**Before**

**The Public Utilities Commission of Ohio**

In the Matter of the Application of the )

Dayton Power and Light Company to ) Case No. 13-2442-EL-UNC

Amend its Corporate Separation Plan )

**Objections of Industrial Energy Users-Ohio**

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1. **INTRODUCTION**

On December 30, 2013, the Dayton Power and Light Company (“DP&L”) filed separate applications requesting authority to amend its corporate separation plan (“Corporate Separation Application”) and to transfer its generating assets (“Asset Transfer Application”).[[1]](#footnote-1) DP&L’s brief Corporate Separation Application states that “[a]s discussed in DP&L’s proposed Fourth Amended Corporate Separation Plan, the plan will explain the formation of AES US Services, LLC, which will provide certain administrative services to DP&L.”[[2]](#footnote-2) DP&L claims that “AES US Services will allocate prudently-incurred costs to the Affiliates . . . .”[[3]](#footnote-3) DP&L, however, does not disclose how AES US Services, LLC ("AES") will allocate those costs to DP&L.

DP&L’s Corporate Separation Application also states that “[b]y filing its Application this month, DP&L seeks approval of its Application to sell or transfer DP&L’s generating assets, both wholly and partly owned, away from the electric distribution utility by May 31, 2017.”[[4]](#footnote-4) The Asset Transfer Application, however, did not disclose the specific details under which DP&L intends to transfer its generating assets; rather DP&L will “file a supplement to [the Asset Transfer Application], setting forth a detailed plan for such a separation, once the Company has had the opportunity to complete its review of the pending issues and their operational and financial impacts.”[[5]](#footnote-5) Similarly, the Corporate Separation Application claims that there are a number of uncertainties that will impact its corporate separation plan but that the Commission should leave those matters up to DP&L’s discretion:

A number of factors, events and circumstances, many of which cannot reasonably be foreseen or predicted, will influence DP&L’s planning . . . . Accordingly, DP&L and its affiliates will need a reasonable degree of flexibility. For this reason, the plan is structured in a way to ensure . . . DP&L a modicum of discretion to select the precise means for achieving and maintaining such compliance in light of the relevant circumstances.[[6]](#footnote-6)

The Corporate Separation Application also does not address DP&L’s unlawful pricing of generation service to its affiliate, Dayton Power and Light Energy Resources (“DPLER”), an issue currently the subject of an Entry on Rehearing the Commission has issued in DP&L’s electric security plan (“ESP”) case.[[7]](#footnote-7)

IEU-Ohio objects to the Corporate Separation Application because the application is incomplete—it does not specify the costing methodology for the services AES will provide. Additionally, the Commission should not act on the Corporate Separation Application without also addressing the unlawful Service Stability Rider (“SSR”) that remains subject to a grant of rehearing in DP&L’s recent ESP case.[[8]](#footnote-8) Finally, the Commission should not approve the amendments to the corporate separation plan without indicating that it is reserving the issues related to the generation transfer to a time when the issues are properly before the Commission, *i.e*., when DP&L files an application that actually seeks to transfer the generation to a third party.

1. **OBJECTIONS**

No electric utility shall engage, either directly or through an affiliate, in the business of supplying non-competitive retail electric service and competitive retail electric service,[[9]](#footnote-9) unless the utility operates under a corporate separation plan approved by the Commission that is consistent with the policy of R.C. 4928.02 and R.C. 4928.17.[[10]](#footnote-10) As is relevant to this proceeding, R.C. 4928.17 contains protections for customers in circumstances where an electric distribution utility ("EDU") is procuring services or products from an affiliate and also when an EDU is supplying services or products to an affiliate. R.C. 4928.17(A)(2) requires that a corporate separation plan “satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power.” R.C. 4928.01 defines market power as “the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market.” Moreover, R.C. 4928.17(A)(3) requires DP&L to supply products and services to its affiliates at fully embedded costs.

The Commission may either approve, modify and approve, or disapprove the corporate separation plan.[[11]](#footnote-11) Additionally, the Commission may reject and require the refiling of a substantially inadequate corporate separation plan.[[12]](#footnote-12) The Commission shall approve the corporate separation plan “only upon findings that the plan reasonably complies with the requirements of division (A) of [R.C. 4928.17] and will provide for ongoing compliance with the policy specified in section 4928.02 of the Revised Code.”[[13]](#footnote-13)

DP&L has not disclosed how AES will allocate costs to DP&L. DP&L claims that there is no “mark-up”[[14]](#footnote-14) but that does not get the job done. Under Ohio law, AES cannot allocate costs to DP&L that exceed prices that would prevail in a competitive market.[[15]](#footnote-15) The Commission should require DP&L to more specifically describe the manner in which AES allocates costs to DP&L and ensure that the methodology complies with Ohio law.

The application also fails to address an issue currently before the Commission in the DP&L ESP case. In that case, IEU-Ohio and others demonstrated that DP&L priced generation sales to its affiliate, DPLER, below levels required under Ohio law. As of August 30, 2012, approximately 62% of DP&L’s retail load had switched to a competitive retail electric service provider.[[16]](#footnote-16) The majority of the switched load has been retained by DPLER.[[17]](#footnote-17) DPLER secured power to serve those contracts from DP&L. The contract between DP&L and DPLER to provide DPLER with generation resources is set at market-based prices.[[18]](#footnote-18) DP&L then complained that it was not securing sufficient generation-related revenue to support its earnings goal and requested authority to collect additional revenue through a nonbypassable charge (the SSR). Over the objection of IEU-Ohio, the Commission authorized the SSR, but failed to address the unlawful preference to DPLER.

The Commission, however, has granted rehearing so that it may further consider its decision authorizing DP&L’s ESP, but has not issued a decision on the issue of the illegal preference.[[19]](#footnote-19) The Commission should reverse its decision approving the SSR prior to approving DP&L’s Corporate Separation Application, and then direct DP&L to resubmit terms of corporate separation that indicate that DP&L’s corporate separation plan complies with R.C. 4928.17(A)(3).

Additionally, to the extent that DP&L’s Corporate Separation Application is intended to set forth DP&L’s corporate separation plan for the period after it transfers its generation assets to a third party, the Commission should limit its approval to updating DP&L’s corporate separation plan to account for the creation of AES. DP&L has not disclosed the specific details of its plan to transfer its generation assets; thus, the Commission cannot predetermine whether DP&L’s proposed corporate separation plan will comply with Ohio law.

1. **CONCLUSION**

For the reasons stated herein, IEU-Ohio urges the Commission to require DP&L to allocate costs from AES in a manner that complies with Ohio law, and, as discussed more fully in IEU-Ohio’s Application for Rehearing in the ESP case, to require DP&L to provide products or services to its affiliates based upon fully embedded costs. Finally, the Commission should not approve the amendment to the corporate separation plan without indicating that it is reserving the issues related to the generation transfer to a time when the issues are properly before the Commission, *i.e*., when DP&L files an application that actually seeks to transfer its generation assets to a third party.

 Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Objections of Industrial Energy Users-Ohio* was served upon the following parties of record this 4th day of February 2014, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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1. *In the Matter of the Application of the Dayton Power and Light Company to Transfer or Sell its Generation Assets, Case No. 13-2420-EL-UNC*, Application (hereinafter “Asset Transfer Application”). The Asset Transfer Application is addressed in separate comments by Industrial Energy Users-Ohio ("IEU-Ohio"). The separate comments demonstrate that the Asset Transfer Application is not ripe for a Public Utilities Commission of Ohio ("Commission") decision because DP&L has not proposed a transfer of the assets. [↑](#footnote-ref-1)
2. Corporate Separation Application at 1. [↑](#footnote-ref-2)
3. Corporate Separation Application, Exhibit A at 12-13. [↑](#footnote-ref-3)
4. Corporate Separation Application, Exhibit A at 1. [↑](#footnote-ref-4)
5. Asset Transfer Application at 2 (Dec. 30, 2013). [↑](#footnote-ref-5)
6. Corporate Separation Application, Exhibit A at 4-5. [↑](#footnote-ref-6)
7. *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Market Rate Offer*, Case No. 12-426-EL-SSO, *et al.*, Entry on Rehearing (Oct. 23, 2014) (hereinafter “*DP&L ESP II*”). [↑](#footnote-ref-7)
8. *DP&L ESP II*,Entry on Rehearing (Oct. 23, 2013). [↑](#footnote-ref-8)
9. “Retail electric service” means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For the purposes of this chapter, retail electric service includes one or more of the following “service components”: generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service. R.C. 4928.01(27). [↑](#footnote-ref-9)
10. R.C. 4928.17(A) provides:

(1) The plan provides, at minimum, for the provision of the competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility, and the plan includes separate accounting requirements, the code of conduct as ordered by the commission pursuant to a rule it shall adopt under division (A) of section 4928.06 of the Revised Code, and such other measures as are necessary to effectuate the policy specified in section 4928.02 of the Revised Code.

(2) The plan satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power.

(3) The plan is sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business . . . without compensation based upon fully loaded embedded costs charged to the affiliate. [↑](#footnote-ref-10)
11. R.C. 4928.17(B). [↑](#footnote-ref-11)
12. R.C. 4928.17(B). [↑](#footnote-ref-12)
13. R.C. 4928.17(C). [↑](#footnote-ref-13)
14. Corporate Separation Application, Exhibit A at 13. [↑](#footnote-ref-14)
15. R.C. 4928.17(A)(2); R.C. 4928.01(18). [↑](#footnote-ref-15)
16. *DP&L ESP II*,IEU-Ohio Ex. 2 at 12. [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. *Id.* at 11-13. [↑](#footnote-ref-18)
19. *DP&L ESP II*,Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 39-42 (Oct. 4, 2013). [↑](#footnote-ref-19)