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Via E-FILE

March 25, 2014

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case Nos. 13-2420-EL-UNC

Dear Sir/Madam:

Please find attached the COMMENTS OF THE OHIO ENERGY GROUP e-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

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MLKkew
Encl.
Cc: Certificate of Service

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of The Application Of Dayton Power And Light Company For Authority To Transfer Or Sell Its Generation Assets	:	Case No. 13-2420-EL-UNC

COMMENTS OF THE OHIO ENERGY GROUP

The Ohio Energy Group ("OEG") submits these Comments in response to the Supplemental Application filed by The Dayton Power and Light Company ("DP&L" or "Company") at the Public Utilities Commission of Ohio ("Commission") on February 25, 2014.

I. The Commission Should Order that the SSR Terminate on the Effective Date of DP&L's Generation Asset Divestiture.

DP&L requests that the Commission allow the Company to continue to collect $110 million annually in revenues through the Service Stability Rider ("SSR") approved in its recent Electric Security Plan ("ESP") case even though it will divest its generation assets prior to the established termination date for that rider (December 31, 2016).[1] The Company claims that the SSR is still necessary after divestiture because *"poor market conditions"* may occur and could cause DP&L financial losses through the remaining term of the ESP.[2]

The Commission should reject DP&L's request and specify that DP&L's SSR will terminate upon the effective date of divestiture. The purpose of the SSR charge was to ensure DP&L's financial integrity by offsetting its declining return on equity ("ROE"), which was caused by losses in the Company's generation business. Specifically, in its ESP case, the Company claimed that its declining ROE was driven principally by three generation-related factors: increased customer switching, declining wholesale prices, and declining capacity

[1] Opinion and Order, Case No. 12-426-EL-SSO *et al.* (September 4, 2014) ("ESP Order") at 25; Entry Nunc Pro Tunc, Case No. 12-426-EL-SSO (September 6, 2013) at 2; Second Entry on Rehearing (March 19, 2014) at 31 (ordering that DP&L must divest its generation assets by no later than January 1, 2016). Indeed, the Company has stated that *"[a] sale to a third party could occur as early as 2014."* Supplemental Application at 2.
[2] DP&L Supplemental Application (February 25, 2014) at 3.

prices.[3] Hence, it was DP&L's retention of its generation business that jeopardized the Company's financial integrity and necessitated the establishment of the SSR.

In contrast, DP&L's transmission and distribution businesses were financially healthy in the absence of the SSR charge. During its ESP case, the Company conceded that it was already receiving a reasonable rate of return on both its transmission and distribution businesses.

> *Examiner Price: ... Do you believe that Dayton Power & Light is getting a reasonable rate of return on its distribution business at this time?*
>
> *Company witness Jackson: We have not looked at the ROE per se on the T and D business.*
>
> *Examiner Price: I'm just asking distribution right now.*
>
> *Company witness Jackson: Yes, or distribution. You know, that said, as I indicated before, I do think we are getting adequate revenues on our -- over the forecasted period. So that would, I guess that would imply that, yes, I believe we are getting an adequate return.*
>
> *Examiner Price: Okay. How about on the transmission side, do you believe you're getting a reasonable rate of return on your transmission business at this time?*
>
> *Company witness Jackson: I do believe so.*[4]

The Company also conceded that its transmission and distribution businesses would remain financially stable if DP&L's generation assets were divested:

> *Q. ...in the event that DP&L were to transfer its generating assets to an unregulated affiliate, would you agree that the remaining transmission and distribution utility would not have a financial integrity concern?*
>
> *Company witness Jackson: I guess as I look at this, this is a filing for DP&L and that filing includes transmission, distribution, and generation, and we had discussed the rationale for the decreases in ROE over that period of time which was tied to market pricing, customer switching, and capacity pricing, obviously, which, yes, are tied on the generation side.*
>
> *Q. So the answer is that the remaining distribution and transmission utility would not have a financial integrity concern...*
>
> *Company witness Jackson: 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."*[5]

Consequently, the Company does not need to continue collecting SSR revenues from customers in order to remain financially viable after its generation business is transferred to another entity and the Company becomes solely a transmission and distribution utility. If DP&L suffers financial losses in its transmission and distribution businesses sometime after its generation assets are divested, then it will continue to have the option to file a rate

[3] DP&L's Initial Post-Hearing Brief (May 20, 2013) at 2.
[4] Case No. 12-426-EL-SSO, Tr. Vol. I at 270:1-19
[5] Case No. 12-426-EL-SSO, Tr. Vol. I at 150:9-151:9.

case requesting an increase in its still-regulated transmission and distribution rates. The Company is therefore effectively immune from the severe financial losses it claims could be caused by *"poor market conditions"* after divestiture since it retains a regulatory solution to prevent such losses.

Further, the Commission's initial Order approving the SSR contemplated that the rider would expire prior to the divestiture of DP&L's generation assets. Indeed, the Commission explained that "*...the SSR will ensure that DP&L can provide adequate, reliable and safe retail electric service* ***until it divests its generation assets.***"[6] Relying upon DP&L's claims that it could not reasonably divest its generation assets prior to September 1, 2016,[7] the Commission initially held that the SSR should only extend through December 2015.[8] While the termination date of the SSR was subsequently extended to December 2016,[9] the Commission's rationale that the SSR is only necessary *until* DP&L divests its generation assets remains applicable.

Because the SSR was established to offset financial losses caused by DP&L's generation business, the Company should not continue to collect the SSR once that generation business is transferred to another entity. Instead, the Company should stop collecting SSR revenues on the effective date that it divests its generation assets since it will no longer need the SSR to sustain its financial integrity. Similarly, the Commission should not permit DP&L to recover any SSR-E revenues after divestiture has occurred.

DP&L may argue that the Commission permitted the stability riders of the Ohio Power Company ("AEP Ohio") and Duke Energy Ohio, Inc. ("Duke") to continue after generation asset divestiture. But the circumstances surrounding Commission approval in those cases differed significantly from the circumstances of this case. The Commission's decision to permit AEP Ohio's Retail Stability Rider ("RSR") to continue after divestiture and to allow RSR revenues to flow through to AEP Ohio's affiliate was based upon that utility's status as a Fixed Resource Requirement ("FRR") entity in PJM and the capacity obligations associated with that status, which the

[6] ESP Order at 51 (emphasis added).
[7] ESP Order at 15.
[8] ESP Order at 25.
[9] Entry Nunc Pro Tunc, Case No. 12-426-EL-SSO (September 6, 2013) at 2.

affiliate would take on post-divestiture.[10] And the Commission's decision to allow Duke's Electric Service Stability Rider to extend through December 31, 2014, irrespective of whether Duke divested its generation assets before that date, was given as part of its approval of a comprehensive Stipulation package. Unlike either of those utilities, DP&L is not an FRR entity in PJM and will not be transferring any FRR capacity obligations to the entity that ultimately buys its generation assets. Nor did DP&L settle the matter of how long it could collect SSR revenues if the Company divested its generation assets prior to the SSR's expiration. Therefore, the Commission can and should take a different approach to DP&L's SSR.

II. The Commission Should Not Burden DP&L's Customers with the Responsibility for Future Environmental Liabilities Associated with Its Generation Assets Once Those Assets are Divested.

DP&L requests that the Commission authorize the Company *"to retain responsibility for future environmental liabilities associated with DP&L's historic ownership of its generation facilities."*[11] In concert with this request, the Company asks the Commission to immediately grant it accounting authority to defer environmental compliance costs imposed by future federal or state requirements so that the Company can subsequently seek to collect those costs from its customers.[12]

DP&L's request is unreasonable and should be rejected. After the Company divests its generation assets to another entity, there is no valid reason for DP&L's customers to retain cost responsibility for the host of future environmental requirements that could be imposed on generation assets that the Company no longer owns. Instead, any such environmental compliance costs and obligations should be the sole responsibility of the entity that acquires DP&L's generation assets.

The Company's request is also likely to be unlawful. If DP&L's generation assets are ultimately transferred to its affiliate, then requiring the Company's customers to pay for future environmental compliance costs associated with those assets would violate R.C. §4928.17, which prohibits a utility from extending *"any*

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[10] Entry on Rehearing, Case No. 11-346-EL-SSO *et al.*, (January 30, 2013) at 26-27 (*"...in order for AEP-Ohio, and the newly created generation affiliate to continue to provide capacity consistent with its FRR obligations, we maintain our position that AEP-Ohio is entitled to its actual cost of capacity, which will in part, be collected through the RSR in order for AEP Ohio to begin paying off its capacity deferral. As we previously established, parties cannot claim that AEP-Ohio's generation affiliate is receiving an improper subsidy when in fact, it is only receiving its actual cost of service."*).

[11] Supplemental Application at 3.

[12] Supplemental Application at 4-5.

undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service..." This is because DP&L's customers would be forced to subsidize future environmental compliance costs that should be borne by the Company's competitive affiliate. It would also violate R.C. §4928.02(H), by allowing anti-competitive subsidies to flow from DP&L's non-competitive retail electric service to another entity's competitive retail electric service.

DP&L's request is also contrary to the Commission's precedent with regard to other Ohio utilities. In approving AEP Ohio's application for corporation separation, the Commission expressly imposed the following conditions on AEP Ohio:

> *Following the transfer of the generating assets, [Ohio Power] shall not, without prior Commission approval, provide or loan funds to, provide any parental guarantee or other security for any financing for, and/or assume any liability or responsibility for any obligation of subsidiaries or affiliates that own generation assets; provided, however, that contractual obligations arising before the date of this finding and order shall be permitted to remain with [Ohio Power], without prior Commission approval, for the remaining period of the contract, but only to the extent that assuming or transferring such obligations is prohibited, and cannot be effectively negotiated by the terms of the contract or would result in substantially increased liabilities for [Ohio Power] if [Ohio Power] were to transfer such obligations to its subsidiary or affiliate and to the extent that AEP GenCo be made contractually responsible to [Ohio Power] for all costs resulting from such generation related liabilities.*[13]

Similar conditions were imposed upon Duke's transfer of its generation assets pursuant to the terms of the Duke ESP Stipulation.[14] And in the case of AEP Ohio, the Commission further protected customers from paying for post-divestiture obligations by modifying AEP Ohio's request to retain pollution control revenue bonds after its generation assets were transferred. Specifically, the Commission found that while AEP Ohio could retain the bonds, *"AEP-Ohio ratepayers shall be held harmless for the cost of the pollution control bonds, as well as any other generation or generation related debt or inter-company notes retained by AEP-Ohio."*[15] In this case, the

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[13] Finding & Order, Case No. 12-1126-EL-UNC (October 17, 2012) ("AEP Ohio Corporate Separation Order") at 16.

[14] Opinion & Order, Case No. 11-3549-EL-SSO (November 22, 2011) ("Duke ESP Order") at 31 *("Following the transfer of the generation assets, Duke shall not, without prior Commission approval, provide or loan funds to, provide any parental guarantee or other security for any financing for, and/or assume any liability or responsibility for any obligation of subsidiaries or affiliates that own generating assets; provided, however, that contractual obligations arising before the signing of the stipulation shall be permitted, but only to the extent that assuming or transferring such obligations is prohibited by the terms of the contract or it is commercially infeasible for Duke to transfer such obligation to its subsidiary or affiliate, and provided further that, on and after the signing of this stipulation, Duke shall ensure that all new contractual obligations have a successor-in-interest clause that transfers all Duke responsibilities and obligations under such contracts and relieves Duke from any performance or liability under the contracts upon the transfer of the generation assets to its subsidiaries.").*

[15] Opinion and Order, Case No. 11-346-EL-SSO *et al.* (August 8, 2012) at 59.

Commission should similarly protect DP&L's SSO customers from post-divestiture obligations by finding that customers will not be forced to subsidize the future environmental liabilities of any entity that ultimately acquires DP&L's generation assets.

While the Commission recently allowed a natural gas utility, Duke, to recover environmental costs associated with cleaning-up plants that had not been *"used and useful"* for decades,[16] DP&L's present request goes even further beyond the bounds of reasonableness. Not only will the generation plants associated with DP&L's deferral request fail the *"used and useful"* inquiry in the traditional ratemaking sense after divestiture, but unlike Duke, those plants will not even be owned by the Company at the time it seeks recovery. Instead, DP&L's request would burden its customers with a still-unknown cost liability in order to clean-up generation plants that do not belong to the utility and may never be used to serve the Company's customers in the future.

III. The Commission Should Not Allow DP&L to Recover Generation-Related Costs Associated with Implementing Corporate Separation.

DP&L asks that the Commission allow it to recover all financing costs, redemption costs, amendment fees, investment banking fees, advisor costs, taxes, and related costs that it incurs to divest its generation assets.[17] However, the Commission did not allow Duke or AEP Ohio to recover *"generation-related costs"* associated with implementing corporate separation from customers.[18] To the extent that the Commission considers any of the costs requested for recovery by DP&L to be *"generation-related costs,"* the Commission should similarly prevent DP&L from recovering such costs.

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[16] *See* Opinion & Order, Case No. 12-1685-GA-AIR *et al.* (November 13, 2013). The Commission's finding is currently on appeal at the Supreme Court of Ohio in Case No. 2014-0328.

[17] Supplemental Application at 5.

[18] AEP Ohio Corporate Separation Order at 17 *("Generation-related costs associated with implementing corporate separation shall not be recoverable from [Ohio Power] customers.")*; Duke ESP Order at 31 (*"Generation-related costs associated with implementing corporate separation shall not be recoverable from customers.")*.

IV. The Commission Should Order That a Hearing be Held on DP&L's Supplemental Application.

Ohio Adm. Code §4901:1-37-09(D) provides that upon the filing of an application to sell or transfer generating assets, *"the commission may fix a time and place for a hearing if the application appears to be unjust, unreasonable, or not in the public interest."* Moreover, the same rule provides that *"[t]he commission **shall fix a time and place for a hearing** with respect to any application that proposes to alter the jurisdiction of the commission over a generation asset."*[19] DP&L's Supplemental Application proposes to do just that.

While DP&L argues that the hearing in its ESP case sufficiently addressed the corporate separation issues raised in this proceeding and therefore, no additional hearing on its current Application is necessary,[20] the stark lack of detail provided by the Company thus far necessitates that a hearing be held on its Supplemental Application. For instance, much of the information required by the Commission when a sale or transfer of generating assets is proposed under Ohio Adm. Code §4901:1-37-09(C) is still missing from this docket. That rule requires that an application to divest generating assets shall, *at minimum:*

(1) Clearly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same;

(2) Demonstrate how the sale or transfer will affect the current and future standard service offer established pursuant to section 4928.141 of the Revised Code;

(3) Demonstrate how the proposed sale or transfer will affect the public interest; and

(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.

DP&L's Supplemental Application fails to satisfy at least three of the four criteria. Regarding the first criterion, DP&L has not even specified which entity will acquire its generation assets. Instead, the Company leaves open the possibility that the assets will be transferred to either an affiliate or some still unknown third-party entity. DP&L also speculates about the date of its generation asset divestiture, stating that it could occur *"as early as 2014"* or as late as May 31, 2017.[21] And while DP&L proposes that the generation assets be transferred at fair market value, the Company fails to quantify that value. Thus, critical terms and conditions of the proposed

[19] Emphasis added.
[20] Supplemental Application at 10-11.
[21] Supplemental Application at 2. This later date has likely changed in light of the Commission's March 19, 2014 Second Entry on Rehearing in Case No. 12-426-EL-SSO holding that DP&L must divest its generation assets no later than January 1, 2016. Second Entry on Rehearing at 31.

sale, including the parties to that sale, the timing of that sale, and the specific price at which the sale will take place, are still unknown.

Regarding the second criterion, DP&L merely posits that the proposed asset transfer will not adversely impact Standard Service Offer ("SSO") customers, without providing further assurance that those customers will not be harmed if its assets are divested prior to the Commission's deadline for divesting those assets. The Company states that *"[a]ssuming that all generation assets that are currently owned by the utility are transferred or sold as of May 31, 2017, DP&L anticipate that the transfer will have no material effect on SSO rates."*[22] But DP&L fails to explain the impact of the proposed generation asset transfer on SSO customers if that transfer occurs sometime prior to the latest date at which it must divest its generation assets (which is now January 1, 2016).[23] Nor does DP&L explain why in fact its rates should not decrease by the amount of the SSR, as discussed earlier. Such explanation should be provided during an evidentiary hearing in this case.

While DP&L may have satisfied the third criterion through reference to the Commission's decision in its recent ESP case, the Company fails to satisfy the fourth criterion. The fair market value of the generation assets that DP&L seeks to transfer is missing from its Supplemental Application. Further, DP&L did not explain how it will ultimately determine the fair market value of its generation assets. While DP&L may not wish to disclose this information on a public basis for fear that it may provide potential third-parties interested in acquiring the Company's generation assets with information that they could use in negotiating for the assets, the Company should be required to provide such information to the Commission and other parties to this case on a confidential basis.

[22] Supplemental Application at 9-10.
[23] Order, Case No.1 2-426-EL-SSO (March 19, 2014) at 31.

Because a substantial amount of information critical to the Commission's ultimate determination in this case has not yet been provided by DP&L, the Commission should hold a hearing in this case. A hearing would allow parties to flesh out the current case record and would provide the Commission with valuable information that can assist it in making an ultimate determination on whether to approve DP&L's Supplemental Application.

Respectfully submitted,

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March 25, 2014

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CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 25th day of March, 2014 to the following:

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