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

SUPPLEMENTAL COMMENTS OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

On February 25, 2014, DP&L filed a Supplemental Application in this docket to transfer or sell its generation assets. Staff files these comments addressing issues of concern contained within the Supplemental Application. Staff will respond to various proposals and requests made by DP&L in the order in which they appear in the Supplemental Application.

As an initial matter, to transfer an asset at Fair Market Value (FMV) is a departure from the past for the Commission and therefore much more information is needed. Not enough details regarding the market price or the particular details of the transaction have been provided by DP&L in order for one to make a learned evaluation of whether it is more prudent to allow the assets to transfer at FMV or require their transfer from DP&L at Net Book Value. In addition to the lack of information regarding the value of the generation assets, there are specific transactional details to understand, none of which are addressed in DP&L's filing. Staff believes it is imperative that the Commission ensure that the transaction is balanced and that DP&L, the electric distribution company, does not bear the costs of the sale of the generation assets. The Commission should insist that

DP&L provide further details about the mechanics of the proposed transaction before it can begin its deliberation. Without specific details as to who benefits and who continues to bear the cost burdens, the Commission is, in essence, giving DP&L (and DPL and AES) blanket authority to structure the transaction in ways which may further harm the financial integrity of DP&L. Just some of the questions which remain for the record are, as these are DP&L's generation assets, will it receive all the proceeds of the sale? What is the allocation of all the current bonds to be refinanced and the quantified, refinancing costs associated with the transfer of the generation assets? What impact is there to DP&L for the generation assets to be transferred in a restructuring as a distribution and contribution of the assets to the unregulated affiliate? Are there mechanisms the Commission could utilize in the event it proposes to provide DP&L increased flexibility to conduct the transaction, such as a prohibition on DP&L paying any dividends to DPL, Inc. or an increase to 10% retained earnings? As DP&L has provided little to no substantive detail regarding the transaction itself, it also has not provided in its Application any safeguard considerations to ensure its financial integrity as the surviving distribution and transmission entity.

In short, Staff believes that whatever process DP&L ultimately requests to utilize to transfer the generation assets, either to an affiliated unregulated entity (affiliated GenCo) or to an unaffiliated unregulated entity (unaffiliated GenCo), the Commission must continue its vigilance to protect DP&L, the entity which will remain under the Commission's jurisdiction, from further financial harm.

Environmental Liabilities

In its third request DP&L proposes to retain responsibility for future environmental liabilities associated with DP&L's historic ownership of its generation facilities and requests deferral authority for associated remediation costs. DP&L states that the incurrence of these liabilities is directly related to the rendering of service to standard service offer customers. DP&L specifically requests that to the extent it finds itself under a legal mandate to perform environmental investigation and remediation activities as to its generation facilities or sites, it believes it should be authorized to recover all prudently incurred costs associated with such environmental investigation and remediation activities. Staff urges the Commission to reiterate the same conditions it placed upon Duke-Ohio and Ohio Power for the transfer of their generation assets, namely that all liabilities transfer along with the asset and that DP&L's specific request to create a deferral for these liabilities be denied. To do otherwise is unbalanced and benefits only the affiliated or unaffiliated GenCo acquiring the asset. Staff believes it is premature at this time to establish a deferral for unknown amounts for essentially unknown reasons. If DP&L wants to later demonstrate that somehow there is a legal mandate on them they are free to file a new application, detailing how such a mandate occurred when DP&L was required to transfer all liabilities with the assets.

Cost of Sale

DP&L asks in its fourth request that it be permitted to recover all financing costs, redemption costs, amendment fees, investment banking fees, advisor costs, taxes, and related costs associated with the separation of the generation assets. It further states that

costs incurred "exclusively" by the GenCo will be borne by the newly formed GenCo entity. The use of the word "exclusively" is fraught with interpretational concerns, especially when coupled with the broad, undefined, terms and conditions of the asset transfer authorizations which DP&L seeks in its Application. Staff recommends that the Commission provide the same financing treatment to DP&L, and the same safeguards to DP&L's customers, as was afforded to Ohio Power in the Commission Finding and Order in Case No. 12-1126-EL-UNC in paragraphs (32)(a) through (32)(h). DP&L has not provided any reason for unique treatment.

Ohio Valley Electric Corporation ("OVEC")

Fifth, DP&L requests that it be permitted to retain its interest in OVEC. DP&L cannot transfer its interest in OVEC without the consent of the remaining members of OVEC and previous attempts by Ohio Power have demonstrated that the member entities of OVEC are unwilling to permit such a transfer. DP&L does not propose that any of the retail rate issues related to OVEC be resolved in this proceeding, but rather will seek resolution of rate matters in a separate proceeding. However, DP&L requests that it be permitted to defer the costs associated with OVEC which are not currently being recovered through DP&L's fuel rider.

Mindful of the Commission's decision in Case No. 12-1126-EL-UNC, Staff recommends that DP&L should at least make a good faith attempt to transfer its interest in OVEC and file in this docket the details and results of that attempt. If DP&L demonstrates that the other member entities denied DP&L's request, then Staff recommends that DP&L be permitted to retain its interest in OVEC. Should DP&L's

position on OVEC change, and it desire to transfer or sell that asset to an affiliated or unaffiliated entity, DP&L should be required to request such authority pursuant to a separate application.

Again, mindful of the Commission's Finding and Order, in Case No.12-1126-EL-UNC, Staff recommends that DP&L be afforded the same treatment regarding the retail issues as provided to Ohio Power.

Lastly, DP&L's request to defer unknown "associated" costs with OVEC is premature. Staff advocates that the Commission should not permit a deferral of such vaguely defined costs. While DP&L posits that creation of a deferral does not guarantee recovery of such costs, the fact remains that the financial community regards a Commission's permission to defer costs to be biased toward future recovery. To allow that perception when the costs are so undefined is inaccurate and inappropriate. Therefore, Staff recommends that the Commission deny the deferral authority and find that DP&L, under separate application when "such" costs are being incurred, may apply for Commission approval, and provide detailed information as to the specific type and amount of costs for which it seeks deferral authority.

Capital Ratio

DP&L's sixth request is that after the transfer of the generation assets, it (the remaining distribution and transmission company) be permitted to "temporarily" maintain a total long term debt of $750 million or total debt equal to 75% of rate base – whichever is greater, until at least 2018 and beyond. DP&L's sole support for this request is that, "…it is likely that DP&L's equity ratio will fall below the 50% level in

the course of the debt restructuring necessary to achieve separation." Again, DP&L provides no concrete financing proposal for the Commission's consideration and approval. This bald assertion is insufficient to permit such a high debt ratio. Indeed, such a high debt ratio is imprudent for DP&L. DP&L's credit rating and cost of capital has already been negatively impacted since the merger of DPL, Inc. and AES and DP&L's increased debt burden due to its subsequent funding of AES via DPL, Inc. in dividend payments for the acquisition.

DP&L acknowledges that the Commission's Order in DP&L's SSO Case, Case No. 12-426-EL-SSO, based DP&L's target ROE upon a 50/50 capital structure. In doing so the Commission established the SSR, the very rider DP&L in this application requests to continue, on the capital structure. To now continue the SSR and permit the debt equity ratio to unbalance to 75/25 is very aggressive.

If DP&L's concern, which is unstated in the Application, is that the terms of new financing or refinancing would be very onerous if not insurmountable, DP&L could explore the use of an intercompany note, if the transfer is only to an affiliate, whereby DP&L retains the generation debt, contingent upon a showing to the Commission that retention of this debt is absolutely necessary, but that associated debt is serviced by DPL. DP&L would be expected to be absolved of the liabilities associated with whatever generation debt it retains.

In any event, Staff recommends that the Commission maintain the requirement that there be positive retained earnings, a condition it ordered in the DP&L/AES Merger Case (Case No. 11-3002-El-MER).

If the Commission is inclined to grant DP&L's request in this matter, Staff recommends that DP&L be prohibited from paying dividends until it returns to, and maintains, a debt/equity ratio of approximately 50/50, as provided for the Commission's Orders in 11-3002-EL-MER and 12-426-EL-SSO.

Hearing Requirement

As a final matter, DP&L requests that the Commission waive the requirement for a hearing in this proceeding. Due to the numerous necessary details, which have yet to be provided by DP&L, Staff believes that it is premature for the Commission to grant that waiver request at this time. Although DP&L cites to the Commission's Orders in the AEP and Duke generation asset transfer cases as justification for similar treatment, DP&L fails to acknowledge that it's application is much more vague and multi tentacles than either of the other two cases. Once DP&L provides the specific details of the transaction the Commission will then be in a position to determine if a hearing is unnecessary for further refining its understanding of the financial implications of the transaction.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Supplemental Comments** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by email, upon the following Parties of Record, this 25th day of March, 2014.

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Summary: Comments Supplemental Comments electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO