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

FINDING AND ORDER

The Commission finds:

(1) On May 18, 2011, The AES Corporation (AES), its subsidiary, Dolphin Sub, Inc. (Merger Sub), along with DPL Inc., and its subsidiary, The Dayton Power and Light Company (DP&L) (Collectively, Applicants), jointly filed an application for the Commission's approval of a merger of Merger Sub and DPL Inc.

(2) According to the application, the change of control transaction will result in the acquisition of DPL Inc. as a wholly-owned subsidiary of AES. The applicants state that Merger Sub, a wholly-owned subsidiary of AES, formed for the purpose of effecting the merger, would merge with and into DPL Inc. Merger Sub would cease to exist, and DPL Inc. would survive as a wholly-owned subsidiary of AES. Following the completion of the transaction, according to the application, AES shall own all of DPL Inc.'s outstanding shares of common stock. The applicants provide that as consideration for the proposed merger, DPL Inc.'s current shareholders would receive $30 in exchange for each DPL Inc. share. DPL Inc.'s shares would no longer be publicly traded.

(3) The application provided that following the merger, through December 31, 2013, AES shall not cause DPL Inc., and DP&L to implement any involuntary workforce reductions. It further provided that DPL Inc. and DP&L shall maintain its local decision making authority and operating headquarters in Dayton, Ohio for a period of at least two years. Further, the

applicants explained that the merger will benefit customers, as DP&L will continue to build on what has made it an efficient, reliable utility, while receiving the benefits of the AES group's technical expertise and global resources.

(4) The applicants declare that the change of control transaction promotes the public convenience and provides for continued reliable service at reasonable rates. Therefore, the applicants request that the Commission expedite the procedural schedule, and approve the merger.

(5) Section 4905.402(B), Revised Code, states in pertinent part:

> No person shall acquire control, directly or indirectly, of . . . a domestic electric utility or a holding company controlling a domestic electric utility unless that person obtains the prior approval of the public utilities commission under this section. To obtain approval the person shall file an application with the commission demonstrating that the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge. The application shall contain such information as the commission may require. If the commission considers a hearing necessary, it may fix a time and place for hearing. If, after review of the application and after any necessary hearing, the commission is satisfied that approval of the application will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge, the commission shall approve the application and make such order as it considers proper. If the commission fails to issue an order within thirty days of the filing of the application, or within twenty days of the conclusion of a hearing, if one is held, the application shall be deemed approved by operation of law.

(6) On June 1, 2011, the Commission suspended the automatic approval of this matter and established deadlines for the filing of comments and reply comments by interested persons.

(7) Comments were timely filed by Ecos Energy LLC (Ecos), the City of Dayton (Dayton), Ohio Partners for Affordable Energy (OPAE), Staff, FES, IEU-Ohio, Ohio Manufacturers' Association Energy Group (OMAEG). Reply comments were timely filed by FES, Dayton, Ohio Hospital Association (OHA), IEU-Ohio and Applicants.

(8) In its comments, Dayton raised concerns about the application's provision stating that "AES has committed to...not 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." Dayton contended the terminology of "substantially fewer" is unclear Dayton also questioned the application's two-year guarantee to maintain DP&L's operating headquarters in Dayton, Ohio, stating that this time period is too short. In addition, Dayton's comments expressed concerns about rate certainty and Applicants' commitment to the City of Dayton and its economic development. Further, Dayton requested more detail on the Applicant's intentions with its real estate in the City of Dayton (Dayton Comments at 3-6).

(9) OPAE requested that the Applicants ensure there will be no diminution in the quality of customer service and ensure reliability standards are met. OPAE also argued that Applicants should maintain a corporate presence in Dayton for at least five years and also requested that any administrative cost reductions that occur as a result of the merger be shared with customers. Finally, OPAE suggested that Applicants not be permitted to proceed with smart grid deployment unless it demonstrates that it is cost effective for each customer class (OPAE Comments at 3-7).

(10) staff recommended that the Applicants adhere to a five-year timeframe to maintain DP&L's headquarters in Dayton. Staff suggested that the bifurcated compensation structure be

removed from the agreement, arguing that it creates a "perverse incentive" to relocate the corporate headquarters from Dayton. Staff also recommended a limitation that no merger related costs be recovered through rates. In addition, Staff suggested that the Applicants should make a three-year workforce commitment and suggested that Applicants provide clarity to the term "substantially fewer" when in reference to workforce reductions; Staff recommended that "substantially fewer" be defined as less than ten percent. Staff also claimed that additional ring fencing provisions are necessary and recommended a requirement that DP&L maintain a capital structure of at least 45 percent equity. Further, Staff proposed that the projected savings be put towards the implementation of a new billing system capable of handling differentiated rates and other capabilities necessary for AMI deployment. Staff claimed that a new billing system would provide a long-term benefit to consumers and recommended that the new billing system be funded through merger savings, not through DP&L's customers (Staff Comments at 3-8).

(11) OMAEG recommended that the Applicants return a portion of any cost savings associated with the merger to Ohio customers. OMAEG also suggested that the two year time period to maintain DP&L's operating headquarters in Dayton, to not implement any involuntary workforce reductions, and to continue to provide corporate contributions and community support be extended to five years (OMAEG Comments at 3-5).

(12) FES argued that the merger should address current barriers to competition within the DP&L territory. First, FES noted that CRES providers are not provided with capacity and transmission peak load contribution data necessary to determine the cost to supply a customer, despite other Ohio utilities doing so. FES claimed that DP&L's interval meter cost and interval meter data charges are excessive compared to other Ohio electric distribution utilities while DP&L's interval meter threshold is lower that the majority of utilities. In addition, FES noted that DP&L's customer switching fees, enrollment issues, and lack of percentage off billing act as barriers to competition (FES Comments 3-8).

(13) In its comments, IEU-Ohio claimed that the Applicants' commitment to rate stability is unclear and noted that DP&L's current electric security plan and distribution rates run through the end of 2012. IEU-Ohio raised concerns that the merger transaction is highly-leveraged, and, as such, the merger may pressure AES to draw revenue from customers in DP&L's service territory. IEU-Ohio asserted that, while the Applicants point out that the merger will beneficial in that DP&L will have access to AES's resources, the Applicants have not shown how consumers will actually benefit from these resources. IEU-Ohio urged the Commission to ensure that the Applicants will not be provided with a foundation to raise rates, block competition, or in any way work against state policies set forth in Section 4928.02, Revised Code. IEU-Ohio requested that the Commission grant intervention requests and establish a procedural schedule to address contested issues relating to the application. IEU-Ohio also suggested the Commission ensure that consumers have full access to CRES suppliers without barriers or restrictions being applied as a result of the merger. IEU-Ohio claimed that requiring the Applicants to combine this proceeding with its SSO application will ensure all issues and conditions are adequately addressed (IEU-Ohio Comments 4-11).

(14) Ecos expressed concerns that the Applicants will be able to meet annual renewable energy benchmarks, claiming AES's commitment to renewable energy is questionable based on its activities in Indiana (Ecos Comments at 2-6).

(15) In reply comments, the Applicants maintained that, while they are sensitive to the recommendation by Staff, Dayton, OMAEG, and OPAE to extend the two-year commitment to keep DP&L's operating headquarters in Dayton, Ohio to five years, a two-year commitment is the appropriate balance. In response to Staff's concerns about the bifurcated compensation provision, Applicants clarified that there is no such provision within the merger agreement and claimed that Staff's concern is mooted by the agreement to maintain DP&L's headquarters in Dayton for at least two years following the merger. The Applicants represented they are not seeking to recover any costs of the merger through customers and accepted Staff's definition of

"substantially fewer" as less than ten percent. However, the Applicants claimed that a ring-fencing provision is unnecessary, as they have committed to maintain DP&L's credit rating at investment grade and also argued that any new billing procedures should not be addressed in this proceeding. In addressing several parties concerns with rate stability, Applicants stated that rates will remain unchanged following the completion of the merger. Finally, in response to Ecos, Applicants noted that Ecos comments discuss a matter currently pending before the Indiana Utility Regulatory Commission and that AES has not taken a position to rescind any renewable energy tariffs (Applicants Reply Comments at 2-21).

(16) In reply comments, OHA supported the position adopted by Staff (OHA Reply Comments at 2), and Dayton expressed that it agrees with Staff on a majority of its comments (Dayton Reply Comments at 1). FES also joined Staff's proposal regarding new billing procedures (FES Reply Comments at 2).

(17) On September 2, 2011 a stipulation was filed in this proceeding between Dayton and Applicants. Corrections to the stipulation were filed on September 6, 2011. This stipulation provides, *inter alia*, that:

(a) Dayton does not oppose the merger and urges the Commission to issue a prompt approval of the merger.

(b) AES agrees to maintain DP&L's operating headquarters in Dayton, Ohio, and DP&L's name for at least 5 years following the effective date of the merger.

(c) For 3 years following the effective date of the merger, Applicants agree not to implement any involuntary workforce reductions that result in DPL Inc. and DP&L employing less than 90 percent of the number of individuals in the aggregate, exclusive of officers and management, who are employed the day before the merger closes.

(d) To protect Dayton's annual payroll tax revenue, if the payroll tax revenue received by Dayton from the Applicants from January 1, 2012, through December 31, 2016, is less than $3 million, then AES shall be required to compensate Dayton for the difference through a direct payment to be made to Dayton within 90 days of written request from Dayton.

(e) Applicants agree that costs incurred directly related to the negotiation, approval and closing of the merger will not be recovered from ratepayers or through regulated rates.

(f) Through December 31, 2017, Applicants agree to discuss with Dayton any plan Applicants have to move DP&L's operating headquarters, at least 180 days before any move is to occur.

(g) If DP&L's operating headquarters are moved out of the MacGregor Park property on or before December 31, 2017, then Dayton shall have an option to purchase the approximately 125 acres and improvements comprising DPL's MacGregor Park facility under the terms and conditions specified in the stipulation.

(h) Applicants agree to make an economic development payment to the City of Dayton in the amount of $700,000 on or before December 31, 2014, of which $350,000 shall be received by Dayton on or before December 31, 2013.

(18) Further, a stipulation was filed by Applicants, OHA, and OPAE on September 19, 2011. This stipulation provides, *inter alia,* that:

(a) The signatory parties support the merger and urge the Commission to issue a prompt approval of the merger.

(b) AES agrees to maintain DP&L's operating headquarters in Dayton, Ohio, and DP&L's name for at least 5 years following the effective date of the merger.

(c) For 3 years following the effective date of the merger, Applicants agree not to implement any involuntary workforce reductions that result in DPL Inc. and DP&L employing less than 90 percent of the number of individuals in the aggregate, exclusive of officers and management, who are employed the day before the merger closes.

(d) Applicants agree that costs incurred directly related to the negotiation, approval and closing of the merger will not be recovered from ratepayers or through regulated rates.

(e) Applicants will pay a total of $75,000 to OHA to assist its member hospitals to participate in energy efficiency and peak demand reduction programs.

(f) Applicants will pay a total of $400,000 to OPAE to benefit electric consumers at or below 200 percent of the federal poverty line or customers who demonstrate they are at-risk of losing electric service.

(19) In addition, on October 26, 2011, a stipulation was filed by Applicants, OMAEG and Staff. This stipulation provides, *inter alia,* that:

(a) The signatory parties agree that the proposed merger will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll or charge, as required by Section 4905.402(B), Revised Code.

(b) AES agrees to maintain DP&L's operating headquarters in Dayton, Ohio, and DP&L's name for at least 5 years following the effective date of the merger.

(c) For 3 years following the effective date of the merger, Applicants agree not to implement any involuntary workforce reductions that result in DPL Inc. and DP&L employing less than 90 percent of the number of individuals in the aggregate, exclusive of officers and management, who are employed the day before the merger closes.

(d) Applicants agree that neither the costs incurred directly related to the negotiation, approval and closing of the merger not any acquisition premium shall be eligible for inclusion in rates and charges applicable to retail electric service provided by DP&L.

(e) DP&L shall maintain a capital structure that includes an equity ratio of at least 50 percent.

(f) DP&L agrees to not have a negative retained earnings balance.

(g) DP&L will add utility consolidated bill ready billing capability to its existing billing system within six months of the Commission order approving the merger (Commission Deadline). If the Commission deadline is missed, D&L will issues a refund to its customers in the amount of $5 million minus the costs DP&L has incurred as of the Commission Deadline to design, develop, and implement bill ready capability. DP&L will not seek recovery of the costs associated with developing and implementing bill ready capability form ratepayers.

(h) Within three months of the Commission order approving the merger, DP&L will implement process changes that will allow it to make customer capacity and transmission peak load contribution data accessible to competitive retail electric service (CRES) providers via electronic data interchange.

(i) Within one week of the Commission order approving the merger, DP&L will amend its application in Case No. 11-4504-EL-ATA to reduce its charge for 12 months of interval meter data from $300 to $150.

(j) Within one week of the Commission order approving the merger, for customers receiving competitive services from an alternate generation supplier (AGS) and who are required under DP&L's applicable AGS to have interval meters, DP&L will reduce its charge for the incremental costs of upgrading the present meter plus all incremental costs associated with the installation of an interval meter from $905 to $570.

(k) Within one week of the Commission order approving the merger, DP&L will amend its application in Case No. 11-4504-EL-ATA to permit CRES providers, under normal circumstances, to enroll a customer more than 30 days prior to the customer's next meter read, with the enrollment defaulting to the following month.

(l) Within one week of the Commission order approving the merger, DP&L will amend its application in Case No. 11-4504-EL-ATA to reflect that, in instances in which an interval meter request form is required for a customer taking service from a CRES provider, DP&L will enroll customers within 3 business days for accounts with a single service.

(m) Within one week of the Commission order approving the merger, DP&L will provide percentage off billing if the CRES provider provides to DP&L updated rate factor changes to effectuate this pricing option.

(20) The stipulation between Applicants, OMAEG and Staff also represents that FES does not take a position on the merger. Moreover, on October 27, 2011, OEG docketed a letter indicating that it does not oppose the merger.

(21) Rule 4901-1-30, Ohio Administrative Code (O.A.C.), authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See, Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), *citing Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

(22) The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(b) Does the settlement, as a package, benefit ratepayers and the public interest?

(c) Does the settlement package violate any important regulatory principle or practice?

(23) The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994) *(citing Consumers' Counsel, supra,* at 126).

(24) After reviewing the stipulations filed in this proceeding, we conclude that the stipulations, as a whole, represent a reasonable resolution of the issues presented in this proceeding. The stipulations appear to be the product of serious bargaining among knowledgeable, experienced parties. The parties in this proceeding routinely intervene in Commission proceeding and are represented by counsel with experience practicing before the Commission. Further, as a package, the stipulations appear to benefit the public interest by expeditiously resolving a matter of importance to the public. The stipulations address many of the issues raised in comments in this proceeding, including increased stability for the local community and the reduction in barriers to competition. We also find that the stipulation do not violate any important regulatory principle or practice. Accordingly, the Commission finds that the stipulations are reasonable and should be approved and adopted in its entirety.

(25) The Commission notes that Section 4905.402, Revised Code, provides that the Commission shall approve the application if we find that the proposed acquisition "will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge." The Commission notes that, as IEU-Ohio pointed out in their comments, DP&L will continue to provide retail electric service pursuant to its

existing standard service offer though December 31, 2012. In addition, as noted above, the stipulations filed in this proceeding provide for a reduction in barriers to competition by CRES providers. With respect to the issues raised by Ecos, the Commission will continue to monitor DP&L's compliance with the renewable energy benchmarks contained in 4928.64, Revised Code. Accordingly, based the application filed in this case, the comments and reply comments submitted by interested stakeholders, and the stipulations submitted by the parties, the Commission finds that the application for approval of the proposed merger should be approved, subject to the additional commitments made by Applicants in the stipulations filed in this proceeding. In addition, the Applicants shall docket annual compliance reports indicating its progress and commitment to the additional provisions made by the Applicants in the stipulations filed in this proceeding, beginning on April 1, 2012. Further, the Commission finds that it is not necessary to hold a hearing in this matter.

(26) Motions to intervene in this proceeding were filed by IEU-Ohio, OPAE, OMA Energy Group, FES, Dayton, OEG, and OHA. With respect to each motion, Applicants timely filed memoranda contra arguing that the Commission should hold all motions to intervene in abeyance until the Commission has reviewed the comments filed in the proceeding.

(27) The Commission finds that the motions to intervene in this proceeding are reasonable and should be granted. The Commission notes that the Supreme Court has held that, whether or not a hearing is held in a proceeding, intervention should be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the Commission. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853.

It is, therefore,

ORDERED, That the three stipulations filed in this proceeding be adopted and approved. It is, further, ORDERED, That Applicants take all necessary steps to carry out the terms of the stipulations. It is, further,

ORDERED, That the application for approval of the merger be approved. It is, further,

ORDERED, That the Applicants shall docket annual compliance reports indicating its progress and commitment to the additional provisions made by the Applicants in the stipulations filed in this proceeding, beginning on April 1, 2012. It is, further,

ORDERED, That the motions to intervene in this proceeding filed by IEU-Ohio, OPAE, OMAEG, FES, Dayton, OEG, and OHA be granted. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

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Betty McCauley

Betty McCauley
Secretary