BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

APPLICANTS' REPLY COMMENTS

Daniel R. Conway (0023058)
(Counsel of Record)
Andrew C. Emerson (0071994)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, OH 43215-6194
Telephone: (614) 227-2270
Facsimile: (614) 227-2100
Email: dconway@porterwright.com

Attorneys for The AES Corporation
and Dolphin Sub, Inc.

OF COUNSEL:

Arthur G. Meyer (0024165)
THE DAYTON POWER AND LIGHT
COMPANY
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7208
Facsimile: (937) 259-7178
Email: arthur.meyer@dplinc.com

Charles J. Faruki (0010417)
(Counsel of Record)
Jeffrey S. Sharkey (0067892)
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
Telephone: (937) 227-3705
Facsimile: (937) 227-3717
Email: cfaruki@ficlaw.com

Attorneys for Applicants DPL Inc. and
The Dayton Power and Light Company

TABLE OF CONTENTS

APPLICANTS' REPLY COMMENTS

I. INTRODUCTION

In the Application in this matter, Applicants demonstrated that the proposed merger would "promote the public convenience and result in the provision of adequate service for a reasonable rate," as required by Ohio Rev. Code § 4905.402(B). Specifically, Applicants demonstrated that the benefits of the merger included:

1. 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.

2. Customers will continue to receive the same high-quality service at reasonable rates that they received before the merger. DP&L's rates are currently fixed through 2012 and were approved by the Commission. Post 2012 rates will also be subject to approval by the Commission.

3. AES is committed to meeting customers' energy demands, and it contributes to communities' capability to grow by providing reliable and responsible electric power. Customers will benefit from the extensive technical expertise and resources of the AES group. The merger will allow DP&L to build on what has made it a reliable, efficient utility while receiving the benefits of being a part of a larger global company. AES owns Indianapolis Power & Light Company ("IPL"), and IPL's close proximity to DP&L will allow each company to provide better emergency response services.

4. The merger will not result in further consolidation among Ohio utilities.

5. 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.

6. 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. In addition, because The DP&L Foundation is an independent entity, it will not be affected by

the merger. It will continue its community focus, as it has for over 25 years.

7. Upon consummation of the merger, DP&L's credit rating will remain investment grade.

In its comments (p. 3), The Staff of the Public Utilities Commission of Ohio concluded that "Staff, with one additional element, agrees with DP&L's assessment of the key elements and benefits to the merger." Staff and interested persons filed comments asserting that some of the benefits identified by Applicants should be extended or that other benefits should be provided.

As demonstrated below, the Commission should conclude that the benefits identified by the Applicants are more than sufficient to satisfy the statutory requirements that the merger "promote the public convenience and result in the provision of adequate service for a reasonable rate." Ohio Rev. Code § 4905.402(B). The Commission should thus reject the comments that seek to extend or add to the commitments made in the Application. The Applicants respectfully request that the Commission continue its review of the transaction in an efficient manner.

II. STAFF COMMENTS

With the exception of one additional element, Staff either agrees that the Applicants' commitments are adequate or makes specific recommendations for the Commission to include in its approval of the merger. The Applicants reply to each Staff recommendation as follows:

1. Headquarters and Name: The Applicants commit to maintain DP&L's operating headquarters in Dayton, Ohio and DP&L's name for at least two years following the

merger. Staff (p. 3), as well as the City of Dayton (pp. 3-4), OMA (pp. 3-4), and OPAE (pp. 5-7), recommend that the two-year timeframe for this commitment be extended to five years. The Applicants are sensitive to these local economic concerns and, to that end, have discussed and will continue to discuss with interested stakeholders the fact that AES has no intention of moving DP&L's headquarters after the two-year commitment. The Applicants maintain that a two-year commitment is the appropriate balance in this instance.

Staff also makes the following recommendation (p. 4): "Furthermore, Staff believes the bifurcated compensation provision, which pays more money to DP&L corporate executives if the corporate headquarters is moved out of Dayton, creates a perverse incentive to move the headquarters from Dayton. Therefore, Staff also recommends that the bifurcated compensation provision be removed from the agreement." Applicants want to clarify that there is no such "bifurcated compensation" provision in the merger agreement. As disclosed in DPL Inc.'s Proxy Statement, however, DPL Inc.'s Severance Pay and Change of Control Plan (the "Severance Plan"), as most recently amended and restated by DPL Inc. in 2007, requires DPL Inc. to make a severance payment to certain executives who, within a specified period following a change of control, are terminated without cause or resign for good reason.[1] The definition of "good reason," which appears to have generated the Staff's comment, is defined in the Severance Plan, in relevant part, as "the relocation of the Company's principal executive offices more than 50 miles from their current location . . . or the requirement of the Participant to be based at a location more than 50 miles from the Participant's location as of the Change of Control."[2]

[1] Section 5.2 DPL's Severance Pay and Change of Control Plan.
[2] Id.

Because the relevant severance payments are triggered only if a resignation for good reason occurs within a specified period of time — which is two years following a change of control for DPL Inc.'s CEO, and one year following a change of control for the other covered executive officers — the Staff's concern is effectively mooted by the merger agreement's requirement to maintain DP&L's operating headquarters in Dayton, Ohio for at least two years following the merger.

Even in the absence of such a commitment, there is simply no incentive for corporate executives to move the headquarters from Dayton, as the Staff suggests, because any decision to relocate DPL Inc.'s headquarters is one that would be made, if at all, by DPL Inc.'s board of directors and not by the executives covered by the Severance Plan. Given this fact, the existence of this provision in the Severance Plan actually serves as an incentive to DPL Inc. to maintain DPL Inc.'s headquarters in its current location following a change of control because any decision to the contrary could require DPL Inc. to make a severance payment to the covered executives.

2. Merger Costs: The Applicants state in their Application that customers will continue to receive the same high-quality service at reasonable rates that they received before the merger, as DP&L's Commission-approved rates are currently fixed through 2012 and any post-2012 rates will be subject to Commission approval. Staff (p. 4), as well as OMA (p. 3), recommend that the Commission include a requirement in its approval of the merger that no merger-related costs be recovered through regulated rates. In its application, Applicants are not seeking to recover any costs incurred directly related to the negotiation, approval, and closing of the merger and have acknowledged that the rates will continue to be fixed through 2012.

3. Workforce: 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. Staff (p. 5), as well as City of Dayton (p. 3), OPAE (p. 6), and OMA (p. 4), recommend that the workforce commitment should be for at least three years, and Staff recommends that "substantially fewer" should be defined as less than 10%.

Applicants accept Staff's recommendation to define "substantially fewer" as less than 10%, which translates into a commitment not to implement any involuntary workforce reductions that would result in DPL Inc. and DP&L reducing by 10% or more the number of individuals in the aggregate that are employed (exclusive of officers and management employees covered by a change in control agreement) the day the merger closes. AES is acquiring DPL Inc. and DP&L as a platform for growth in the PJM market. Unlike the Duke/Cinergy merger, this is not a deal driven by synergies. Thus, Applicants' commitment is consistent with AES's growth strategy. Extending the workforce commitment beyond two years, however, is unreasonable due to the increasing competitiveness of the energy business and the uncertain regulatory costs caused by new environmental regulations. Similar to the headquarters location issue above, the Applicants appreciate the sensitivity of this issue in the local community and are discussing and will continue to discuss with interested stakeholders the issue and explain the basis for the Applicants' two-year commitment.

4. Ring Fencing: The Applicants state in their application that upon consummation of the merger, DP&L's credit rating will remain investment grade. Staff suggests that additional ring-fencing provisions are necessary. Staff recommends (p. 6) that the

Commission require DP&L to maintain a capital structure of at least 45 percent equity. In addition, Staff recommends (p. 6) that DP&L maintain a retained earnings to total plant ratio of at least ten percent.

The Commission should reject Staff's ring-fencing recommendation. Applicants' commitment to maintain DP&L's credit rating at investment grade is sufficient to address Staff's concern and provide appropriate financial oversight for the Commission. The "grade" assigned by the rating agencies directly reflects those agencies' evaluation of DP&L within the holding company structure. The rating agencies have experience analyzing and grading public utilities within the structure of holding companies, and their resulting grade is a reasonable bar by which the Commission can exercise appropriate financial oversight.

Maintaining DP&L's credit rating at investment grade coupled with the Commission's direct authority under Ohio Rev. Code § 4905.42 to pre-approve any future evidence of indebtedness sought by DP&L provides the Commission with a two-part remedy to Staff's concerns. Because Applicants are not asking in this proceeding to put any debt on DP&L, at issue is the Commission's oversight of DP&L's financial condition going forward. If, post-merger, DP&L sought to issue equity or debt, then it would need to obtain Commission approval under § 4905.42, as it has in the past. Section 4905.42 states, in relevant part, "All stocks, bonds, notes, or other evidence of indebtedness issued by any public utility or railroad without the permission of the commission are void." That section, along with sections 4905.40 and 4905.41, provide the only direct authority for the Commission to protect the financial condition of a public utility within a holding company. These sections have worked well over time, and it is sensible not to disrupt that regulatory scheme in this proceeding.

The Commission should also exercise caution in connection with its consideration of Staff's recommendations because the Commission's statutory basis to impose ring fencing provisions is doubtful. The Commission's review of this merger is triggered by the relevant change in control statute, Ohio Revised Code 4905.402(B). There is no language in § 4905.402(B) — nor in any other section of the Ohio Revised Code — that empowers the Commission to impose ring-fencing provisions in a merger proceeding. As a creature of statute, the Commission has jurisdiction to do only what it is specifically empowered to do by the General Assembly. In the past, the Commission has used its § 4905.402(B) approval authority to attach minor conditions on mergers to ensure the financial integrity of the regulated utility; those instances, however, were limited to Commission access to books and records, not capital structure requirements. *See In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control,* Case No. 98-1082-TP-AMT, Opinion and Order, at p. 29 (Apr. 8, 1999).

In sum, the ring-fencing provisions are unnecessary in view of the facts that the Applicants have committed to maintenance of DP&L's credit rating as investment grade; that DP&L is not assuming any new debt as a result of the merger; and that this Commission would have to approve any new DP&L debt in the future. The Commission, as a result, should not adopt Staff's recommendation to impose these provisions.

5. <u>Merger Savings/New Billing System</u>: Staff's additional element (pp. 6-7) is that a portion of any merger savings should be directed to the implementation of a new billing system for DP&L. Putting aside whether or not there will be any merger savings attributed to regulated services for which a portion could be earmarked as Staff seeks, this is not the appropriate proceeding to evaluate this issue. As the Commission is well aware, advanced

metering infrastructure deployment, related rate designs, and the planning and implementation of a billing system that will take full advantage of such an investment is a complex process. DP&L's experience with estimates for such a system shows that implementation of a new billing system would require significant capital expenditures and O&M expenses. Analyzing the need for such a system, the system itself, the cost, and cost recovery are topics not suited for this proceeding.

III. INTERESTED PERSONS' COMMENTS SHOULD NOT PREVENT CONSUMMATION OF THE MERGER

A. IEU-OHIO'S COMMENTS

1. No Hearing is Required

IEU-Ohio (p. 3) and The City of Dayton (p. 2) assert that the Commission should permit discovery and conduct a hearing in this matter. The Commission should reject those comments for the following reasons.

As to IEU-Ohio's and Dayton's request for discovery, the Applicants created a CD that contained the following materials:

1. AES Press Release
2. DP&L Corporate Separation Plan
3. DP&L Electric Distribution Tariff
4. DP&L Electric Generation Tariff
5. DP&L FERC Form-1
6. DPL Inc. Press Release
7. DP&L PUCO Order from DP&L's ESP case (08-1094)
8. DP&L PUCO Stipulation from DP&L's ESP case (08-1094)
9. DPL Inc. SEC Form 10-K 2010
10. DPL Inc. SEC Form 10-Q Q1-2011
11. AES SE Form 10-K

In the Joint Motion of Applicants to Establish Deadlines for Initial and Reply Comments and to Hold Motions to Intervene in Abeyance, p. 2, Applicants offered to provide a copy of that CD to any interested person who requested it, and Applicants have provided the CD to those few persons that requested it. That information is more than sufficient to permit interested persons to evaluate the Application, and to provide comments on it. Applicants provided a CD to IEU-Ohio, without a request from IEU-Ohio, when IEU-Ohio filed its motion to intervene; despite Dayton's request for discovery and a hearing, Dayton did not request a copy of the CD in response to Applicants' offer to provide the CD to any interested person who requested it.

As to IEU-Ohio's and Dayton's request for a hearing, a hearing is not mandatory in this matter. Ohio Rev. Code § 4905.402(B) ("after any necessary hearing"). When the Commission is not required by statute to conduct a hearing, the Supreme Court of Ohio has repeatedly rejected arguments that the Commission erred by failing to conduct a hearing. MCI Telecommunications Corp. v. Pub. Util. Comm. of Ohio, 32 Ohio St. 3d 306, 310 (1987) ("We have repeatedly held that a utility ratepayer has no constitutional right to notice and hearing in rate-related matters if no statutory right to a hearing exists."); MCI Telecommunications Corp. v. Pub. Util. Comm. of Ohio, 38 Ohio St. 3d 266, 270 (1988) ("all subsequent PUCO actions . . . have occurred under a notice and comment procedure. MCI has had ample opportunity to advocate its position . . . by submitting comments and replies to the submissions of other parties. Nowhere in the statutes is the PUCO required to give a public hearing to each and every objection that is raised to its proposed actions. Such a requirement would literally hamstring the PUCO"); City of Cleveland v. Pub. Util. Comm. of Ohio, 67 Ohio St. 2d 446, 453 (1981) (rejecting argument by party that the PUCO should have conducted a hearing, and stating "any legal right which a ratepayer would have to notice or hearing would have to stem directly from the statutes"); Armco Inc. v. Pub. Util. Comm. of Ohio, 69 Ohio St. 2d 401, 409 (1982) (rejecting appellant's argument that the commission was required to conduct a hearing, and stating "ratepayers are statutorily, but not constitutionally afforded the right to participate in rate making proceedings").

In fact, although IEU-Ohio and Dayton requested discovery and a hearing, neither has identified <u>any</u> issue of fact relating to the merger that requires discovery and a hearing. Instead, IEU-Ohio's submission is a mixture of policy observations and speculation as to actions that DP&L may or may not take in the future as a result of the merger. The purpose of a hearing is to resolve factual questions. Because there are no factual questions for the Commission, the Commission should deny IEU-Ohio's and Dayton's requests for discovery and a hearing.

Indeed, in the Duke/Cinergy merger application matter, the Commission established a comment period and declined to conduct a hearing:

> "Under the terms of the governing statute, we must, first, determine whether a hearing is necessary. The Commission has reviewed, in detail, the application, comments of various interested persons relating to the appropriate issues to be considered, the recommendations of staff, and the comments of interested persons addressing staff's recommendations. The Commission finds that a hearing is not necessary for us to consider fully the comments and arguments presented in this case, to consider the effects of the merger on the public, and to determine the appropriate resolution of the issues related to the application. Therefore, we also find that cause to grant intervention under Section 4903.221, Revised Code, has not been shown. Intervention is, therefore, denied with regard to all persons who filed motions for intervention."

December 21, 2005 Finding and Order, p. 5 (Case No. 05-0732-EL-MER). As in the Duke/Cinergy matter, comments and reply comments are more than adequate to permit the Commission to evaluate the Application, and the Commission should not conduct a hearing.[3]

The Commission should thus conclude that discovery and a hearing are not necessary in this matter.

2. Consolidation with a Standard Service Offer (SSO) Case Should Not Be Ordered

IEU-Ohio also suggests (p. 3) that the Commission should require DP&L to file its next SSO case and consolidate this proceeding with that case. The Commission should reject that suggestion. Under DP&L's existing ESP, DP&L is required to file its next SSO case by March 31, 2012. February 24, 2009 Stipulation & Recommendation, ¶ 1 (Case No. 08-1094-EL-SSO). DP&L has not filed that case yet, and it will make the relevant filings in due course. There is no need for the Commission to require DP&L to file an SSO case before March 31, 2012, and IEU-Ohio's request for consolidation, accordingly, is without merit.

3. The Merger Will Result in Reasonable Rates

The Commission is required to determine whether the merger will result in service at a "reasonable rate." Ohio Rev. Code § 4905.402(B). In the Application (p. 10), Applicants demonstrated that the merger would not affect DP&L's rates because DP&L has an established Electric Security Plan ("ESP") from Case No. 08-1094-EL-SSO that extends through December 31, 2012. Staff stated (p. 2-3) that is was satisfied with Applicants' rate commitments in the Application.

---

[3] If the Commission were to permit intervention (to preserve the appeal rights of interested persons), then it should limit the intervention to the right to make comments and not permit discovery or a hearing.

IEU-Ohio nevertheless suggests (p. 2) that Applicants' rate commitment is somehow inadequate: "[t]he rate stability commitment that appears to be the centerpiece of the Application is nothing more than a concession that the Applicants will follow the law of Ohio as it relates to DP&L's current Electric Security Plan." The Commission should reject IEU-Ohio's comment because § 4905.402(B) requires only that DP&L charge a "reasonable rate" after the merger. IEU-Ohio does not claim that the rates set in DP&L's ESP (Case No. 08-1094-EL-SSO) are unreasonable; in fact, IEU-Ohio signed the Stipulation in that case. Because DP&L's existing rates will remain unchanged after the merger, the Commission should conclude that the statutory requirement of "reasonable rate[s]" is satisfied.

4. <u>Nonbypassable Charges, Capacity Charges and Restrictions on Shopping</u>

IEU-Ohio argues (p. 11) that "the Commission must impose conditions on the proposed change in control so as to . . . ensure that the consumers have full and unencumbered access to CRES suppliers and that the debt service obligations associated with the proposed highly-leveraged transaction are not funded through nonbypassable charges, unduly prejudicial capacity charges that apply to shopping customers or their CRES suppliers or other restrictions on shopping." The Commission should reject that comment for each of the following separate and independent reasons.

1. <u>DP&L's existing charges are reasonable</u>: IEU-Ohio suggests DP&L's current charges as unreasonable. However, DP&L's current rates were established through the Stipulation in Case No. 08-1094-EL-SSO, which IEU-Ohio signed. The Commission should not allow IEU-Ohio to attempt to renegotiate terms and conditions to which IEU-Ohio agreed and that have been approved by the Commission simply because there is an open merger proceeding.

2. Relevance: In addition, issues relating to nonbypassable charges, capacity charges and restrictions on customer shopping are entirely irrelevant to whether the Commission should approve the merger Application. IEU-Ohio does not offer any explanation as to how DP&L's current rate structure could be affected by the merger. Indeed, DP&L's current charges and restrictions have been approved as reasonable by the Commission in other proceedings. Any new charges or restrictions that DP&L will implement will also be reviewed in other proceedings before the Commission. Because the merger will not affect DP&L's existing charges and restrictions, IEU-Ohio's comment is irrelevant.

3. No specifics: The Commission should reject IEU-Ohio's comments for the additional reason that IEU-Ohio does not identify any specific relief that it wants. IEU-Ohio asks the Commission to "impose conditions," but IEU-Ohio does not identify any specific conditions that it wants. In the absence of a specific request from IEU-Ohio, the Commission should disregard IEU-Ohio's ambiguous comments.

4. DPLE's participation in P3 is irrelevant: IEU-Ohio suggests (p. 9) that a focus on local concerns may be subordinated by DPL Inc.'s and AES's cash flow and earnings ambitions, citing to the activities of the PJM Power Providers Group (P3) in New Jersey. IEU-Ohio fails to offer any explanation as to how these P3 activities have any relationship with the proposed merger. AES is not a member of P3 and DP&L is not either. DP&L's unregulated affiliate, DPL Energy, LLC (DPLE) is a P3 member and it became a member years before any merger discussions began with AES. As a P3 member, DPLE has joined with a group of other entities owning generation within PJM so that positions before the FERC and in other states in support of fair wholesale competition are presented by a group large enough to make their voices

heard. Because the merger with AES is unrelated to P3's activities or DPLE's membership within P3, IEU-Ohio's argument should be rejected.[4]

B. THE CITY OF DAYTON'S COMMENTS

In its comments, The City of Dayton states that (1) the Commission should permit discovery and conduct a hearing (p. 2), (2) DP&L should extend its commitment not to reduce its workforce (p. 3), (3) DP&L should define what it means by agreeing not to substantially reduce its workforce (p. 3), and (4) DP&L should extend its commitment to maintain its corporate headquarters and local decision making in Dayton (pp. 3-4). Each of those comments was addressed above in response to comments by other parties. Dayton's other comments are addressed below.

1. Rates and Service

Dayton states (pp. 4-5) that the Commission should consider how the merger will affect DP&L's rates and service. The City of Dayton does not identify any specific reason that it believes that the merger would affect DP&L's rates or service -- rather, Dayton states (p. 5) only that it "fears" that the merger will have some effect on rates or service. Nor does Dayton identify any specific relief that it wants; Dayton says only that the Commission should "consider" the issues.

The Commission should reject Dayton's comments for several reasons. First, the Staff has stated that it is satisfied with Applicants' commitments regarding service and rates.

[4] IEU's description of the New Jersey legislation that was challenged by P3 is also incomplete. The New Jersey legislation was part of a market manipulation plan wherein New Jersey would provide heavy subsidies for new construction of power plants in New Jersey and, in return, the new power plants would bid artificially low prices into the market in an effort to drive down prices particularly within New Jersey and neighboring states. P3 supports fair and open wholesale competition and opposes market manipulation whether done by sellers or buyers.

Staff Comments, pp. 4-5. Second, if DP&L's service were to suffer or if DP&L were to seek to impose unreasonable rates, then the Commission could address those issues at that time. Dayton's unfounded "fears" are inappropriate for this proceeding and, in any case, insufficient for the Commission to act. Third, Dayton has not identified any specific relief that it wants, and the Commission should not grant relief when Dayton has not even identified what it wants.

2. Community Contributions

In the Merger Agreement, Applicants agreed that DP&L would continue to provide corporate contributions and community support for at least two years. In addition, The DPL Foundation is independent of DPL Inc. and DP&L; the Foundation is fully funded, and it will continue its charitable efforts after the merger. Staff agreed (p. 5) that this commitment was adequate.

Nevertheless, Dayton (p. 5) asks the Commission to order DPL Inc. to extend its commitment to make corporate and charitable contributions beyond two years. The Commission should reject that request because the level of commitment made by Applicants is reasonable. Indeed, there is no provision in the Ohio Revised Code that grants the Commission the power to order utilities to make charitable contributions.

C. OMA ENERGY GROUP'S COMMENTS

OMA Energy Group (OMA) makes the following comments: (1) the Commission should monitor DP&L to ensure continued reliability and quality service (p. 3); (2) merger-related costs should not be passed on to customers (p. 3); (3) DP&L's headquarters should remain in Dayton for a least five years (pp. 3-4); (4) the Commission should extend the Applicants' workforce commitment to five years (p. 4); and (5) the Commission should extend the Applicants' charitable contribution commitment to five years (pp. 4-5). Each of these comments was addressed above. OMA's and OPAE's other comments are addressed below.

1. Merger Cost Savings

OMA (p. 3) and OPAE (p. 7) state that a portion of any merger-related cost savings should be passed on to Ohio customers. As stated above, this is not a transaction driven by synergies. AES is acquiring DPL Inc. and DP&L as a platform for growth in the PJM market. While the merger may result in some scale efficiencies, including increased purchasing power, that may help DP&L to secure more advantageous arrangements for procurement related to new construction projects and service agreements, those benefits are uncertain, will only be realized over time and will, ultimately, flow to the customers in any case. The commitments by Applicants to (i) maintain DP&L's operating headquarters in Dayton, Ohio for at least two years following the merger and (ii) following the merger through December 31, 2013 not to implement any involuntary workforce reductions that would result in DPL Inc. and DP&L reducing by 10% or more the number of individuals in the aggregate that are employed (exclusive of officers and management employees covered by a change in control agreement) the day the merger closes effectively eliminate the two most significant categories of potential cost savings for the foreseeable future.

2. Definition of "Immediate"

OMA raises (p. 4) one concern related to the Applicants' workforce commitment that is unique to the other comments. OMA seeks clarification on what "immediate" means. The phrase "immediately before the merger" means "the day the merger closes."

3. Reliability and Quality of Service

OMA suggests (p. 3) that the Commission monitor DP&L's service quality following the merger. As the Applicants state in their application, customers will continue to receive the same high-quality service at reasonable rates that they received before the merger. Further, PUCO Staff states in its comments that the recent adoption of DP&L's service reliability performance targets and the Electric Service and Safety Standards rule requirements ensure that DP&L's electric service does not deteriorate (pp. 4-5) and therefore, Staff makes no additional recommendations related to service quality issues.

D. OHIO PARTNERS FOR AFFORDABLE ENERGY'S COMMENTS

In its comments, OPAE states that (1) DP&L should continue to comply with current reliability standards (pp. 3-4), (2) DP&L should maintain local employees (pp. 4-5), (3) AES should maintain a corporate presence for a minimum of five years (pp. 5-7), and (4) AES should provide the value of any cost savings resulting from the merger to customers (p. 7). Applicants responded to those comments above in response to comments by other parties, and OPAE's other comments are addressed below.

1. Renewable Installations

OPAE argues (p. 5) that AES should commit to establishing a program to offer a long-term contract for new renewable installations to spur additional investment in the region. AES does have extensive experience regarding renewable energy, and Applicants believe that DP&L will benefit from its experience. However, the Commission should reject OPAE's comment that DP&L should be required to enter into long-term contracts for renewable energy for the following three separate and independent reasons. First, whether DP&L should enter long-term contracts for renewable energy installations has nothing to do with the issues in this case. Renewable energy targets are established in Ohio Rev. Code § 4928.64, and DP&L's

efforts to comply with that section will be considered in other proceedings. Second, given the competitive nature of the Ohio electric industry, the Commission should not order DP&L to enter into any long-term contracts, whether those contracts are long-term Purchase Power Agreements (PPAs) from renewable projects, or any other long-term contracts. Without assurances of long-term cost recovery, the risk of entering into long-term commitments is simply too great. Third, if the Commission were to order DP&L to enter into long-term PPAs, DP&L and its customers would suffer because DP&L would have no bargaining leverage: the parties with which DP&L would negotiate would know that DP&L had been ordered to enter into contracts, so they would be free to stick to unfavorable terms, conditions or pricing that could result in inflated energy prices to Ohio's ultimate consumers. OPAE's suggestion would hamstring DP&L, would harm DP&L's customers, and is unworkable.

2. Smart Meters

OPAE states (pp. 7-8) that smart meters should not be installed unless they can be shown to be cost-effective for consumers. While Applicants believe that this comment is irrelevant to the issue in this proceeding, Applicants do agree that Smart Meters should be installed only if they are proven to be cost-effective.

E. ECOS ENERGY LLC'S COMMENTS

Ecos Energy LLC claimed (pp. 4-5) in its comments that Indianapolis Power & Light Company "attempted to rescind" a renewable energy tariff, "escape a renewable energy commitment" or "disavow" that tariff. The Commission should reject that comment for two reasons. First, Ecos is attempting to inject into this proceeding a matter that is currently pending before the Indiana Utility Regulatory Commission. Second, IPL has not attempted to "rescind," "escape" or "disavow" any renewable energy tariff. If IPL's position is accepted by the Indiana

Utility Regulatory Commission, then the tariff will continue to be available to encourage actual IPL customers to invest in renewable energy facilities as intended. While IPL's position impacts the ability of Ecos and other developers to directly participate under the tariff, IPL has continued to work with actual customers who are interested in investing in renewable resources.

The insinuation that IPL's actions call into question its commitment to the environment is similarly false. Without any mandate, IPL adopted the renewable energy tariff and other initiatives such as its green energy rate, historical demand side management investment and power purchase agreements with wind farms. These actions demonstrate IPL's commitment to the environment. In fact, IPL estimates that approximately 7% of its retail sales by the end of 2011 will be secured from non-traditional resources. This progress demonstrates the importance to IPL and AES of including renewable resources in their energy portfolio.

F. FIRSTENERGY SOLUTIONS CORP.'S COMMENTS

FirstEnergy Solutions Corporation identifies (pp. 3-8) numerous charges and practices of DP&L that FES claims inhibit competition in DP&L's service territory. Specifically, FES asserts that some of DP&L's switching-related charges are too high and that some of DP&L's switching rules and practices are difficult to comply with. Id. To advantage itself, FES argues that, as a condition of approving the merger Application, the Commission should require DP&L to lower its various charges and to alter its various practices. Id. The Commission should reject FES's comments for the following reasons.

As an initial matter, DP&L's switching-related charges and practices are entirely irrelevant to whether the Commission should approve the proposed merger. The issue in this case is whether the merger will "promote the public convenience and result in the provision of adequate service for a reasonable rate." Ohio Rev. Code § 4905.402(B). The reasonableness of DP&L's switching-related charges and practices simply has no bearing on that issue.

Indeed, DP&L has recently filed a proposed revision to its Supplier Coordination Tariff (G8 Tariff) in which DP&L has proposed various modifications to its tariff provisions to comply with changes to the Ohio Administrative Code and to implement operational and business practice changes. Case No. 11-4504-EL-ATA. FES's concerns relating to DP&L's retail customer choice program are more appropriately raised in that proceeding.

As an aside, it should be noted that most of FES's comments are without basis or are misleading. For example, FES claims that DP&L's interval meter threshold (100 kW) is lower than that used by other Ohio utilities, but both Duke and DP&L use a 100 kW threshold. In addition, FES implies that DP&L offers percentage off price-to-compare rate-ready billing to DP&L's affiliate, DPLER, but not to other CRES providers, but that is not true. DPLER calculates the percentage off billing itself, and then provides rates to DP&L; DP&L provides the same service to FES. Finally, many of FES's comments focus on charges or practices that were authorized by earlier stipulations that were approved by the Commission (e.g., $0.20 per bill for rate-ready consolidated billing, CRES providers will pay $1,000 for requests for additional rates structures or changes to rate structures). FES's comments are not well founded, as DP&L will demonstrate if and when FES raises them in an appropriate proceeding.

G. DWANE INGALLS'S COMMENTS

The Commission has received a letter from Dwayne Ingalls, a former employee of Indianapolis Power & Light Co., suggesting that the Commission review the Application in light of alleged under-investment in operations and maintenance at IPL. Mr. Ingalls has raised these issues in numerous administrative proceedings in Indiana and there has never been a single finding validating any of his claims in any proceeding. The Commission should give no weight to any of his allegations in this proceeding.

IV. CONCLUSION

The proposed merger will result in DP&L being part of a much larger entity that is better able to compete and to adapt to the changes of the modern utility industry. The merger will promote the public convenience and result in adequate service at reasonable rates, and it should be approved by the Commission.

Respectfully submitted,

Daniel R. Conway (sle)

Daniel R. Conway (0023058)
(Counsel of Record)
Andrew C. Emerson (0071994)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, OH 43215-6194
Telephone: (614) 227-2270
Facsimile: (614) 227-2100
Email: dconway@porterwright.com

Attorneys for The AES Corporation
and Dolphin Sub, Inc.

OF COUNSEL:

Arthur G. Meyer (0024165)
THE DAYTON POWER AND LIGHT COMPANY
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7208

Charles J. Faruki (sle)

Charles J. Faruki (0010417)
(Counsel of Record)
Jeffrey S. Sharkey (0067892)
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street

Facsimile: (937) 259-7178
Email: arthur.meyer@dplinc.com

Dayton, OH 45402
Telephone: (937) 227-3705
Facsimile: (937) 227-3717
Email: cfaruki@ficlaw.com

Attorneys for Applicants DPL Inc. and
The Dayton Power and Light Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Applicants' Reply Comments has been served via electronic mail upon the following counsel of record, this 18th day of August, 2011:

Samuel C. Randazzo, Esq.
Frank P. Darr, Esq.
Joseph E. Oliker, Esq.
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

Christopher L. Miller, Esq.
Gregory H. Dunn, Esq.
Asim Z. Haque, Esq.
SHOTTENSTEIN ZOX & DUNN CO., LPA
250 West Street
Columbus, OH 43215
cmiller@szd.com
gdunn@szd.com

Attorneys for The City of Dayton, OH

David C. Rinebolt, Esq.
Colleen L. Mooney, Esq.
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
drinebolt@aol.com
cmooney2@columbus.rr.com

Lisa G. McAlister, Esq.
Matthew W. Warnock, Esq.
BRICKLER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
lmcalister@bricker.com
mwarnock@bricker.com

Attorneys for The OMA Energy Group

Mark A. Hayden, Esq.
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Colleen M. O'Neil, Esq.
Kevin P. Shannon, Esq.
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114
coneil@calfee.com
kshannon@calfee.com

Attorney for FirstEnergy Solutions Corp.

Steven L. Beeler
William Wright
Assistant Attorneys General
Attorney General's Office
Public Utilities Commission Section
180 East Broad Street, 9th Floor
Columbus, OH 43215-3793
steven.beeler@puc.state.oh.us
William.Wright@puc.state.oh.us

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com

Attorneys for The Ohio Energy Group

Richard L. Sites, Esq.
General Counsel & Senior Director of Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
Telephone: (614) 221-7614
Facsimile: (614) 221-4771
Email: ricks@ohanet.org

Thomas Melone
President and
Chief Executive Officer
Allco Renewable Energy Limited
14 Wall Street, 20th Floor
New York, NY 10005

Representative for Ecos Energy LLC

Daniel R. Conway (sle)

Daniel R. Conway

1596117v.4

COLUMBUS/1596117v.4