BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Authority to Amend its Corporate Separation Plan.	))))	Case No. 13-2442-EL-UNC

COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

Dayton Power & Light Company ("DP&L" or "Utility") has proposed a Fourth Amended Corporate Separation Plan ("Fourth Amended plan") that is subject to regulatory review for preventing both unfair competitive advantage to DP&L's affiliates and negative impacts on the rates that customers pay. DP&L's Fourth Amended plan includes revisions to account for a new affiliate services corporation ("AES US Services, LLC"), serving 13 affiliates.

The application continues DP&L's functional separation of the generation portion of its business, an arrangement that has cost Ohio consumers dearly for such DP&L charges as rate stabilization. Functional separation will end upon DP&L's sale or transfer of its generating assets in Case No. 13-2420-EL-UNC, a process that has been slow to evolve since its genesis in 1999's Senate Bill 3 that restructured electric service.

DP&L's Third Amended Corporate Separation Plan ("Third Amended plan") was reviewed as part of DP&L's ESP II proceeding, and was approved implicitly by the Opinion and Order of the Public Utilities Commission of Ohio ("PUCO"), dated

September 4, 2013.[1] DP&L's Fourth Amended plan primarily reflects the addition of new affiliated services corporation, AES US Services, LLC ("AES US Services").[2] DP&L states that AES US Services will allocate prudently-incurred costs to 13 affiliates.[3]

DP&L claims that AES US Services' costs will be allocated with the goals of (1) preventing cross-subsidization of one entity by another, (2) maximizing synergies and economies of scale in AES US Services operations, and (3) minimizing the time and expense needed to record and audit the transactions.[4] DP&L claims that all AES US Services "are recovered at cost" and that there is no "mark-up" or "profit" on AES US Services charges.[5] AES US Services will also maintain a Cost Alignment and Allocation Manual, which will be reviewed and updated at least annually and coordinated with the subject affiliates.[6] In addition, AES US Services books of account will be maintained for at least five years and will be available for review and audit.[7]

DP&L's ongoing functional separation and its parent's incorporation of a new affiliated services corporation require careful scrutiny to ensure adherence to the objectives of R.C. 4928.17. Moreover, as DP&L proceeds with its proposed transfer of

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[1] *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 12-0426-EL-SSO et al, Opinion and Order of September 4, 2013. The PUCO did not, in its Opinion and Order of September 4, 2013 or Entry Nunc Pro Tunc of September 6, 2013, explicitly approve DP&L's Third Amended Corporate Separation Plan, but its approval of DP&L's ESP, without rejection of such plan, would appear to constitute implicit approval. *See* Opinion and Order, p. 52 (rejecting proposed modifications to DP&L's ESP to the extent not specifically addressed).

[2] DP&L Application, Exh. A, pp. 12-14.

[3] DP&L Application, Exh. A, pp. 12-13.

[4] DP&L Application, Exh. A, p. 13.

[5] *Id.*

[6] *Id.*

[7] DP&L Application, Exh. A, pp. 13-14.

generation, changes in financing and operations could impact the allocation of costs between noncompetitive Transmission and Distribution (T&D) services and competitive generation services. Such changes must be reviewed to prevent adversely affecting rates paid by DP&L's customers, as well as to prevent unfair competitive advantage or abuse of market power. Finally, any changes in the allocation of costs must be carefully tracked to ensure such allocations are consistent with the policies of R.C. 4928.02 and R.C. 4928.17.

II. COMMENTS

A. Standard of Review

Corporate separation plans have the primary objective of preventing unfair competitive advantage and the abuse of market power.[8] They must be sufficient to ensure that the utility does not extend undue preference or advantage to an affiliate or business division engaged in the business of supplying retail electric service or nonelectric products or services.[9] Further, functional separation was intended only for an interim period,[10] in lieu of providing competitive retail services through a fully separated affiliate as required by R.C. 4928.17(A)(1).

Approval of continued functional separation as an interim measure must be "for good cause shown" and must provide for ongoing compliance with the policies specified in R.C. 4928.02.[11] The PUCO's rules clearly provide that utilities bear the burden of

[8] R.C. 4928.17(A)(2) and (A)(3).

[9] R.C. 4928.17(A)(3).

[10] R.C. 4928.17(C).

[11] R.C. 4928.17(C).

proof with respect to demonstrating compliance with legal and regulatory requirements associated with corporate separation plans, under R.C. 4928.17 and Ohio Admin. Code Chapter 4901:1-37.[12] As a key component of a functional separation plan, utilities also bear the burden of demonstrating that cost allocation manuals properly allocate costs such that "no cross-subsidization is occurring between the electric utility and its affiliates."[13]

B. The PUCO Should Carefully Scrutinize DP&L's CAM and the AES US Services Cost Alignment and Allocation Manual, and Perform Periodic Audits, To Ensure That Neither DP&L's T&D Customers Nor Its Retail Electric Customers Will Be Harmed as a Result of Improper Allocation of Costs Among DP&L's Affiliates.

DP&L's new affiliated services corporation may provide services to as many as 13 affiliates, including DP&L and DPL Energy Resources, Inc. ("DPLER"), DP&L's affiliated competitive retail electric service ("CRES") provider. Improper allocation of costs to DP&L's T&D services could result in higher T&D rates to DP&L customers in its upcoming rate proceeding.[14] Additionally, improper allocation of costs between DP&L and DPLER or any advantageous allocation of costs away from DPLER or another DP&L affiliate could create an unfair competitive advantage for the affiliate. If DPLER or another affiliate that provides retail electric services (or a non-electric product or service) is given an advantageous allocation of costs, this could impact the rates paid by retail electric customers in the competitive market. Consequently, it is essential that DP&L's Cost Allocation Manual ("CAM") and the AES US Services Cost Alignment

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[12] Ohio Admin. Code 4901:1-37(E).

[13] Ohio Admin. Code 4901:1-37-08(A) and (C).

[14] The PUCO has required DP&L to file a distribution rate case by July 1, 2014. *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 12-0426-EL-SSO et al, Opinion and Order of September 4, 2013, p. 27.

and Allocation Manual ("CAAM") be carefully scrutinized to prevent improper or advantageous allocations that harm DP&L's customers and benefit DP&L's affiliates.

DP&L has not filed its CAM or AES US Services CAAM. Prior to the PUCO's approval of DP&L's Fourth Amended Plan, DP&L's CAM and the AES US Services CAAM must be produced documenting how costs are allocated. Parties should be given the opportunity to review both manuals and conduct discovery to determine whether the CAM/CAAM will ensure that no cross-subsidization will occur between DP&L and its affiliates. The PUCO Staff should exercise its right to audit the CAM and CAAM to ensure compliance with Ohio Adm. Code 4901:1-37-08, which sets forth the requirements for CAMs. Further, if parties, including the PUCO Staff, identify provisions of the CAM or CAAM that appear to be deficient or will likely allow cross-subsidization to occur, then an evidentiary hearing should be ordered, with opportunities for all parties to present testimony.

C. Changes in Allocation of Costs between Affiliates as a Result of Sale or Transfer of Generation Assets Should Be Reviewed as Structural Separation Progresses To Ensure That Costs Associated with Generation Assets are Not Improperly Shifted to DP&L's T&D Services and Ultimately Charged to DP&L's Distribution Customers.

It is also important that, as progress is made toward structural separation, any changes in allocation of costs between DP&L and its affiliates be reviewed by the PUCO. It is anticipated that changes in DP&L's financing and operations will occur because of structural separation. Generation assets and expenses that were previously allocated to DP&L's SSO service will be transferred to a generation affiliate or sold. Costs that are allocated to DP&L's generation operations by DP&L or, now by AES US Services, will need to be reallocated to its generation affiliate. The PUCO has an important role in ensuring that costs associated with DP&L's generation operations are reallocated to its generation affiliate and not shifted either to DP&L's T&D services or away from DPLER or other CRES affiliates. Improper allocation of costs to DP&L's T&D services could inappropriately increase distribution customer rates while improper allocation of costs away from DPLER or other CRES affiliates could result in improperly and illegally subsidizing competitive affiliates and harming customers in the retail electric market.

Additionally, DP&L has indicated in its Application to transfer or sell generation in Case No. 13-2420-EL-UNC, that it may be required to retain certain interests in generating assets, including its 4.9% interest in Ohio Valley Electric Corporation ("OVEC").[15] As DP&L's structural separation progresses, it will also be necessary to ensure that DP&L's retention of these generation assets does not affect the rates at which it provides service to SSO customers or provide an unfair competitive advantage to its affiliate(s) in providing service.

D. The PUCO Should Require Separate Accounting of DP&L's Generation and Transmission and Distribution Operations Pending Sale or Transfer of Generation Operations, To Ensure Customers are Not Harmed by Improper Allocations That Result in Increased Rates to Distribution Customers.

DP&L's Fourth Amended Plan states that it describes "the separate accounting practices that perform this separation of competitive versus noncompetitive retail electric service."[16] DP&L further states that "DP&L and each affiliate or business unit in the DP&L group will maintain, in accordance with generally accepted accounting principles,

[15] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Sell or Transfer its Generation Assets,* Case No. 13-2420-EL-UNC, Application, pp. 5-6.

[16] DP&L Application, Exh. A, p. 2.

an applicable uniform system of accounts, books, records and accounts that are separate from the books, records and accounts of each other affiliate or business unit."[17]

It came to light in DP&L's ESP II proceeding, however, that DP&L's generation business is not considered to be a separate "business unit" from its Transmission and Distribution business.[18] Therefore, DP&L does not currently maintain books and records of account separately for the generation and T&D portions of its business.[19]

But the books and records of account of DP&L's generation business should be maintained separately from its T&D business. This is especially important as DP&L moves toward structural separation. Doing so is necessary to facilitate transparency of the transaction and prevent improper shifting of generation costs to T&D service, thereby potentially increasing T&D costs that DP&L seeks to charge distribution customers in a future distribution rate proceeding. Furthermore, it is essential to allow parties to determine the profitability of DP&L's T&D operations for evaluation in proceedings involving the Significantly Excessive Earnings Test ("SEET") so that excessive earnings can be passed back to customers. Separate income statements and balance sheets for generation and T&D should be maintained pending sale or transfer of generation operations.

[17] DP&L Application, Exh. A, p. 7.

[18] DP&L witness Tim Rice testified that the term separate business unit refers to "behind-the-meter services." *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 12-0426-EL-SSO, Transcript Vol. III-Public at 729.

[19] Transcript Vol. III-Public at 730.

III. CONCLUSION

The PUCO should carefully scrutinize DP&L's CAM and AES US Services' Cost Alignment and Allocation Manual, to ensure that DP&L's regulated services are not improperly allocated costs properly assigned to DP&L's affiliates, including DPLER and other CRES affiliates. Such scrutiny is necessary to prevent costs associated with services to affiliates from being charged to customers in DP&L's next distribution rate proceeding. Improper allocation could also harm retail electric customers if DP&L's CRES affiliates are able to gain an unfair competitive advantage over their competitors, resulting in higher rates for competitive retail electric services.

Further, as DP&L progresses toward structural separation, the PUCO should ensure that any changes in cost allocations are appropriate, to prevent generation costs from being improperly shifted to distribution customers and claimed in future DP&L rate proceedings. In the meantime, DP&L should be required to maintain separate books of account for its generation and T&D businesses, with separate statements of earnings and separate balance sheets. Such transparency is necessary to prevent generation costs from being charged to distribution customers in DP&L rate proceedings and to allow a proper determination of whether DP&L has significantly excessive earnings and should pass some of its earnings back to customers.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of *Comments* was served on the persons stated below via electronic transmission to the persons listed below, this 4th day of February, 2014.

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