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 REPLY BRIEF SUBMITTED BY
INTERVENORS MURRAY ENERGY CORPORATION
AND THE CITIZENS TO PROTECT DP&L JOBS

I. INTRODUCTION

In their Joint Post-Hearing Brief, Intervenors Murray Energy Corporation and the Citizens To Protect DP&L Jobs oppose DP&L's Amended Stipulation and Recommendation to the extent the Amended Stipulation fails to include the Stuart and Killen plants in the proposed sale process for generating assets addressed in Paragraph 1(d). [1] Intervenors assert that there is absolutely no justification for the outright closure of these plants without first putting them through the sale process that the Amended Stipulation provides for DP&L's other generating assets. This is particularly true given DP&L's extraordinary proposal in the Amended Stipulation that the Commission permit it to transfer its generating assets to an affiliate while leaving behind the associated debt at DP&L for servicing by its jurisdictional customers.

[1] Intervenor's position also is supported by the Utility Workers Union of America, Local 175, the Adams County Board of Commissioners, Sprigg and Monroe Townships, the Adams County Ohio Valley School District, and the Manchester Local School District.

Outright closure of the Stuart and Killen plants, without at least putting them through the already-stipulated-to sale process for DP&L's other generating assets, 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 in this case convincingly establishes that there is no rational justification for outright closure of the Stuart and Killen plants without at least attempting a sale through the sale process already provided in Paragraph 1(d) of the Amended Stipulation for DP&L's other generating assets. DP&L witnesses failed to justify exclusion of the Stuart and Killen plants from the stipulated sale process. To the contrary, DP&L's own expert testified that if Stuart and Killen were not closed and generated some sale proceeds, those sale proceeds would be applied to reduce DP&L debt, benefitting <u>both DP&L and its ratepayers</u>. (Malinak, TR. Vol. I, 213, 215). Moreover, Intervenor witness Emily Medine explained why DP&L's unilateral decision to close the Stuart and Killen power plants, excluding the plants from the stipulated 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. (Direct Medine, Int. Ex. 2, p. 2). Specifically, Ms. Medine concluded:

- 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 for the communities in which the plants are located.
- Both the Killen and Stuart plants could be sold. Potential buyers include private equity, merchant generators, and strategic players including coal producers.
- There is no reason why the sale 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 the stipulated sale process is not in the public interest, the Amended Stipulation should be modified 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 devastate Adams County and the local communities where the plants are located. The Stuart and Killen plants are the largest employer in Adams County. They 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 governmental resources. Ultimately, the entire State of Ohio will be impacted as the State will be required, one way or another, 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 can no longer be supported through local tax revenues. (Joint Post-Hearing Brief, pp. 25-31).

DP&L failed to address these issues in its Initial Brief. The only party challenging Intervenors' position is the Sierra Club. Whether by tacit agreement or otherwise, the Sierra Club is not a signatory to the Amended Stipulation and takes no position regarding the Amended Stipulation. (Sierra Club Brief, p. 2). The Sierra Club's only interest – a purely self-interest – is to advocate for the closing of all coal-fired generating plants, no matter what the devastating impacts may be for the State of Ohio, its residents, businesses, and ratepayers. Indeed, the Sierra Club does not represent the interests of any Ohio ratepayer, business, public authority, or local Adams County resident in this proceeding. As a result, and not surprisingly, the Sierra Club proffered no witnesses and no substantive evidence of its own in this case. Instead, the Sierra Club simply flew counsel in from California to attend the evidentiary hearing, had California counsel press its anti-coal agenda before the Commission, and then flew its counsel back to California. The Sierra Club presents absolutely no affirmative evidence or argument of its own as to why it is not in the best interest of DP&L, its ratepayers, and the residents of Adams County for DP&L to include the Stuart and Killen plants in its already-stipulated-to sale process for DP&L's generation assets.

The Sierra Club's Initial Brief raises no compelling arguments and addresses no legal or factual issues not already addressed in detail in Intervenors' Joint Post-Hearing Brief. Rather than repeating the evidence and arguments set forth in their Joint Post-Hearing Brief, Intervenors will respond to the Sierra Club's arguments in this Reply.

II. LAW AND ARGUMENT

A. This Commission Has Jurisdiction To Review The Proposed Amended Stipulation And To Require That The Stuart and Killen Plants Be Included In The Stipulated Sale Process As A Condition For Approval Of The Amended Stipulation

The Sierra Club contends that the Amended Stipulation is silent regarding the Stuart and Killen plants, does not itself require closure of those plants, and does not prohibit DP&L from selling the plants. Thus, the Sierra Club asserts, the disposition of the Stuart and Killen plants is not before the Commission for review in this case. (Sierra Club Brief, pp. 3-4). The Sierra Club is wrong.

Contrary to the Sierra Club's position, DP&L's exclusion of the Stuart and Killen plants from the proposed sale process for its generating plants set forth in Paragraph 1(d) of the Amended Stipulation most certainly is subject to this Commission's jurisdiction and review. The linchpin in this case is DP&L's proposal to transfer its generating assets to an affiliate while leaving the debt associated with those assets with DP&L. If Stuart and Killen are not marketed through a legitimate and open sale process, there will be no sale proceeds to apply to reduce the associated debt left behind at DP&L. Exclusion of the Stuart and Killen plants from the stipulated sale process, while 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 that cannot be justified under any circumstances.

In this case, DP&L proposes in the Amended Stipulation to transfer $545.8 million of generating assets to an affiliate but leave behind at DP&L $938.7 million of debt associated with the generating assets. 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 while leaving the associated debt with the electric distribution utility. This provision of Paragraphs 1(c), (d) and (e) of the Amended Stipulation, proposing the transfer of generation assets to an affiliate, is specifically required to be reviewed and approved by the Commission under R.C. 4928.17(E), OAC Rule 4901:1-37-09(C), and OAC Rule 4901:1-37-04(C). Furthermore, FERC has jurisdiction to review the sale, lease or other disposal of generating assets under Section 203 of the Federal Power Act. (Intervenors Joint Post-Hearing Brief, pp. 32-34).

Moreover, 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's 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. And 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 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 Amended Stipulation without material modification. There is no provision as to the treatment of closing costs for the Stuart and Killen plants if those plants are closed prior to Commission or FERC approval. Nor is there any demonstrable ability for AES Ohio Generation LLC to pay for site reclamation and long-term environmental requirements without the income stream derived from the plants' operation. Absent such ability or indemnity from AES Corporation, if AES Ohio Generation LLC were to become insolvent, the environmental costs of the closed plants could revert to DP&L. As a result, the Amended Stipulation is inadequate as it does not provide assurances to the Commission that closure of the Stuart and Killen plants would insulate DP&L customers from this risk.

5. DP&L, or its 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.

(Intervenor's Joint Post-Hearing Brief, pp. 34-35).

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 the Amended Stipulation that is before the Commission for approval. 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 whole, benefit ratepayers and the public interest?

(3) Does the settlement 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). (Intervenor's Joint Post-Hearing Brief, pp. 35-36).

B. DP&L's Witnesses Failed to Address Material Issues Regarding The Proposed Transfer And Sale Provisions Of the Amended Stipulation

DP&L got it right in its Original Application filed in this case when it represented to the Commission that the premature retirement of its coal-fired generating plants would be disastrous for DP&L, its ratepayers, local communities where the plants are 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 Electricity Rider to ensure that these critical coal-fired generating plants would continue operating through December 31, 2026. Original Application at ¶¶6, 9.

The Sierra Club attempts to dismiss DP&L's original representations to the Commission that it is crucial for DP&L to preserve its baseload coal-fired generating plants by contending that the Original Application was withdrawn. (Sierra Club Brief, pp. 9-12). That is not correct.

Rather, on September 23, 2016, DP&L gave notice of its withdrawal of the Reliable Electricity Rider proposal of its Original Application. The Original Application for an Electric Security Plan was not withdrawn, but has been substantially modified by the Amended Stipulation now before the Commission. DP&L's representations regarding the necessity of maintaining its critical coal-fired generating assets were made by DP&L on the public record. The Sierra Club cannot suggest that DP&L was "mistaken" or "lied" to the Commission when it made these explicit representations in its Original Application.

The fact remains that DP&L's Amended Stipulation constitutes a complete reversal of its position regarding the necessity for continued operation of its generating assets. It is now DP&L's burden to prove that the Amended Stipulation, as a whole, benefits ratepayers and the public interest and does not violate any important regulatory principles or practices. However, DP&L's witnesses wholly failed to address material problems regarding DP&L's belated proposal to transfer and sell (or shutter) those very generating assets that it originally told the Commission were indispensable to it.

DP&L witness Schroder confirmed that the generating 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 acknowledged that no FERC approval had yet been obtained. (Tr. Vol. II, 389, 390). She did not know if the proposed 180-day period 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 to be transferred were, or what constituted 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 generating plants or their permit compliance status. (Tr. Vol.

II, 400). She did not address in her testimony the operational profitability of the plants to be transferred or the capacity utilization factors for those plants. (Tr. Vol. II, 406). She performed no study or analysis of the operating cash flow, less capital expenditures, for any of the plants on an annual basis. (Tr. Vol. II, 404).

DP&L witness Malinak testified that DP&L has announced plans to close the Stuart and Killen plants by June 2018 and has 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 those 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 was required for transfer of the generation assets (Tr. Vol. I, 194), did not know what "generation assets" were included in the proposed transfers (Tr. Vol. I, 194), did not know if any land would transfer or whether coal or landfill facilities would be included in the transfers (Tr. Vol. I, 195), and did not know what "non-debt" liabilities would transfer (Tr. Vol. I, 196).

The Sierra Club asserts that Intervenor witness Medine did not review financial projections for the Stuart and Killen plants prepared by DP&L, did not review any discovery in this case, and did not review any confidential financial information. The Sierra Club further asserts that DP&L itself has conducted an extensive analysis of the Stuart and Killen plants and concluded that timely closure of both plants is in the company's best financial interest. (Sierra Club Brief, p. 13). These assertions are false and misleading.

First, as noted, the Sierra Club itself offered no testimony or evidence of its own regarding any financial projections for operations of the Stuart and Killen plants. The Sierra Club can point to no evidence in this record as to any financial projections for plant operations and has offered no discovery responses or other evidence of its own to support its claims. Instead, the Sierra Club attempts to rely on the testimony of DP&L witnesses who did not address these matters in any meaningful manner.

DP&L witness Schroder admitted that she did not address in her testimony the operational profitability of any plants or the capacity utilization factors for the plants, and she performed no study or analysis of the operational cash flow for the plants. (Tr. Vol. II, 404, 406). DP&L witness Malinak acknowledged that his financial analysis assumes that the generating assets remain assets of DP&L, including the revenues, costs of operation, and CAPEX for those assets. His financial projections did not model for the sale of plants or for the proposed closure of the Stuart and Killen plants. (Tr. Vol. I, 149).

The only possible mention of any quantifiable or non-quantifiable costs or benefits from closure of the Stuart and Killen stations appears in a redacted one-paragraph section of Mr. Malinak's direct testimony. (Direct Malinak, Confidential, DPL Ex. 2B, p. 70). Ms. Medine reviewed this information and concluded that there simply was "nothing" there. (Tr. Vol. III, 508).

Second, contrary to the Sierra Club's assertion, Intervenor witness Medine specifically reviewed the operations of the Stuart and Killen plants and concluded that the plants have value. The Stuart and Killen plants are baseload generating plants. Killen has had a capacity factor [2] greater than 60% in every year from 1999 through 2016. (Direct Medine, Int. Ex. 2, p. 13). Stuart

[2] 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).

historically had a capacity factor greater than 60%, but has had challenges in recent years. Stuart's operating challenges from 2014 are now being addressed by DP&L; there has been a significant restructuring of DP&L's management team. (Direct Medine, Int. Ex. 2, p. 14-15). Ms. Medine also concluded that recent, temporary reductions in natural gas prices have not adversely impacted Killen's capacity factor. The capacity factor for Killen in 2014 was over 70% -- not only high, but higher than its capacity factor in 2013. Had low natural gas prices been a problem for Killen, its capacity factor would have been adversely impacted. It wasn't. (Direct Medine, Int. Ex. 2, p. 15).

Ms. Medine accurately concludes that the closure of Killen and Stuart, without first attempting a sale of the units through DP&L's stipulated sale process for its other generating units, 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.
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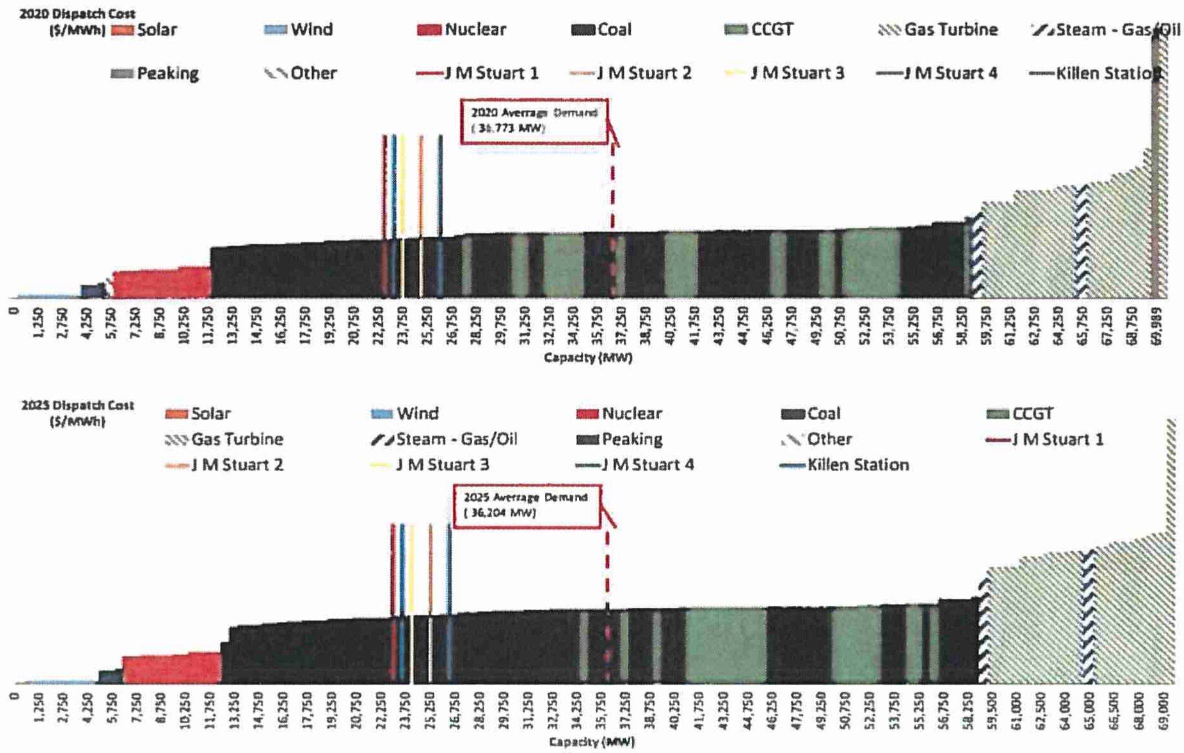
> (Direct Medine, Int. Ex. 2, pp. 22-23).

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

PJM WEST DISPATCH STACK IN 2020 AND 2025 (REVISED)



(Int. Ex. 2A)

Neither DP&L nor the Sierra Club offered any to this cogent analysis.

C. DP&L's Perceived Value For The Stuart and Killen Plants Is Irrelevant To The Issue Of Whether The Plants Should Be Subject to DP&L's Stipulated Sale Process

Even if the Stuart and Killen plants were shown to generate negative cash flow, that does not necessarily mean that the plants have no value or that the plants could not generate sale proceeds, in an open and legitimate sale process, that could be applied to reduce the generation debt left behind at DP&L.

DP&L witness Malinak acknowledged that since the generation assets would be transferred without the associated debt, the effect would be to <u>increase</u> DP&L's leverage ratio, which would be a credit <u>negative</u>, 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 if Stuart and Killen are closed, the plants would not undergo the sale process in the Amended Stipulation and would generate no sale proceeds that 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 – <u>benefitting both DP&L and ratepayers</u>. (Tr. Vol. I, 213, 215). What a potential buyer would be willing to pay for the Stuart and Killen assets would depend on what generation assets were 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).

Intervenor witness Medine was steadfast in her position that there was no justification for DP&L's exclusion of the Stuart and Killen plants from the proposed sale process in the Amended Stipulation. That DP&L's purported valuation of the plants is "zero" for bookkeeping purposes is irrelevant.

> 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 have value in the market is to test the market -- by going to a legitimate, open sale process. (Tr. Vol. III, 569). Again, DP&L's accounting valuation for the plants is irrelevant. (Tr. Vol. III, 523).

> But more importantly it's your own [potential buyer's] 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 simple fact is that there are potential buyers in the market for coal-fired generation facilities. 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). Furthermore, on April 25, 2017, Dynegy filed a Form 8-K with the SEC disclosing that on April 20, 2017, Dynegy affiliates executed an Asset Purchase Agreement to acquire DP&L's ownership share in the Zimmer and Miami Fort plants. (Appx. A to Joint Post-Hearing Brief). And other Ohio utilities have sold coal-fired generation assets. Potential buyers include private equity, merchant generators, and strategic investors. (Direct Medine, Int. Ex. 2, p. 31).

D. Exclusion Of The Stuart And Killen Plants From The Stipulated Sale Process Is Not Justifiable Under the Circumstances; Including Those Plants In The Already-Stipulated-To Sale Process Imposes No Substantial Burden on DP&L

The linchpin of the entire Amended Stipulation is the stipulated transfer of DP&L's generation assets to an affiliate, the proposed sale of those 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. The transferring of generation assets to an affiliate while leaving the associated debt with the regulated utility is an extraordinary proposition. 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 who will no longer benefit from the transferred generation assets. (Medine, Tr. Vol. III, 555).

The supposed benefit of this arrangement is that AES will apply 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 plants, without first putting them on the market for sale in the stipulated sale process, will generate no sale proceeds to apply to the left-behind debt. Jurisdictional customers will be required to provide revenues to service the debt associated with the Stuart and Killen plants without the benefit of any sale proceeds to offset that debt. (Malinak, DPL Ex. 2A, p. 68; Tr. Vol. I, 221, 222).

Given that jurisdictional customers are asked to service the left-behind debt associated with the generation assets transferred, the Commission should require DP&L to maximize every effort to sell the Stuart and Killen plants in a legitimate and open sale process. The Commission has the authority to impose as a condition of the Amended Stipulation that the Stuart and Killen plants be included in the stipulated sale process. Pursuant to OAC Rule 4901:1-37-09(C), the 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. The Commission also is specifically mandated 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. Again, transferring generation assets to an affiliate while leaving the associated debt with the electric utility imposes debt service costs on jurisdictional customers who will no longer benefit from the transferred generation assets. (Medine, Tr. Vol. III, 555). The Commission should require, at the very least, that sale proceeds be maximized to include the Stuart and Killen plants under Paragraphs 1(c), (d) and (e) of the Amended Stipulation to benefit jurisdictional customers.

Including the Stuart and Killen plants in the stipulated sale process imposes no substantial burden on DP&L. 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 provide any explanation for the timing of the proposed June 2018 closure of the Stuart and Killen plants. That date may relate to PJM requirements, as PJM provides capacity support for generators based on prices three (3) years in advance. (Direct Medine, Int. Ex. 2, p. 32). In any event, there is more than sufficient time for DP&L to include the Stuart and Killen plants in its stipulated sale process within the time frames provided in the Amended Stipulation and before any closure of those plants.

Use of the stipulated sale process for the Stuart and Killen plants should not be burdensome to DP&L as it already proposes to use that sale process for its other coal-fired generation assets. The ease of including the Stuart and Killen plants in the already-stipulated-to sale process starkly contrasts with the fact that jurisdictional customers already are being asked to pay DP&L up to $10 million for generation separation costs as part of its proposed Regulatory Compliance Rider. (Amended Stipulation, p. 17). These generation separation costs were addressed in Case No. 13-2420-EL-UNC.

With the recent election of President Trump, the energy industry is changing dramatically -- many Obama-era EPA regulations inimical to the prosperity of coal and coal-fired generation have been eliminated, and more are likely to be eliminated. The Clean Power Plan has been stayed and will be reassessed. The Stuart and Killen plants already are compliant with MATS regulations and the Coal Combustion Residual (CCR) regulations. The Effluent Limitation Guidelines (ELG) currently are in litigation and are subject to reassessment by the U.S. EPA. (Direct Medine, Int. Ex. 2, pp. 24-26; Tr. Vol. III, 512). Coal-fired generation is experiencing a rebound from 2015 and 2016 levels, as evidenced by Dynegy's recent agreement to acquire DP&L's interests in the Miami Fort and Zimmer plants. (Appx. A to Joint Post-Hearing Brief).

Finally, there are additional defects in the Amended Stipulation that have not been addressed by DP&L and its witnesses. Specifically:

1. There is no explanation of the status of FERC approval and scope of any conditions for FERC approval of the transfer of generation assets. FERC approval of the transfer of assets is clearly a requirement under Section 203 of the Federal Power Act. FERC regulations require disclosures of <u>specific</u> generating assets and liabilities to be transferred, correlated to specific FERC plant accounts. Any transfer of assets approved in this case should be consistent with any transfer conditions imposed 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 plants, 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 Adams County residents and the Adams County Regional Water District. AES Ohio Generation LLC, which is not a signatory to the Amended Stipulation, has no demonstrable means to pay for these obligations without operating power plants. Absent such ability, these costs could revert to DP&L.

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 that the coal-fired generation assets are fairly marketed, in good faith. (Medine, Vol. III, 569, 570).

III. <u>CONCLUSION AND RECOMMENDATIONS</u>

The Commission should require, as a condition of its approval of the Amended Stipulation, that DP&L include the Killen and Stuart plants in the stipulated sale process addressed in Paragraph 1(d) of the Amended Stipulation. Outright closure of these plants without pursuing 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 the plants are located, is not in the State's interest, and is not in the public interest. The Commission also should 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 the Commission's prior orders, particularly its 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 15th day of May, 2017.

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