

FILE

9

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2011 JUL 18 PM 3:47
PUCO

In the Matter of the Application of the AES)
Corporation, Dolphin Sub, Inc., DPL Inc. and)
The Dayton Power and Light Company for)
Consent and Approval for a Change of Control)
of The Dayton Power and Light Company)

Case No. 11-3002-EL-MER

**THE CITY OF DAYTON'S COMMENTS IDENTIFYING ISSUES THAT THE
COMMISSION SHOULD CONSIDER IN REVIEWING PROPOSED MERGER**

The City of Dayton, Ohio ("Dayton"), on behalf of itself and its residential and commercial citizens, hereby files these comments which identify and discuss issues that the Public Utility Commission of Ohio ("Commission") should consider in the merger proposed in this case. As Dayton has long since been intertwined with and reliant upon the services of the Dayton Power & Light Company, Dayton respectfully requests that the Commission consider the issues identified herein in the forum of a formal public hearing so as to provide the Commission, as well as Dayton, with the opportunity to fully inquire into the specifics of this merger and the possible ramifications of the merger on Dayton and the citizens of Dayton.

I. PROCEDURAL BACKGROUND

This proceeding was initiated by the AES Corporation ("AES"), Dolphin Sub, Inc., DPL Inc. and The Dayton Power & Light Company ("DP&L") (collectively the "Applicants") through the Applicants' filing of an Application for Consent and Approval for a Change of Control of The Dayton Power & Light Company (the "Application"). The Applicants, through the Application, seek Commission approval for the merger of DPL Inc., the parent corporation of DP&L, with AES. The merger purports to result in AES acquiring all shares of DPL Inc., the holding company parent of DP&L.

The Commission, in an Entry dated June 1, 2011, suspended these proceedings in order to fulfill its obligation under Ohio Revised Code ("O.R.C.") Section 4905.402(B). Specifically, the Commission suspended these proceedings in order to evaluate whether the merger fulfills the statutory requirement that the merger "promote public convenience and result in the provision of adequate service for a reasonable rate." The comments identified by Dayton herein are integral in determining whether the merger fulfills these requirements.

II. COMMENTS

Dayton and DP&L have a 100 year history together,¹ and the history of DP&L, its growth and development is deeply intertwined with that of Dayton's. Dayton and Dayton's citizens rely on DP&L to provide quality electric service at reasonable rates, and Dayton along with many of Dayton's citizens rely on DP&L for much more than just electric service. DP&L employs a significant number of Dayton citizens, is a large part of Dayton's tax base and is integral to Dayton's ability to attract and retain commercial and residential citizens. DP&L has also been a philanthropic partner of Dayton's, and has assisted Dayton in development endeavors for a century.

Through its actions here, Dayton by no means seeks to unnecessarily obstruct a corporate opportunity presented to DP&L and its shareholders, but Dayton does not dismiss the possibility that the proposed merger will disturb the partnership developed between DP&L and Dayton. Therefore, Dayton respectfully requests that the Commission, for the benefit of the residential and commercial citizens of Dayton and Dayton's citizens, consider the following issues in the forum of a formal public hearing so that Dayton may be given an opportunity to ask questions, seek information and review DP&L's responses in order to properly understand the merger and its ramifications:

¹ See Exhibit 3 of the Application, Letter from CEO & President Paul M. Barbas.

- **Workforce and Employment Concerns.** The Applicants state in the Application that "following the merger through December 31, 2013, AES has committed to cause DPL Inc. and DP&L not to implement any involuntary workforce reductions that would result in DPL Inc. and DP&L employing *substantially fewer* individuals in the aggregate than are employed immediately before the merger."² Dayton is extremely concerned about this language. Applicants implicitly state that "all bets are off" after December 31, 2013, and that DPL Inc. and DP&L could be subject to more than *substantial* employment cuts after that date. Even in the interim, until December 13, 2013, the Applicants only guarantee that the workforce will not be cut to an extent that would result in *substantially fewer* employees than employed immediately before the merger. In its Application as recited by DP&L, "substantially fewer" is undetermined and its meaning unexplained. Many DPL Inc. and DP&L employees reside in Dayton, and their livelihoods, and the well-being of their families, appear to be at risk based upon the language cited.
- **Headquarters and Decision Making.** The Applicants state in the Application that "AES is committed to preserving DP&L's local decision making authority, including its commitment to maintain DP&L's operating headquarters in Dayton, Ohio and DP&L's name, for at least two years following the merger."³ Again, here, the Applicants make only a two year guarantee that one of Dayton's oldest, most prominent and prolific businesses, a business that is deeply intertwined with the history, culture and economy of Dayton, will remain in Dayton. Not only are

² Application, page 3, #5.

³ Application, page 3, #1.

Dayton's citizens customers, but many are also shareholders of DP&L, and a certain intimacy has always existed between DP&L, Dayton and Dayton's citizens. Dayton's citizens had great influence over how the company's decisions were crafted and implemented. The relocation of DP&L's headquarters and the possible end of local decision making could be devastating on many fronts. The financial ramifications of the possible relocation of DP&L headquarters and perhaps certain operations, or worse, the end of DP&L's corporate presence could be disastrous for Dayton. Any material job consolidation or employee relocation following the proposed merger will have an enormous impact on Dayton's workforce and the income taxes generated by those jobs. Such reductions in taxes and possible reassignments could concurrently impact the level of service provided to Dayton and Dayton's citizens.

- **Rates and Services.** The Applicants state in the Application that "Customers will continue to receive the same high-quality service at reasonable rates that they received before the merger." ⁴ DP&L's rates are fixed through 2012, and the Commission should consider how the merger will affect DP&L's rates thereafter. Dayton's citizens, like many citizens in Ohio, continue to persevere through a very challenging economic climate. A major rate increase in 2013 would make this climate even more challenging, and would not provide for the public convenience or betterment of Dayton's citizens. Furthermore, DP&L has consistently endeavored to provide reliable service, and as recent as last year created a Business Call Center to address service issues in Dayton's business community. The Applicants make no concrete guarantees that efforts such as this will be continued after the merger.

⁴ Application, page 3, #2.

Instead, Dayton and its citizens are left to wonder whether major cost reductions are imminent for DP&L, cost reductions that will invariably trickle down to consumers and negatively effect DP&L's services. Concurrently, if AES is reaping financial gains from the merger, Dayton is left to wonder whether this will positively influence rates for Dayton and Dayton's citizens, perhaps even before 2012. Unfortunately, none of these fears can be allayed by, nor are answers provided in the Application as initially filed.

- **Community Contribution and Economic Development.** The Applicants state in the Application that "for at least two years following the merger, DP&L will continue to provide corporate contributions and community support in the Dayton, Ohio area at levels substantially consistent with its current levels of charitable contributions and community support."⁵ Again, the Applicants make only a short-term commitment that is concerning to Dayton. The Applicants could be suggesting that after two years, there will be no charitable contributions made to Dayton by DP&L, and that the partnership that has existed for a century will almost dissolve overnight. While Dayton appreciates that the DP&L Foundation will remain intact and is claimed to be "fully funded," Dayton is legitimately concerned about the future of DP&L giving and even the Foundation. It is unknown how much of an annual investment DP&L makes in Dayton and/or the Foundation. Dayton would like to better understand those issues. Further, based upon the tenor of the Application, the Foundation is independent from DP&L and while DP&L may currently be able to influence the participation of the Foundation locally, there is no guarantee that the Foundation will

⁵ Application, page 3-4, #6.

remain intact and continue to infuse funds into the Dayton local area. The Applicants should address in detail how they plan to maintain, or even improve their charitable activities and involvement through these proceedings. Furthermore, DP&L and Dayton have long been partners in economic development projects. The Application does not address such joint development projects, and again, implicitly, Dayton can only assume that AES and the Applicants have no intention of partnering with Dayton and other local political subdivisions to assist in such opportunities on a going forward basis.

- **Real Property.** Dayton and Dayton's citizens have not been immune to this difficult economic climate, especially in the real property context. Dayton has a number of unused and blighted areas, and DP&L's possible exodus from Dayton would only intensify Dayton's real estate woes. Dayton should be given the opportunity to inquire and deliberate regarding the Applicants' intentions with the prime real estate it occupies in Dayton in the context of discovery and culminating in a full public hearing.

III. CONCLUSION

The Commission should address the comments discussed above, allow for a period of discovery and for the submission of testimony, and further allow for a public hearing that would require the Applicants to fully explain the merger and address legitimate concerns made here by Dayton and Dayton's citizens. The concerns expressed here are further exacerbated by two filings that were served upon Dayton by Ecos Energy LLC, and from a former employee of AES,

a Mr. Dwane G. Ingalls. These filings very clearly express a certain level of disappointment in AES for its failure to fulfill promises. This merger case is simply too important to Dayton, and to the public convenience of Dayton and the surrounding region, to allow for approval of the merger without a period of discovery, the submission of testimony, and a public hearing.

Dayton reserves the right to supplement these Comments in the event that additional issues or concerns come to the attention of Dayton during these proceedings.

Respectfully Submitted,



Christopher L. Miller (0063259)

Direct Dial: (614) 462-5033

E-mail: cmiller@szd.com

Counsel of Record

Gregory H. Dunn (0007353)

Direct Dial: (614) 462-2339

E-mail: gdunn@szd.com

Asim Z. Haque (0081880)

Direct Dial: (614) 462-1072

E-mail: ahaque@szd.com

Schottenstein Zox & Dunn Co., LPA

250 West Street

Columbus, Ohio 43215

(614) 462-2700 (Main Number)

(614) 222-4707 (Facsimile)

Attorneys for the City of Dayton, Ohio

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Comments were served upon the parties of record listed below this 18th day of July, 2011 via first class mail and electronic mail.


Christopher L. Miller

Daniel R. Conway
Andrew C. Emerson
Porter Wright Morris & Arthur LLP
41 South High Street
Suites 2800-3200
Columbus, OH 43215-6194
dconway@porterwright.com
aemerson@porterwright.com

*Attorneys for The AES Corporation and
Dolphin Sub, Inc.*

Arthur G. Meyer
1065 Woodman Drive
Dayton, OH 45432
Arthur.meyer@dplinc.com

*Attorney for The Dayton Power and Light
Company*

William Wright
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, OH 43215-3793
William.Wright@puc.state.oh.us

*Attorney for The Public Utilities Commission
of Ohio*

Joseph E. Oliker
Samuel C. Randazzo
Frank P. Darr
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwnchm.com
joiker@mwncmh.com

Attorneys for Industrial Energy Users of Ohio

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45840
cmooney2@columbus.rr.com

*Attorney for The Ohio Partners for Affordable
Energy*

Charles J. Faruki
Jeffrey S. Sharkey
Faruki Ireland & Cox P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
cfaruki@ficlaw.com
jsharkey@ficlaw.com

Attorneys for DPL, Inc.

Lisa G. McAlister
Matthew Warnock
Bricker & Eckler LLP
100 S. Third Street
Columbus, OH 43215
lmcalister@bricker.com
mwarnock@bricker.com

Attorneys for OMA Energy Group