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. 16-395-EL-SSO**
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	**)** **)** **)**	**Case No. 16-396-EL-ATA**
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4904.13	**)** **)** **)** **)** **)**	**Case No. 16-397-EL-AAM**

SIERRA CLUB'S INITIAL POST-HEARING BRIEF

INTRODUCTION

Sierra Club urges the Commission to reject Murray Energy's belated suggestion to impose a mandate that Dayton Power & Light ("DP&L") undertake a potentially onerous sale process for the Killen and Stuart plants. Murray Energy, having filed an untimely intervention and now made a habit of misrepresentation to the Commission,[1] seeks to foist this self-serving restriction into the multi-party Amended Stipulation without any showing of legal error or benefit to DP&L or its customers, even though the Amended Stipulation itself does not require their closure, prevent their sale, or mention the plants at all.

The owners of the Killen and Stuart plants—DP&L, Dynegy, and American Electric Power—have made clear that these plants are not valuable, as reflected in DP&L's forecasts in

[1] *See* Response by Sierra Club to Murray Energy Corporation's Motion to Intervene, Feb. 28, 2017 (noting Murray Energy's false statement that Sierra Club would receive "payments" under the Amended Stipulation); *see also* Tr. III at 518-20 (witness Medine acknowledging that the federal government is not projecting a coal "resurgence," notwithstanding her written testimony stating otherwise).

this proceeding and in the owners' federal securities filings. Simply put, the owners consider these plants worthless and, crucially, DP&L witness Malinak has testified that because of the plants' negative cash flows retiring them would improve DP&L's credit rating. DP&L has carefully analyzed the economics of these plants and concluded that closure is in its and its customers' best interest. Against this overwhelming evidence, Murray Energy offers the testimony of Emily Medine, who theorizes that the plants might have some value, even though she has not attempted to rebut or even review DP&L's projections.

In the shadow of the factual flimsiness of its position, Murray Energy offers the legal theory that the potential closure of these plants requires Commission approval. Such a theory must come as a surprise to generation owners, like Dynegy, that are not regulated by the Commission and, in any case, is not supported by the statute's plain language. The Commission should reject this theory as it has no legal support.

Sierra Club takes no position on whether the Commission should approve the Amended Stipulation. Sierra Club observes, though, that a multi-party settlement[2] involves a delicate balance of competing interests. If the Commission wishes to foster settlement in its cases, it should not attempt to re-work a multi-party settlement by including a new, extraneous provision absent a clear showing of legal error or some other compelling public interest. The Commission should reject Murray Energy's attempt to re-negotiate the settlement in this proceeding to serve its parochial interests on the basis of nothing more than speculation.

[2] The Amended Stipulation has ten supporting parties and four non-opposing parties.

ARGUMENT

I. Witness Medine's recommendations have no legal relevance to this proceeding.

A. The disposition of the Stuart and Killen Plants is not a subject of this case.

The matter before the Commission is review of an Amended Stipulation intended to settle this case. While the Amended Stipulation commits DP&L or an affiliate to sell its ownership interest in the Conesville, Miami Fort, and Zimmer generating stations, the Amended Stipulation is silent regarding the Stuart and Killen plants.[3] The Stipulation does not require the closure of Stuart and Killen[4] or prohibit DP&L from selling them.[5] The Stipulation doesn't prevent a third party from starting negotiations with DP&L to purchase Stuart and Killen.[6] The Stipulation says absolutely nothing about Stuart and Killen:

> EXAMINER PRICE: Is there any provision in the stipulation which requires Commission approval to close Stuart or Killen, or are the closure of Stuart and Killen in any part of the stipulation?
>
> [DP&L WITNESS MALINAK]: I am not aware of it being there anywhere.[7]

Witness Medine acknowledged in her own direct testimony that the Amended Stipulation contains no provision that addresses the disposition of Stuart and Killen.[8] Crucially, Witness Medine acknowledged during questioning by the Attorney Examiner that DP&L does not need to ask the PUCO for approval to close Stuart and Killen:

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[3] Amended Stipulation (filed March 14, 2017), ¶ 1.d.; also Tr. II at 402 (Schroder cross-examination).

[4] Tr. III at 504. Note: All Transcript references are to cross-examination of witness Medine unless stated otherwise.

[5] Tr. III at 504-505.

[6] Tr. III at 505.

[7] Tr. I at 204 (Malinak cross-examination).

[8] Medine Test. at 20.

> EXAMINER PRICE: I am just asking are they – are they making – seeking Commission approval or authorization to close Stuart and Killen in the ESP?
>
> [WITNESS MEDINE]: I don't think they need to ask the company – the Commission.[9]

Because the Amended Stipulation doesn't discuss the closure of Stuart and Killen and DP&L is not required to ask the Commission for closure approval, the closure of Stuart and Killen has nothing to do with the Commission's review of the Amended Stipulation. Ms. Medine's testimony is simply a sideshow, sponsored by an untimely intervenor, with no legal relevance to this proceeding.

B. Witness Medine's arguments based on Ohio Revised Code Section 4928.17 are misplaced.

While Witness Medine ignores the three-factor test for reviewing settlements, she instead bases her argument on a tenuous reading of a statutory provision: R.C. § 4928.17, which governs Corporate Separation Plans and was attached to her testimony as Appendix B. In that testimony, Medine asserted that Section 4928.17 required DP&L to have a plan for divesting its generation assets; and required DP&L to obtain Commission approval of that plan.[10] She asserted that when it approved DP&L's transfer of generating assets to an affiliate in 2014, the Commission found the transfer to be in the public interest and required the completion of such transfer by January 1, 2017.[11]

Medine then reasoned that the Corporate Separation Plan "presumably expired at the end of 2016" as DP&L had failed to transfer the plants to an unregulated affiliate by January 1, 2017,

[9] Tr. III at 554.

[10] Medine Test. at 21.

[11] *Id*. at 6; citing *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, Opinion and Order (Sept. 17, 2014).

as required by a Commission order.[12] Since the approval "presumably expired," Medine argues, DP&L now "requires 'new' approval and as such should be obligated to justify why the transfer remains in the public interest."[13] In cross examination, Medine reiterated her position that Section 4928.17 should govern the Commission's review of any plant closures.[14]

It is doubtful whether any legal grounds for Medine's recommendations remain in the record as the Attorney Examiner struck much of Witness Medine's testimony about R.C. § 4928.17.[15] Nonetheless, Sierra Club will address this argument as Medine raised it in cross examination and it may appear in Murray's briefing. Quite simply, Section 4928.17 does not require Commission approval of plant closure decisions, and the Commission should reject Medine's attempts to stretch and contort the statute.

Generally, R.C. § 4928.17(A) prohibits a company that engages in retail electric service from providing a product or service other than retail electric service, without a corporate separation plan. Section 4928.17(E) requires Commission approval of any sale or transfer of generating assets: "No electric distribution utility shall sell or transfer any generating asset it wholly or partly owns at any time without obtaining prior commission approval." The plain language of Section 4928.17(E) requires Commission approval of a sale or a transfer, not for plant closure or a retirement. Since plant closure and retirement are not listed in the associated group of actions that require Commission approval, one should assume this is a deliberate exclusion and does not require Commission approval.[16]

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[12] *Id*.

[13] *Id*. at 21.

[14] Tr. III at 544-545, 547.

[15] Tr. III at 492-494.

[16] One of the canons of construction, "'*expressio unius est exclusio alterius* tells us that the express inclusion of one thing implies the exclusion of the other.'" *Crawford–Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 121 Ohio St.3d 560 (2009) , *quoting Myers v. Toledo*, 110 Ohio St.3d 218 (2006). This canon has force when the items

Perhaps recognizing this hole in her argument, Medine sought a different angle. She asserted that because DP&L did not transfer its generating assets by a January 1, 2017 deadline, the order approving the transfer "presumably expired" and approval for the transfer of generating assets must now be sought anew. But there are fatal flaws in this attempted workaround.

Foremost of these flaws, the Order in Case No. 13-2420, which approved the Corporate Separation Plan, did not set the January 1, 2017 deadline. That deadline was set in an Entry on Rehearing in DP&L's last Electric Security Plan case (Case No. 12-426, commonly referred to as *ESP II*).[17] The Order in Case No. 13-2420 merely approved the plan to transfer the assets and never established a deadline. There is thus no basis to presume that a consequence of DP&L's failure to complete the asset transfer by the deadline set in the *ESP II* order (Case No. 12-426) creates cause to re-open Case No. 13-2420. Witness Medine is relying on the wrong order for setting the deadline, and consequently barking up the wrong tree.

Further, the *ESP II* order didn't provide for re-opening if DP&L failed to meet the asset transfer deadline. Moreover, nothing in the order in Case No. 13-2420 provided for such a re-opener, either. Witness Medine never explains why—if the deadline set in the *ESP II* order is still binding but not met—the appropriate response wouldn't be to require prompt compliance with the transfer deadline, instead of re-opening the entire corporate separation plan. The former response is a more logical and straightforward way to address the issue. If what Murray Energy wants is to re-litigate terms of the order in Case No. 13-2420, it should file a pleading asking the Commission to re-open that docket.

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expressed are members of an associated group or series, justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003), *citing United States v. Vonn*, 535 U.S. 55, (2002). Section 4928.17(E) includes sale and transfer, which are an associated group; thus, the exclusion of retirement from this provision was a deliberate choice.

[17] *In re the Dayton Power and Light Company, Case No. 12-4260EL-SSO, et al.*, Entry on Rehearing (June 4, 2014) at 5.

Witness Medine also argues that Section 4928.17(A)(2), which states that a corporate separation plan must "satisf[y] the public interest in preventing unfair competitive advantage and preventing the abuse of market power," requires the Commission to mandate an effort to sell these plants so as not to create unfair competitive advantage. Medine's argument is unpersuasive as it lacks specificity and evidentiary proof and thus lacks credibility. *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-2110, ¶ 36, 109 Ohio St. 3d 328, 339, 847 N.E.2d 1184, 1195 (The Court found that the Commission order did not violate R.C. 4928.17(A) or grant FirstEnergy undue preference, unfair competitive advantage, and abusive market power because the appellants argument "suffer from a lack of specificity and proof."). Witness Medine's argument that the Commission must condition its approval on a requirement that DP&L attempt to sell Stuart and Killen to prevent unfair competitive advantage is unpersuasive for four reasons.

First, Medine conceded that DP&L *itself* would not get any competitive advantage from the retirement of these units. Witness Medine's acknowledged that the DP&L corporate family is "indifferent to the consequence of higher [energy or capacity] prices."[18] Medine readily acknowledged that DP&L had no such motivation as the Company is planning to divest itself from all its generating assets and thus could receive no financial benefit from increased power prices.[19]

Second, the Commission should disregard Medine's argument as she offered no proof that the closure of these plants is being done to create competitive advantage or market power. As acknowledged multiple times on cross, Medine has no evidence that the potential closure of

[18] Tr. III at 555.

[19] Tr. III at 556.

Stuart and Killen would be undertaken *for the purpose of* increasing power prices in PJM.[20] Medine said that she suspected this could provide motivation for Dynegy and AEP Generation Resources, DP&L's co-owners in the plants.[21] However, she had no evidence to back up her suspicion. Suspicion without evidentiary proof is simply not sufficient. *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-2110, ¶ 36, 109 Ohio St. 3d 328 at 339. Moreover, the merchant generator investors' motivations for seeking to close the plants are far outside the scope of this proceeding.[22]

Third, Witness Medine conflates a possible increase in PJM prices with proof of anti-competitive behavior. To argue that the possibility of closing Stuart and Killen threatens to create unfair competitive advantage and the abuse of market power, Witness Medine asserts that an increase in power prices might happen in PJM if the plants close.[23] However, Medine made no attempt to estimate that increase.[24] Even if closing both plants would increase capacity prices significantly (which she has not established), it is not clear how such an increase would secure any *unfair* competitive advantage. When pressed on this issue on cross examination, Medine offered no reasonable basis to conclude that increased prices could lead to any unfair competitive advantage:

> Q. ….What about closing Killen or Stuart would lead to an unfair competitive advantage?
>
> A. As I mentioned on Saturday, the issue relates to the fact that the merchant generators were looking to reduce capacity operating in the region in order to

[20] Tr. III at 552.

[21] *Id*.

[22] *Id*.

[23] Medine Test. at 23-24.

[24] Tr. III at 533-534.

> reduce costs. And the two merchant generators that you mentioned in closing the plant are Dynegy and AEP Generation Resources.[25][26]

It is hard to even discern Medine's point here: it is entirely reasonable for merchant generators to try to reduce costs by closing unprofitable generation assets; and nowhere in her response does Medine offer any coherent theory establishing any potential unfair competitive advantage from such closures.

A possible increase in PJM prices does not create a *res ipsa loquitur* type issue that necessarily demonstrates anti-competitive behavior. Market prices fluctuate based on the law of supply and demand. Medine failed to offer any evidentiary proof that a possible increase in price resulted from a utility's attempts to create an unfair competitive advantage. *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-2110, ¶ 36, 109 Ohio St. 3d 328 at 339.

Finally, Medine offers no specificity regarding possible unfair competitive advantage. While Witness Medine asserted that PJM prices may increase if Stuart and Killen close,[27] Medine made no attempt to estimate that increase; or even to characterize it as being large or small.[28] Such general assertions without specificity and proof are inadequate to support the relief requested by the Commission. *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-2110, ¶ 36, 109 Ohio St. 3d 328 at 339.

C. **Allegations DP&L made about Stuart and Killen in its withdrawn February 2016 filing are irrelevant.**

Witness Medine also inappropriately relies on DP&L's withdrawn original filing in this case, dated February 22, 2016, to support her recommendations. The February 2016 filing sought

[25] Tr. III at 551-52.

[26] Merchant generator investors' motivations for seeking to close the plants are far outside the scope of this proceeding.

[27] Medine Test. at 23-24.

[28] Tr. III at 533-534.

approval of a Reliable Electricity Rider ("RER") that would have provided financial support to the Company's coal-fired generating plants. Witness Medine argues that because DP&L asserted in the now withdrawn February 2016 filing that it was important to keep those plants open, the Company now bears some kind of new, higher burden of proof if it wants to close the plants:

> To start with, I believe DP&L has the burden of showing that closure of Killen and Stuart is a better outcome for customers than a sale particularly given the February 2016 filing which spoke to the importance of retaining the coal generation.[29]

This position is a false equivalency as Medine admitted during cross-examination that DP&L does not need Commission approval to close the plants. If DP&L doesn't need Commission approval to close the plants, then there is no basis to impose a higher burden of proof on DP&L in order to obtain Commission approval to close them. Witness Medine never explains this inconsistency.

Even if one could harmonize Medine's conflicting opinions on this point, it still wouldn't matter. DP&L's February 2016 filing has no bearing on this case, as it was *withdrawn* in September 2016.[30] Therefore, it is not part of the record in this case, and any opinions based upon it lack foundation. It simply is not evidence that has been admitted into the record.

At the hearing, Murray's counsel confusion about the nature of that withdrawal was apparent as he argued that while the request for approval of the RER had been withdrawn, other, unspecified components of the filing had not.[31] But that just isn't correct. DP&L's September 2016 Notice of Withdrawal provided a detailed list of testimony that was withdrawn, in addition to the RER request. The withdrawn testimony included all of the testimony concerning the

[29] Medine Test. at 22.

[30] The Dayton Power and Light Company's Notice of Withdrawal of Reliable Electricity Rider Proposal (filed September 23, 2016); see also the comments of DP&L counsel Jeff Sharkey, Tr. III at 542.

[31] Tr III at 542-543.

alleged benefits of continued plant operations that Medine relied on. This fact can be quickly confirmed by comparing the list of withdrawn testimony in the Notice of Withdrawal with the list of witnesses and testimony subjects on page 12 of Thomas Raga's direct testimony submitted as part of the February 2016 filing. The pertinent items are:

Witness	Subject	Withdrawn Testimony
Angelique Collier	"Compliance with Environmental Regulations."	Entire Direct Testimony withdrawn.
Carlos Grande-Moran	"Reliability effects of closure of at-risk generation plants."	Entire Direct Testimony withdrawn.
David Harrison	"Economic impact of closure of generation plants."	Entire Direct Testimony withdrawn.
R. Jeffrey Malinak	"Financial need of the RER generation plants […]"	Entire Direct Testimony withdrawn.
Mark Miller	"DP&L's generation assets; risks facing those assets."	Entire Direct Testimony withdrawn.
Thomas Raga	"Overview of case filing."	All references to the generating plants.

In the recent case of *In re Application of Columbus S. Power Co.*,[32] the Supreme Court of Ohio held that the Commission could not rely on evidence submitted in support of a rejected proposal in order to approve a subsequent proposal. In that case, the Commission had approved AEP Ohio's request for additional capacity revenue (beyond what had been approved in a parallel capacity case) through a Retail Stability Rider ("RSR"). The Court held that the evidence relied on by the Commission for the RSR decision lacked foundation, because that evidence had

[32] 147 Ohio St.3d 439, 67 N.E.3d 734 (2016).

been submitted in support of a different capacity revenue proposal that the Commission had already rejected by the time it decided the RSR:

> The critical problem is that the evidence relied on by the commission to approve the RSR was evidence that AEP had submitted to support the RSR under the two-tiered capacity-pricing plan. But the foundation for the RSR was eliminated when the commission rejected the two-tiered plan and found instead that AEP would be fully compensated for providing capacity under the cost-based charge approved in the Capacity Case. And no evidence was submitted in the ESP Case after the commission issued its decision in the Capacity Case. In short, none of the evidence cited in the ESP Order is relevant to whether it was necessary for AEP to recover additional revenue through the RSR beyond the costs that the company incurred to provide capacity service.[33]

Likewise in this case, Murray and its witness ask the Commission to rely on a filing that was withdrawn almost eight months ago. The allegations in that filing are simply not in the record and were never tested, for example, by cross examination. Moreover, any allegations therein are unsupported as testimony was withdrawn. Therefore, the filing and the testimony are not part of the record for purposes of R.C. § 4903.09. Murray didn't introduce any evidence on this point. Because these items are not part of the record in this case, the Commission simply cannot rely on them, and should give no weight to opinions of Witness Medine that are based on them.

II. Witness Medine's recommendations are not supported by her analysis.

Even if the Commission were inclined to consider Murray Energy's request to require a sale of Killen and Stuart, Murray Energy has not provided the Commission with any basis for that request. In particular, the superficial analysis proffered by Witness Medine does not support the request, both because Medine has provided no foundation for her key economic conclusions,

[33] 147 Ohio St.3d at 448-449.

and because her analysis relies on omissions or misrepresentations of key facts that undermine her conclusions.

A. Witness Medine failed to establish a foundation for her expert conclusions on the viability of selling Killen and Stuart.

The deficiencies of Witness Medine's threadbare analysis are numerous. Most pointedly, Medine reviewed almost none of the relevant materials: she did not look at financial projections for either of the plants prepared by DP&L;[34] she did not see any cash flow projections for either plant;[35] she did not review any discovery in this case;[36] she did not review any of the most recent financial filings by any of the plants' owners;[37] and indeed she did not review any of the confidential financial information in this case that might have offered her a candid view of DP&L's balance sheet with respect to the plants.[38] Given her failure to review any of the specific financial or operational information relating to these plants, it isn't surprising that Medine never tried to value either Killen or Stuart herself, nor did she seek to estimate the plants' ongoing operational costs or potential closing/retirement obligations.[39] She also never analyzed the financial integrity of DP&L overall, nor considered the beneficial impact closure of the plants could have on the DP&L corporate family.[40] In short, her testimony in this proceeding is wholly devoid of any specific analysis on whether Killen or Stuart are economically viable in any sense of the word, much less as potential sale targets.

[34] Tr. III at 507.

[35] Tr. III at 507, 11.

[36] Tr. III at 508.

[37] Tr. III at 508.

[38] Tr. III at 507.

[39] Tr. III at 509-10.

[40] Tr. III at 506-07.

To a degree, this failure to proffer any specifics is understandable: as Medine admitted, she spent less than three weeks learning this case and preparing her initial testimony.[41] But the cursory and unsupported conclusions that Medine provides are virtually useless to the Commission in evaluating the sale-worthiness of either plant. *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-2110, ¶ 36, 109 Ohio St. 3d 328 at 339. Even were Murray Energy's request germane to the issues presented in this proceeding (which, as explained above, it is not), it would be improper for the Commission to impose a condition on DP&L that could impose real costs (in the form of a forced sale process, possibly extending the costly life of both plants and requiring expenditure of limited resources) without actual evidence of specific benefits that could reasonably result from such a forced sale.

The vague assertions in Medine's testimony are particularly troubling when compared to the specific testimony by DP&L's Witness Jeffrey Malinak regarding how requiring the sale of Killen and Stuart would create extreme difficulties for DP&L. DP&L offered Malinak to testify about the specific financial situation of DP&L and its coal plants, and when asked by Murray Energy's attorney about the economic benefit of selling either plant, he expressed open skepticism:

> Q. [If there is a closure of Stuart and Killen, there won't be any proceeds, will there?
>
> A. Depends on how you define "proceeds."
>
> Q. Any proceeds from the sale.
>
> A. Well, if – well, first of all, you know the plants are not economic, so selling them is going to be difficult. For a positive amount. But they are running – their projected cash – free cash flows are negative. And so when you close the plant, you no longer are facing the negative free cash flows, so that's a form of economic proceeds.

[41] Tr. III at 505-06

Q. And you alluded to that in your testimony and I am going to get to that point in a moment. But as of this point, if there is no sale of Killen and Stuart and the plants are instead closed, there will be no proceeds of any sale.

A. If you define "proceeds" as sort of cash in from outside, I would agree with that, but, economically, there will be these proceeds. There will be the savings from the foregone negative cash flows which are substantial.[42]

Malinak went on to note that "most potential buyers . . . want to make a profitable purchase so with respect to Stuart and Killen that would be very difficult," and that a sale would be unlikely to occur even for cents on the dollar "based on the cash flows [he had] seen."[43] On redirect, Malinak went further, reiterating his conclusion that both Killen and Stuart have negative cash flows that are significant enough to have brought down DP&L's credit rating, such that retiring them would actually improve the utility's credit rating.[44]

Witness Medine's failure to provide any specific analysis or other foundation supporting her opinion renders her testimony and Murray Energy's request essentially meaningless. Even if it were appropriate to include these plants in its decision in this proceeding, which it is not, it would still be impossible, and indeed improper, for the Commission to take action based on Medine's recommendation.

B. To the extent Witness Medine conducted any specific analysis, her conclusions are undermined by her omission or mischaracterization of key facts.

In addition to providing no specific basis for her claims that the Commission should condition any order on DP&L selling Killen and Stuart to a third-party buyer, Witness Medine has demonstrated a willingness to ignore or mischaracterize key facts that might contradict her conclusions, which further undermines the credibility of her

[42] Tr. III at 202-03.

[43] Tr. I at 214.

[44] Tr. I at 224-25.

testimony. There are several examples of this skewed perspective, which we address in turn.

First, and perhaps most obviously, Medine ignores the unavoidable fact that DP&L itself has conducted an extensive financial analysis of the plants and concluded that timely closure of both plants is in the company's *best* financial interest.[45] DP&L is certainly not entitled to absolute deference in its financial projections, but Ms. Medine doesn't merely fail to address DP&L's analysis or provide any basis by which the Commission might question DP&L's analysis; she actively seeks to undermine it by citing the now-withdrawn February 2016 filing, even though (as explained above) that reference is not part of the record or valid.

Second, Medine ignores several other financial indicators that demonstrate a widespread belief that the two plants are not providing significant value to DP&L. Most pointedly, she ignores the facts that both AEP and Dynegy have valued their ownership interests in Stuart at $0; and that Dynegy has taken impairments on both plants.[46] The fact that AEP and Dynegy have both taken losses on the plants and valued Stuart at *zero* demonstrates a strong probability that the plants would be difficult to sell. And Medine's apparent failure even to consider these low valuations in her analysis, much less respond to and seek to counter those valuations, demonstrates her reluctance to address information undermining her proffered opinions in this proceeding.

Third, although a core portion of her testimony focuses on the alleged "market impacts" that would result from closure of Killen and Stuart, Witness Medine did not make any attempt to quantify how large those impacts might be; instead, her testimony is

[45] Tr. I at 199-202.

[46] Tr. III at 522-23; Dynegy 2016 10K; AEP 2016 10K.

limited to the obvious (and unhelpful) observation that reducing the supply of energy and capacity providers may increase the cost of that energy and capacity.[47] While true, this statement offers no insight as to whether those impacts will be significant, or even noticeable. This is particularly relevant here because Ms. Medine's own exhibit 2A, which lays out the generation dispatch curves for the PJM West region (including Ohio), demonstrates that there is ample power generation capacity in the region, such that a loss of both plants would not likely have a significant impact on power prices.[48] Thus, the most readily available evidence indicates that retiring both plants would probably not significantly increase energy prices in the region, undermining part of her justification for Murray Energy's request. And again here, as is a theme with Medine's testimony, rather than identifying and seeking to explain or disprove this inconvenient fact, she ignores it in her direct testimony (which doesn't mention how large or small any price impacts might be) and was unprepared to elaborate on this superficial analysis on cross examination.[49]

Finally, Witness Medine has demonstrated a willingness to exaggerate her characterization of facts to support her recommendations. This is most directly seen where Medine testifies that the U.S. Energy Information Administration has projected a "resurgence" in coal generation as a result of the anticipated delay or elimination of the Clean Power Plan.[50] When asked about this testimony, particularly in light of the fact that the EIA Report cited continued to show coal generation would remain 25-30% below its

[47] Tr. III at 533-34.

[48] Medine Direct Testimony, at Ex. 2a.

[49] Tr. III at 536-37.

[50] Medine Direct Testimony, at 24:5-9.

levels at the start of the decade,[51] Medine retracted her use of the word "resurgence" to describe the coal market in a future without the Clean Power Plan.[52] This retraction resolved her mischaracterization in that instance, but more broadly, it demonstrates her willingness to misconstrue sources of information in support of her expert testimony.

In short, Witness Medine's consistent failure to fully consider facts that might challenge her analysis, as well as her unfortunate tendency to mischaracterize other information in a manner designed to support her recommendations, render her opinions in this matter even less helpful than it already was due to her failure to conduct specific analyses of the Killen and Stuart plants.

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Respectfully submitted,

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[51] Sierra Club Ex. 1.

[52] Tr. III at 518-20.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing Sierra Club's Initial Post-Hearing Brief upon the following parties via electronic mail.

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