BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Authority to Transfer or Sell its Generation Assets.	)))	Case No. 13-2420-EL-UNC

INITIAL COMMENTS OF FIRSTENERGY SOLUTIONS CORP. TO DP&L'S SUPPLEMENTAL APPLICATION TO TRANSFER OR SELL ITS GENERATION ASSETS

I. Introduction

Once again, the Dayton Power & Light Company ("DP&L") has failed to provide sufficient information in its supplemental application (the "Application") to allow substantive comment on its proposal. DP&L fails to identify when it will sell its assets, the proposed sale price, to whom the assets will be transferred, the debt which will be transferred with the assets, and when DP&L will provide the other essential information about this transaction. While FirstEnergy Solutions Corp. ("FES") supports DP&L's corporate separation, there is not enough information provided in the Application for the Commission to grant the proposed transfer or to approve DP&L's request for waivers from the Commission's rules.

As this is DP&L's second Application, it appears that DP&L does not intend to provide the specific details of its proposal until 75 days before the proposed transfer date. This is not enough time for interested parties and the Commission to evaluate the proposed transaction. The Commission should reject DP&L's waiver requests as premature and fix a date certain on which DP&L is required to file its anticipated supplemental application in order to accomplish complete corporate separation by January 1, 2016.[1] As the FERC and Commission approval

[1] Case No. 12-426-EL-SSO, Second Entry On Rehearing dated March 19, 2014, p. 18.

process can take more than two years,[2] DP&L should be required to make a supplemental filing by no later than May 31, 2014. This supplemental filing should be required to include all essential information about this transaction so that interested parties and the Commission can fully evaluate the proposed transaction. In the event the Commission is inclined to take substantive action at this point, at minimum the Commission should make clear that DP&L must meet the corporate separation requirements which were recently imposed on AEP Ohio and Duke Energy Ohio.

II. In Light Of The Lack Of Essential Data, DP&L's Requests Should Be Denied Until More Information Is Provided.

A. The Commission Should Not Extend The SSR Until It Knows The Details Of DP&L's Proposed Separation.

DP&L requests that the SSR continue "regardless of the specific timing or mechanics of divestiture."[3] DP&L supports this request by reminding the Commission it is not a structurally separated utility and is currently facing adverse market conditions. However, DP&L never explains where the SSR revenues will flow after corporate separation. This information is potentially vital. Suppose DP&L sells the assets to a third party at the end of 2014. DP&L has already acknowledged that its transmission and distribution revenues are sufficient.[4] As the justification for the SSR was focused on DP&L's generation assets, why should the SSR to the EDU continue after corporate separation if the assets are purchased by a third party?

DP&L will likely argue that its generation assets have a low market value due to current market conditions, and in light of the low transfer price the SSR is vital to DP&L's financial

[2] *See* FES Reply Comments to DP&L's Initial Application filed February 19, 2014, pp. 1-2.
[3] Application, p. 3.
[4] Case No. 12-426-EL-SSO, Tr. Vol. XII, p. 2914. Tr. Vol. I, p. 117 ("Q. And you also believe that distribution revenues will be adequate over the proposed ESP period, correct? A. Yes, I believe that the distribution revenues are adequate as we have laid out in our projections."); Tr. Vol. I, p. 118 ("Q. And you believe the transmission revenues would be adequate over the five-year proposed ESP period, correct? A. That is my expectation."); *see also*, Tr. Vol. I, p. 150 ("I believe that the T and D business has sufficient revenue included in it so I do not believe it would have a financial integrity issue for the T and D business.").

integrity. The Commission may eventually accept this position. However, there is no way to make this determination without knowing when the transfer will take place, at what price, where the SSR dollars are proposed to go after separation is complete (to the EDU or the purchaser), and how SSO pricing will be set after the sale of the assets to the unidentified buyer. Until DP&L provides this basic information, its request should be denied.

B. DP&L Should Not Be Granted Its Cost Of Sale At This Point.

DP&L has failed to identify what "financing costs, redemption costs, amendment fees, investment banking fees, advisor costs, taxes, and related costs" it seeks to recover through this proceeding.[5] There is likely good reason for this failure since DP&L has not yet incurred these costs and is therefore unable to identify them with specificity. However, just like it would be unfair to require DP&L to identify all costs at this stage, it would also be inappropriate to guarantee DP&L cost recovery until the nature and extent of these costs are known. It would be more prudent to wait until DP&L can provide details regarding these costs before determining whether DP&L should be permitted to recover these costs. Rather than giving DP&L a blank check, the Commission should order that DP&L track these costs and authorize DP&L to file a separate proceeding after corporate separation is complete to recover them if appropriate.

C. The Commission Should Not Rule On DP&L's Requested Change To Its Capital Ratio Until DP&L Provides Additional Information About This Transaction.

DP&L has not provided any information regarding the amount of debt which will be transferred with the generation assets. Instead, DP&L attempts to reserve the right to transfer only a portion of the debt associated with the generation assets and to exceed its capital ratio stipulation on the amount of debt retained at the EDU.[6] DP&L requests leave to adjust the debt

[5] Application, p. 5.
[6] Application, p. 7.

transferred in this transaction in 2018 or later, "after which further debt reductions will be conditioned on market recovery and an ability to reallocate debt to its non-regulated affiliate."[7]

Vagueness on the debt to be transferred to a third party is improper for several reasons. There is no way for the Commission to determine if the generation assets are being transferred at fair market value if the Commission does not know what debt is being assigned with the assets. Moreover, there is no reasonable way for DP&L to transfer its generation assets and then later, using some unexplained criteria, require the transferee to accept more debt based on these vague criteria. Finally, without knowing the amount of debt which will be transferred as part of this transaction there is no way for the Commission to determine the effect of the transaction on the EDU's long-term financial health. If DP&L does not include all generation related debt with its generation assets, how would the T&D business operate in the long term under this unbalanced debt load? In light of these readily apparent problems, the Commission should reject DP&L's proposed change to its capital ratio stipulation until additional information is provided, including the purchase price and the specific debt proposed to be transferred with the generation assets.

D. DP&L Has Failed To Correctly Identify The Potential Effect On SSO Service.

DP&L proposes to transfer its generation assets on or before May 31, 2017, but reserves the right to transfer the assets "as early as 2014."[8] The Commission has correctly determined that separation should happen more quickly, by no later than January 1, 2016.[9] While DP&L is attempting to provide itself with maximum flexibility, its failure to provide a date certain for this transfer is significant. DP&L's current SSO includes both traditional service from DP&L directly and steadily increasing competitive auctions. DP&L's SSO customers currently receive

[7] Application, p. 8.
[8] Application, p. 2 (citing previous decision in Case No. 12-426-EL-SSO).
[9] Case No. 12-426-EL-SSO, Second Entry On Rehearing dated March 19, 2014, p. 18.

a 10% auction product, increasing to 60% in 2015 and 100% in 2016.[10] Therefore, the timing of DP&L's transfer of the assets could significantly affect SSO customers. If the assets are transferred immediately, then 90% of the SSO load would be served by an unidentified third party at an unknown price under a contract which has not yet been drafted. While an earlier transfer of the assets could certainly help customers, there is no way to make this determination without knowing the answers to these basic questions.

Despite the vagueness in its position, DP&L states that it does not expect that its proposed transfer will have a material effect on the terms and conditions of its standard service offer.[11] Before the Second Entry on Rehearing, DP&L makes this claim by assuming that "all generation assets that are currently owned by the utility are transferred or sold as of May 31, 2017."[12] However, this is not what DP&L has proposed. DP&L proposes corporate separation at some point between 2014 and May 31, 2017, to either a third party or an affiliate. It has not proposed corporate separation as of May 31, 2017, or January 1, 2016, specifically. Accordingly, there is no way to know what impact this transaction will have on SSO rates. For example, would a potential third party purchaser be willing to provide SSO service under the terms of DP&L's SSO? Would that purchaser provide the non-auction load under the SSO price or would it demand a portion of the SSR as well? Would the purchaser continue to supply any auction load won by a DP&L affiliate currently provided by DP&L's generation assets? As the record is silent on these essential points, there is currently no way to determine what will be the effect on SSO rates.

[10] Case No. 12-426-EL-SSO, Second Entry On Rehearing dated March 19, 2014, pp. 18-19.
[11] Application, p. 9.
[12] Application, pp. 9-10.

E. DP&L Should Provide Essential Information About Its Proposal.

1. Who Will The Assets Be Transferred To?

DP&L's Application fails to identify who will be purchasing the assets. It could be either an "unregulated affiliate" or an "unaffiliated third party."[13] The identity of the purchaser of the assets is vital information which goes to the validity of the proposed fair market value of DP&L's assets, who will serve SSO load, and auction load.

2. What Is The Transfer Price?

As discussed above, DP&L seeks authority to transfer the generation assets at fair market value, but fails to state what that purported fair market value is.[14] DP&L states it will supplement its Application within 75 days of the proposed transfer.[15] Without knowing the proposed transfer price, there is no way to determine whether DP&L's proposed transfer is appropriate or will unduly impact SSO customers.

DP&L repeatedly states that it will comply with OAC 4901:1-37-09(C)(4) by providing the transfer pricing information 75 days before the transfer date.[16] This is not accurate. OAC 4901:1-37-09(C) provides the minimum requirements for the Application. This includes, among other things, "(4) State the fair market value and book value of all property to be transferred from the electric utility, and state how the fair market value was determined." This section requires that this information be provided in the application, not in a supplemental brief filed 75 days before the proposed transfer. Accordingly, DP&L's Application fails to comply with OAC 4901:1-37-09(C)(4). This failure should not be waived because there is a significant difference

[13] Application, p. 2.
[14] Application, p. 2.
[15] OAC 4901:1-37-09(C)(4).
[16] *See, e.g.*, Application ¶¶ 5, 8, 15.

between transferring assets at book value (as was done for AEP Ohio and Duke Energy Ohio) and at fair market value (as DP&L proposes).

3. How Could DP&L Separate By January 1, 2016 Under This Schedule?

DP&L does not propose any date certain on which it will complete corporate separation. Instead, DP&L merely offers that it will state the fair market value of its assets "when the time of the actual transfer is known, and in no event, no later than 75 days prior to May 31, 2017."[17] As discussed in FES's initial comments, this is simply not enough time to conduct a corporate separation proceeding. The AEP Ohio proceeding, which was simpler since it involved a transfer at book value rather than market value, still took more than two years.[18] As DP&L never explains how it expects to complete corporate separation under its proposed timeline, it should be required to make a supplemental filing by no later than May 31, 2014 providing further information about its proposal so that it can comply with the Commission mandate to complete separation by no later than January 1, 2016.

4. How Will DP&L Transfer The Assets?

DP&L states that it will transfer its generation assets as of the currently unknown "transfer date."[19] At some point prior to an unidentified "separation date" (which may or may not be the same as the "transfer date"), "DP&L will transfer its generation assets to an unregulated affiliate via an internal restructuring involving a distribution and contribution of those assets."[20] Based on these statements, it is unclear how DP&L anticipates transferring its assets. Does DP&L intend to transfer the assets prior to Commission approval? Does DP&L intend to transfer the assets immediately or closer to the transfer date? As the mechanics of

[17] Application, p. 10.
[18] *See* FES Reply Comments to DP&L's Initial Application filed February 19, 2014, pp. 1-2.
[19] Application, p. 2.
[20] Application, p. 2.

DP&L's proposed transfer are still unclear DP&L should be required to explain how it intends to structure this transaction.

F. At Minimum, The Commission Should Make Clear That DP&L Is Required To Comply With The Same Corporate Separation Standards As Were Imposed On AEP Ohio And Duke Energy Ohio.

If the Commission is inclined to take some action in response to the Application, then at minimum the Commission should make clear that DP&L is obligated to meet the same corporate separation standards as were recently imposed on AEP Ohio and Duke Energy Ohio.[21] As DP&L has not identified how it will complete corporate separation, it is impossible at this point to identify what provisions of the AEP Ohio and Duke Energy Ohio orders may be applicable to DP&L. Accordingly, if the Commission intends to take a substantive step at this time, it should make clear that DP&L will be required to comply with the same standards as were imposed on AEP Ohio and Duke Energy Ohio.

G. DP&L's Request to Waive Hearing Should Be Denied At This Time.

It may eventually be appropriate to waive hearing in this case. However, there are simply too many unknowns regarding DP&L's proposal to waive hearing at this point. DP&L has failed to identify the purchase price, the debt which will be transferred with the assets, the liabilities which it seeks to retain, or the effect this transfer will have on SSO customers. DP&L's request to waive hearing should be denied until these basic issues are resolved.

IV. Conclusion

FES respectfully requests that the Commission direct DP&L to complete corporate separation expeditiously in a manner consistent with these comments.

[21] *See* Case No. 12-1126-EL-UNC, Opinion and Order dated October 17, 2012 (AEP Ohio); Case No. 11-3549-EL-SSO, et al., Opinion and Order dated November 22, 2011 (Duke Energy Ohio).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of FirstEnergy Solutions Corp.* was served this 25th day of March, 2014, via e-mail upon the parties below.

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Summary: Comments of FirstEnergy Solutions Corp. to DP&L's Supplemental Application to Transfer or Sell its Generation Assets electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.