

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**REPLY COMMENTS OF
THE DAYTON POWER AND LIGHT COMPANY**

On December 30, 2014, DP&L filed its Application for approval of its Fourth Amended Corporate Separation Plan. Comments on that Application have been filed by the Commission's Staff, The Office of the Ohio Consumers' Counsel, Industrial Energy Users-Ohio, and Direct Energy Services, LLC. DP&L responds to those comments below.

1. AES US CAAM: Staff (p. 3) and OCC (p. 5) argue that they should be permitted to inspect the AES U.S. Services Cost Alignment and Allocation Manual. DP&L does not object to their review of the AES US CAAM, after OCC signs a Confidentiality Agreement with DP&L. As of the date of these Reply Comments, neither of those parties has asked DP&L to make the AES US CAAM available for inspection.

The issue of whether a cost allocation manual was subject to discovery arose in DP&L's ESP case, Case No. 12-426-EL-SSO. In that case, the Attorney Examiners ruled that DP&L could redact those parts of its board minutes (which must be contained in its cost allocation manual) that reflected legal advice. February 13, 2013 Trans., p. 142. Accord: Kelly v. Ford Motor Co. (In re Ford Motor Co.), 110 F.3d 954, 966 (3d Cir. 1997) (holding that minutes of board of directors' meetings that reflected attorneys' advice were privileged); Great

Plains Mut. Ins. Co., Inc. v. Mut. Reinsurance Bureau, 150 F.R.D. 193, 197-98 (D. Kan. 1993)

(minutes of board of directors' meeting that included attorneys' advice to board were privileged).

Similarly here, DP&L will redact all portions of the AES US CAAM that reflect or include legal advice.

2. Staff Wording Changes: Staff (p. 4) proposes that DP&L make a number of wording changes to its proposed Fourth Amended Corporate Separation Plan. DP&L has no objection to the first and third proposed changes, but it objects to the following Staff⁷ recommendation:

"In Section II. B., page 8, the Company struck the requirement that it cannot provide competitive retail electric services as defined by R.C. 4928.01(B)(i) except through a separate affiliate. Because this remains a requirement under Ohio law, this must be a part of the Company's plan; therefore, Staff recommends that the strike through portion be reinstated."

DP&L seeks Commission authority to allow it the flexibility to provide select "behind the meter services" through this provision. The Commission may authorize DP&L to provide such services, because Ohio Rev. Code 4928.17(A) provides that a utility cannot provide competitive retail electric services "unless the utility implements and operates under a corporate separation plan that is approved by the [Commission]."

The Commission has authorized First Energy (The Cleveland Electric Illuminating Company) to provide similar services:

"Special Customer Services: The Company may furnish customers special customer services as identified in this section. No such special customer service shall be provided except where the Company has informed the customer that such service is available from and may be obtained from other suppliers. A customer's decision to receive or not receive special customer

services from the Company will not influence the delivery of competitive or non-competitive retail electric service to that customer by the Company. Such special customer services shall be provided at a rate negotiated with the customer, but in no case at less than the Company's fully allocated cost. Such special customer services shall only be provided when their provision does not unduly interfere with the Company's ability to supply electric service under the Schedule of Rates and Electric Service Regulations.

Such special customer services include: design and construction of customer substations; resolving power quality problems on customer equipment; providing training programs for construction, operation and maintenance of electrical facilities; performing customer equipment maintenance, repair or installation; providing service entrance cable repair; providing restorative temporary underground service; providing upgrades or increases to an existing service connection at customer request; performing outage or voltage problem assessment; disconnecting a customer owned transformer at customer request; loosening and refastening customer owned equipment; determining the location of underground cables on customer premises; disconnecting or reconnecting an underground pedestal at customer request; covering up lines for protection at customer request; making a generator available to customer during construction to avoid outage; providing pole-hold for customer to perform some activity; opening a transformer at customer request for customer to install an underground elbow; providing a 'service saver' device to provide temporary service during an outage; resetting a customer-owned reclosure device; providing phase rotation of customer equipment at customer request; conducting an evaluation at customer request to ensure that customer equipment meets standards; or upgrading the customer to three phase service."

PUCO Tariff No. 13, Original Sheet No. 4, p. 13.

DP&L seeks authority to provide similar services. As the Company transitions to full legal separation of its generation assets, it needs flexibility to engage in new offerings to customers in order to allow the utility to continue to provide value to consumers.

3. Issues in Other Cases: IEU (pp. 2-5) argues that the Commission should not approve DP&L's Fourth Amended Corporate Separation Plan because it does not address

issues that are pending in DP&L's ESP case (Case No. 12-426-EL-SSO) and in DP&L's pending case relating to transfer of its generation assets (Case No. 13-2420-EL-UNC). The Commission should not consider those arguments in this case, because those issues have been or will be decided in those cases. DP&L filed its Fourth Amended Corporate Separation Plan to address the AES US CAAM; the issues that IEU identifies have nothing to do with this case.

4. Participation of Shared Employees in Drafting Filings: As the Commission knows, the Commission's rules permit DP&L and its affiliates to share employees, providing that the costs of those employees are allocated to DP&L on a fully-allocated cost basis. Ohio Admin. Code § 4901:1-20-16(G)(1)(b). Direct Energy (pp. 1-2) argues that any shared employee should either be prohibited from participating in the drafting of any ESP, MRO or Tariff filing, or that such participation be recorded in DP&L's CAAM and disclosed in DP&L's application. Direct Energy claims that CRES providers would be at an unfair disadvantage if shared employees knew the content of DP&L's filings before CRES providers had similar access.

The Commission should reject that argument for three reasons. First, the Commission's rules already address the information that shared employees can access and how the costs of shared employees should be allocated. Ohio Admin. Code § 4901:1-20-16. Those rules have worked very well for many years and there is no reason to revise them. Second, as a practical matter, DPL Inc.'s executives provide services to DP&L and its various affiliates. Those persons need to be able to review and approve major filings, such as an ESP or MRO Application. Direct Energy's proposal that they be prohibited from working on those documents is simply not workable. Third, Direct Energy claims that CRES providers may be at a disadvantage if they learn the contents of DP&L's filings after the shared employees learn the contents, but Direct Energy does not supply any specific examples. Indeed, those cases typically

take a year or longer to resolve, so CRES providers have ample notice before the plans are approved. The Commission should not implement substantial changes to its rules due to an unsubstantiated concern by Direct Energy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Comments of The Dayton Power and Light Company has been served via electronic mail upon the following counsel of record, this 19th day of February, 2014:

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Summary: Comments Reply Comments of The Dayton Power and Light Company
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Company