DP&L. If Stuart and Killen are not marketed through a legitimate and open sale process, there will obviously be no sale proceeds to apply to reduce the associated debt left behind. Omission of the Stuart and Killen plants from the sale process when jurisdictional customers of DP&L are being asked to provide revenues to service the associated debt left behind is a substantial failing of the Amended Stipulation which cannot be justified under the circumstances. Omission of these plants from the sale process is not in DP&L's interest, is not in the ratepayer's interest, is not in the interest of the coal production industry in Ohio, is not in the interest of the local communities which will be devastated by the premature closing of these plants and is not in the public interest.

Pursuant to R.C. 4928.17(E), no electric distribution utility shall sell or transfer any generating asset it wholly or partially owns at any time without obtaining prior Commission approval. This section explicitly provides:

> No electric distribution utility shall sell or transfer any generating assets it wholly or partially owns at any time without obtaining prior commission approval.

OAC Rule 4901:1-37-09 addresses the sale or transfer of generating assets subject to Commission approval under R.C. 4928.17(E). OAC Rule 4901:1-37-09(C) provides:

> (C) An application to sell or transfer generating 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 the book value of the property to be transferred from the electric utility and state how the fair market value was determined.

Additionally, OAC Rule 4901:1-37 addresses transactions between an electric utility and affiliates. OAC Rule 4901:1-37-04(C) provides restrictions against affiliate transactions unless otherwise approved by the Commission. OAC Rule 4901:1-37-04(C) provides in relevant part:

> Unless otherwise approved by the Commission, the financial arrangements of an electric utility are subject to the following restrictions:
>
> (1) Any indebtedness incurred by an affiliate shall be without recourse to the electric utility.
>
> (2) An electric utility shall not enter into any agreements with terms under which the electric utility is obligated to commit funds to maintain the financial validity of an affiliate.
>
> * * *
>
> (6) An electric utility shall not pledge, mortgage, or use as collateral any assets of the electric utility for the benefit of an affiliate.

In this case, DP&L proposes in the Amended Stipulation to transfer $545.8 million of generating assets to the affiliate but proposes to leave behind $938.7 million of debt associated with the generation assets. That debt includes $300 million in Ohio Air Quality debt. DP&L cites no

explicit authority under Title 49, and particularly Chapter 4928, Ohio Revised Code, for the proposed transfer of generating assets to an affiliate but leaving the associated debt with the electric distribution utility. This provision of the Amended Stipulation addressed in Paragraphs 1(c), (d) and (e), a proposed transaction with an affiliate, is at least subject to Commission review and approval as an affiliate transaction subject to Commission approval under OAC Rule 4901:1-37-04(C).

The process and requirements for Commission approval of a sale or transfer of generating assets, particularly transactions between affiliates, under OAC Rule 4901:1-37-09 and OAC Rule 4901:1-37(C) are not dramatically at odds with the jurisdiction of FERC under Section 203 of the Federal Power Act. Section 203(a)(1) requires prior authorization of FERC before the sale, lease or other disposal of facilities subject to FERC jurisdiction. See Horizon Asset Management, Inc., 125 F.E.R.C. ¶61, 209 at pp. 1-2 (2008). FERC has detailed disclosure and information requirements in place to determine whether the proposed transaction is in the public interest. Section 205(a); 18 CFR 33.2, Appx., p. 5. These requirements include disclosure of the generating assets and liabilities to be transferred specific to FERC plant accounts. In the case of transactions between affiliates of a holding company, FERC will review whether the transaction results in any improper cross-subsidization not otherwise in the public interest. See 16 U.S.C. § 824b(a)(4).

Here, DP&L acknowledges FERC approval is necessary to the proposed transfer of generating assets to the affiliate. Indeed, the entire transaction is subject to, and conditioned upon, FERC approval. (Amended Stipulation, Paragraph 1(c)).

In submitting the Amended Stipulation for Commission approval and adoption, DP&L essentially reopens the prior divestiture cases, particularly Case No. 13-2420-EL-UNC. In the Amended Stipulation, DP&L proposes to transfer its generation assets to an affiliate but subject to different circumstances than existed in Case No. 13-2420-EL-UNC and subject to different terms

and conditions than those addressed in Case No. 13-2420-EL-UNC. As it stands today, the generating assets have not been transferred and remain assets of DP&L on the books and records of DP&L. The proposal in the Amended Stipulation is at odds with the Commission September 7, 2014 Finding and Order in Case No. 13-2420-EL-UNC in several significant respects:

1. DP&L proposes to transfer the generation assets at an unspecified "net book value" and does not explicitly address the transfer of "environmental liabilities" associated with these assets. The proposed set off to debt from sale proceeds is of questionable enforceability since AES is not a party to the Amended Stipulation.

2. DP&L proposes to transfer undefined "non-debt liabilities" but proposes to leave at DP&L all generation associated debt. This was neither addressed nor authorized in Case No. 13-2420-EL-UNC.

3. The proposed transfer is now conditioned on FERC approval.

4. DP&L now proposes to extend the deadline for transfer of facilities to 180 days after final Commission approval of the Stipulation without material modification. There is no indication as to treatment of closing costs for the Stuart and Killen stations if the plants are closed prior to Commission or FERC approval.

5. DP&L, or the affiliate, commits to an undefined sale process to an unaffiliated third party without determination of fair market value thirty (30) days prior to any sale.

Accordingly, by virtue of the proposed Amended Stipulation and Recommendation, this Commission has jurisdiction to again review the proposed transfer of generating assets under the requirements of OAC Rule 4901:1-37-09(e) and OAC Rule 4901:1-37-04(C) given the change in circumstances that existed when the Commission approved the transfer of assets to the affiliate in its September 7, 2014 Finding and Order in Case No. 13-2420-EL-UNC and given new conditions that were not addressed by the Commission in its September 7, 2014 Finding and Order.

Finally and most obviously, this Commission has jurisdiction to review the proposed transfer of generating assets as provided in Paragraphs 1(c), (d) and (e) of Amended Stipulation and Recommendation. The Commission has jurisdiction to determine:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principles or practice?

See Indus-Energy Consumers of Ohio Power v. Pub. Util. Comm., 68 Ohio St. 3d 559, 629 N.E. 2d 423 (1994).

B. DP&L'S PROPOSED CLOSURE OF THE STUART AND KILLEN STATIONS AND OMISSION OF THESE PLANTS FROM THE SALE PROCESS PROVIDED IN THE AMENDED STIPULATION VIOLATES IMPORTANT REGULATORY PRINCIPLES AND PRACTICES, DOES NOT BENEFIT RATEPAYERS AND DOES NOT PROMOTE THE PUBLIC INTEREST.

Intervenors oppose the Amended Stipulation and Recommendation to the extent that DP&L proposes the outright closure of the Stuart and Killen station and omits these plants from the proposed sale process addressed in Paragraph 1(d). Closure of these plants without at least first exhausting a legitimate and open sale process for these plants cannot be justified under any circumstances. This proposal violates important regulatory principles and practices, does not benefit either DP&L or ratepayers and does not promote the public interest.

The linchpin of the entire Amended Stipulation and Recommendation is the transfer of generation assets to the affiliate, the proposed sale of the assets and the payment of any sale proceeds to reduce the associated debt left behind at DP&L as provided in Paragraphs 1(c), (d) and (e) of the Amended Stipulation. This is a significant proposal as the net book value of the generation assets exceeds $545 million and the associated debt exceeds $938 million, $300 million of which is State of Ohio Air Quality Debt directly related to pollution control at the generating stations. (Direct Malinak, DPL Ex. 2A, p. 27; RJM – 19A; Tr. Vol. I, 221, 222).

Transferring generation assets to an affiliate but leaving the associated debt with the regulated utility is an extraordinary circumstance. Jurisdictional customers of DP&L will be required to pay revenues to service debt for generation assets that provide no service to them. Indeed, the cash flow expected from the proposed DMR Rider will be used to pay interest obligations on existing debt at DP&L and DPL, Inc. (Jackson, Tr. Vol. I, 35; Amended Stipulation, ¶2(b)). This transaction was not addressed or approved by the Commission in its September 7, 2014 Finding and Order in Case No. 13-2420-EL-UNC. The proposal is, on its face, contrary to fundamental regulatory principles since the proposal imposes costs, the debt service, on jurisdictional customers that will no longer benefit from the transferred generation assets. (Medine, Tr. Vol. III, 555).

The supposed benefit is that AES will apply any sale proceeds to make discretionary debt payments to reduce the debt left behind at DP&L. (Amended Stipulation, ¶1(e)). However, outright closure of the Stuart and Killen stations, without first undergoing a possible sale in the sale process, will obviously generate no sale proceeds to apply to the debt. Jurisdictional circumstances will be required to provide revenues to service the debt associated with the Stuart and Killen plants without the benefit of any set-off. (Malinak, DPL Ex. 2A, p. 68; Tr. Vol. I, 221, 222).

Omission of the Stuart and Killen plants from the sale process is not in the interest of either DP&L or ratepayers. DP&L's own expert, Mr. Malinak, testified that since the generation assets would be transferred without the associated debt, the effect would be to increase DP&L's leverage rates which would be a credit negative, all else equal. (Direct Malinak, DPL Ex. 2A, p. 68). Indeed, on March 20, 2017, Standard & Poors downgraded DP&L's credit rating to BB- due in part to DP&L's announced closure of the Stuart and Killen plants. (DP&L Ex. 105; Tr. Vol. I, pp. 114, 200). Mr. Malinak further testified that if Stuart and Killen are closed, the plants would not undergo the sale process in the Amended Stipulation and would generate no sale proceeds which

would be used to pay debt left behind with DP&L. (Tr. Vol. I, 202, 203). However, if Stuart and Killen were not closed and generated some sale proceeds in a sale process, those sale proceeds would be used to pay debt – benefitting both DP&L and ratepayers. (Tr. Vol. I, 213, 215).

The justification offered by DP&L to close the Stuart and Killen plants and omit the plants from the sale process is negative cash flow from plant operation. This assertion is not supported by the record and is irrelevant to the issue of whether the plants should be included in the sale process to produce proceeds to reduce the debt borne by jurisdictional circumstances.

First of all, notwithstanding the announced closure of the Stuart and Killen stations and the proposed transfer of generation assets, Mr. Malinak's financial analysis assumes that the generation assets remain assets of DP&L, including the revenues, costs of operation and CAPEX for generation assets. (Malinak, Tr. Vol. I, 149).

Second, the generation assets will not be transferred for 180 days until after the Commission approves the Amended Stipulation and after FERC approval. (Amended Stipulation, Paragraph 1(c)). DP&L itself proposes continued operation of the Stuart and Killen plants until June, 2018. DP&L witnesses could not explain any reason for the timing of a June, 2018 closure of the Stuart and Killen stations. That date may relate to PJM requirements as PJM provides capacity support for generators based on prices three (3) years in advance. (Direct Malinak, Int. Ex. 2, p. 32). In any event, there is more than sufficient time for DP&L to exhaust a sale process for the Stuart and Killen stations within the time frames provided in the Amended Stipulation and before final closure of these plants.

Third, events in the energy industry are dynamic and are changing dramatically. The Stuart and Killen stations are base load generating plants providing both energy and capacity service. Killen has had a capacity factor greater than 60% in every year during the 1999 through 2016 period. Stuart historically had a capacity factor greater than 60% but has had operating challenges

in recent years. These operating challenges in 2014 are being addressed by DP&L management. (Direct Malinak, Int. Ex. 2, pp. 14-15).

The recent temporary reduction in natural gas prices has not adversely impacted Killen's capacity factor. The capacity factor for Killen in 2014 was over 70% which was not only high but higher than the capacity factor in 2013. (Direct Malinak, Int. Ex. 2, p. 15). Ms. Medine's analysis indicates that both the Stuart and Killen stations fall within the lower cost part of the PJM West Stack. (Direct Medine, Int. Ex. 2, p. 22-23; Int. Ex. 2A).

With the recent election of President Trump, the energy industry is changing dramatically with the elimination of many of the Obama-era EPA regulations inimical to the interests of coal and coal-fired generation. The Clean Power Plan has been stayed and will be reassessed. The Stuart and Killen stations are already compliant with MATS regulations and the Coal Combustion Residual (CCR) regulations. The Efficient Limitation Guidelines (ELG) are currently in litigation and are subject to reassessment by the U.S. EPA. (Direct Medine, Int. Ex. 2, pp. 24-26; Tr. Vol. III, 512).

In any event, DP&L's perception of the value of Stuart and Killen stations is irrelevant. As DP&L witness Malinak agreed, the price a willing buyer would be willing to pay for the Stuart and Killen plants depends on what assets are actually put up for sale and the motivation of that buyer at time of sale. That can only be determined at an actual sale. (Malinak, Tr. Vol. I, 213, 214).

Intervenor Medine was steadfast in her position that the reality is that third parties would value plant based on their own synergies, their own assumptions with respect to regulation and their own circumstances. The only way to measure the value of the Stuart and Killen plants on the market is to test the market by going to a legitimate, open sale process. A perceived low value for the Stuart and Killen stations would only serve to increase potential buyer interest. (Medine, Tr. Vol. III, 567-568, 569).

The fact remains that there are potential buyers in the market for coal fired generation. DP&L itself delayed divestiture to pursue a sale of generation assets to a third party which was to occur as early as 2014. (Second Entry on Rehearing, Case No. 12-426-EL-SSO, March 19, 2014). On April 25, 2017, Dynergy filed a Form 8-K with the SEC disclosing that on April 20, 2017, Dynergy affiliates executed an Asset Purchase Agreement to require DP&L's ownership share in the Zimmer and Miami Fort stations. Other Ohio utilities sold generation assets. Potential buyers include private equity, merchant generators and strategic players. (Direct Medine, Int. Ex. 2, p. 31).

Given that jurisdictional customers are asked to service the debt associated with the generation assets transferred, this Commission should require DP&L to maximize every effort to sell the plants in a legitimate and open sale process. The Commission has the authority to impose a condition in the Amended Stipulation to require that the Stuart and Killen stations be included in the sale process. Pursuant to OAC Rule 4901:1-37-09(C), this Commission can establish terms and conditions of any transfer or sale, can ensure that there are no adverse impacts on jurisdictional customers and can ensure that the sale and transfer will promote the public interest. This Commission also has jurisdiction under OAC Rule 4901:1-37-04(C) to review affiliate transactions to ensure that an electric utility does not subsidize an affiliate by committing funds to benefit an affiliate or maintain its financial viability. Transferring generation assets to an affiliate but leaving the associated debt with the electric utility imposes costs, the debt service, on jurisdictional customers that will no longer benefit from the transferred generation assets. (Medine, Tr. Vol. III, 555). This Commission should, at least, require that sale proceeds be maximized to include the Stuart and Killen stations under Paragraphs 1(c), (d) and (e) of the Amended Stipulation to benefit jurisdictional customers.

Outright closure of the Stuart and Killen plants without at least pursuing a possible sale process is not in DP&L's interest, is not in the ratepayers interest, is not in the interest of Ohio's

coal production industry and is not in the interest of the local communities and the State of Ohio. The evidence convincingly establishes that the closure of the Stuart and Killen generating plants will not only severely harm coal production and destroy jobs in the Ohio Valley region but will absolutely devastate Adams County and the local communities. The Stuart and Killen stations are the largest employer in Adams County and provide significant tax revenues to the county, townships, and school districts. The loss of these plants is particularly devastating to Adams County which is a rural, sparsely populated county. The closure of these plants will have a rippling effect throughout the community impacting businesses, commercial enterprises, health care, schools and education and governmental resources. Ultimately, the entire State of Ohio will be impacted as the State will be required, one way or the other, to step in to support the local schools, provide unemployment and welfare benefits, support health care through Medicaid or other sources and support the local infrastructure, including roads and other resources that cannot be supported any more through local tax revenues. (See Citizen Exs. 1 and 2; Other Intervenor Exhibits).

There are other issues with the Amended Stipulation that need to be addressed in more detail than that provided by the DP&L witnesses. Specifically:

1. There is no explanation of the status of FERC approval and scope of any conditions of FERC approval. FERC approval of the transfer of assets is clearly a requirement under Section 203 of the Federal Power Act. FERC regulations require disclosures of specific generating assets and liabilities to be transferred specific to FERC plant accounts. Any transfer of assets approved in this case should be consistent with any transfer conditions addressed by FERC. There is also no indication of the timing of FERC approval. (Schroeder, Tr. Vol. II, 294, 389, 390; Malinak, Tr. Vol. I, 194).

2. There is no specific description or designation of generation assets to be transferred, including whether land will be transferred, what associated facilities such as coal ash disposal facilities and transmission lines will be transferred, or what equipment, inventories or materials will be transferred. (Malinak, Vol. I, 194, 195).

3. There is no explicit requirement that "environmental liabilities" be transferred consistent with the Commission's September 7, 2014 Findings and Order in Case No. 13-2420-EL-UNC. And, there is no definition of what those

"environmental liabilities" will entail. (Schroeder, Vol. II, 296, 398; Malinak, Vol. I, 196). This is significant as there is no specific decommissioning plan for the Stuart and Killen stations, no indication of how on-going maintenance will be provided and no provision for clean-up of environmental hazards. This is of particular concern to the Adams County residents and the Adams County Regional Water District.

4. There is no definition of the "sale process" under Paragraph 1(d) of the Amended Stipulation. There should be a legitimate and open sale process to assure coal generation is fair marketed in good faith. (Medine, Vol. III, 569, 570).

IV. CONCLUSION AND RECOMMENDATIONS

This Commission should require, as a condition of its approval of the Amended Stipulation, that DP&L include the Killen and Stuart stations in the sale process addressed in Paragraph 1(d) of the Amended Stipulation. Outright closure of these plants without exhausting a potential sale is not in the interest of DP&L or ratepayers, is not in the interest of Ohio's coal production industry, is not in the interest of the local communities where these plants are located or in the State's interest and is not in the public interest. This Commission should also review the Amended Stipulation to ensure that any proposed transfer and sale of the generation assets is consistent with FERC approval, adequately specifies the generation assets to be transferred and sold, adequately defines the proposed sale process and is consistent with this Commission's prior orders, particularly the September 7, 2014 Finding and Order in Case No. 13-2420-EL-UNC as addressed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the fling of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons listed in Exhibit A via electronic mail this 5th day of May, 2017.

/s/ John F. Stock
John F. Stock

EXHIBIT A

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DYNEGY INC. (NYSE:DYN) Files An 8-K Entry into a Material Definitive Agreement

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04/25/2017 | 03:59am EDT

DYNEGY INC. (NYSE:DYN) Files An 8-K Entry into a Material Definitive Agreement

Item 1.01 **Entry into a Material Definitive Agreement.**

On April21, 2017, Dynegys indirect wholly-owned subsidiaries, Dynegy Zimmer, LLC, a Delaware limited liability company (Dynegy Zimmer), and Dynegy Miami Fort, LLC, a Delaware limited liability company (Dynegy Miami Fort), entered into an Asset Purchase Agreement (the Purchase Agreement) with AES Ohio Generation, LLC, an Ohio limited liability company (AESOhio), and The Dayton Power and Light Company, an Ohio corporation (DPL), to which Dynegy Zimmer and Dynegy Miami Fort, as applicable, will, subject to the terms and conditions in the Purchase Agreement, purchase DPLs (or, upon receipt of FERC approval of the divestiture by DPL of its Ohio generation assets to AES Ohio, AES Ohios) entire 28.1% undivided interest in the Wm. H. Zimmer Generating Station, a coal-fired electric generating plant located in Moscow, Ohio, and 36.0% undivided interest in Miami Fort Unit 7 and Miami Fort Unit 8, a coal-fired electric generating plant located in North Bend, Ohio, approximately 740 megawatts in total (summer capacity), for $50 million in cash and the assumption of certain liabilities, including environmental liabilities. The cash purchase price is subject to adjustment at closing based on the amount of certain inventories, pre-paid amounts, employment benefits, insurance premiums, property taxes and other costs prior to closing.

The Purchase Agreement includes customary representations, warranties and covenants by the parties and customary closing conditions, including approval by FERC under Section203 of the Federal Power Act, as amended.

Financials ($)

Sales 2017	**5 298 M**	P/E ratio 2017	**4,54**
EBIT 2017	**431 M**	P/E ratio 2018	**9,89**
Net income 2017	**50,2 M**	EV / Sales 2017	**1,64x**
Debt 2017	**7 862 M**	EV / Sales 2018	**1,55x**
Yield 2017	-	Capitalization	**827 M**

» More Financials

Chart DYNEGY INC

Duration : Auto. ▼ Period : Day ▼

APPENDIX A

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The Purchase Agreement contains certain termination rights for both parties, including if the closing does not occur within 12 months following the date of the Purchase Agreement (subject to extension to 18 months, if necessary to obtain applicable governmental approvals).

The foregoing description of the Purchase Agreement and the transactions contemplated thereby is not complete and is subject to, and qualified in its entirety by reference to, the full text of the Purchase Agreement, a copy of which is attached as Exhibit2.1 hereto and the terms of which are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d)Exhibits.

ExhibitNo.	Description
2.1	Asset Purchase Agreement dated April21, 2017, by and among Dynegy Zimmer, LLC, Dynegy Miami Fort, LLC, AE Ohio Generation, LLC and The Dayton Power and Light Company*

* to Item 601(b)(2)of Regulation S-K exhibits and schedules (and similar attachments) have been omitted. Dynegy agrees to furnish, supplementally, a copy of any omitted schedule or exhibit to the Securities and Exchange Commission upon request by the Commission.

to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

DYNEGY INC. (Registrant)

Dated: April24, 2017 By: /s/ Catherine C. James

Name: Catherine C. James

» Full-screen chart

Technical analysis trends DYNEGY INC

	Short Term	Mid-Term	Long Term
Trends	Bearish	Bearish	Bearish

» Technical analysis

Income Statement Evolution

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Summary: Brief Joint Post-Hearing Brief Submitted by Intervenors Murray Energy Corporation and The Citizens to Protect DP&L Jobs electronically filed by John F Stock on behalf of Murray Energy Corporation and Citizens to Protect DP&L Jobs