**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

## COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

## I. Introduction

On December 30, 2013, The Dayton Power and Light Company ("DP&L") filed an application for authority to transfer, sell, or decommission some or all of its generation assets. As part of that application, DP&L noted that it would file a supplemental application because it was still developing a definitive plan for separation of its generation assets.

On February 25, 2014, DP&L filed its supplemental application, proposing to transfer its generation assets to an affiliate, with the caveat that DP&L and its parent company "have recently begun to evaluate the transfer of DP&L's generation assets to an unaffiliated third party" via a sale.[1]

The Retail Energy Supply Association ("RESA")[2] strongly supports the divestiture by electric distribution companies of their generation assets. As Senate Bill 3 in 1999 and Senate Bill 221 in 2007 made clear, generation is a competitive service. Sections 4928.03 and 4928.17,

[1] Supplemental Application at 2.

[2] RESA is a broad and diverse group of 21 retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented, outcome than a regulated utility structure. RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Revised Code, limit the role of an electric distribution utility to only supplying competitive generation service needed as part of the default service. In the Commission's Opinion and Order in Case No. 12-426-EL-SSO issued on March 19, 2013, it is clear that DP&L will be transitioning to use of a public auction procurement program for its default generation, and that by the 2016, all competitive generation needs of DP&L will be provided by public auction. Thus, DP&L's plan to divest its generation previously pledged to public service ("Legacy Generation") must be completed by 2016, at which time the Legacy Generation will no longer be utility assets.

On March 4, 2014, the Attorney Examiner established an additional comment cycle for responding to DP&L's supplemental application. RESA timely files these comments opposing three aspects of DP&L's supplemental application. In the supplemental application, DP&L addresses several components of implementing the divestiture. As part of that implementation, DP&L requests authority to recover generation costs associated with its Legacy Generation from *all* its distribution customers, not just standard service customers who use the Legacy Generation. As explained in greater detail below, DP&L's generation-related costs should be paid for only by the standard service customers who make use of that power. Shopping customers purchase generation from their suppliers and pay for all the generation-related costs as part of their competitive retail electric service ("CRES") provider fees. Those same shopping customers should not be required to also pay for DP&L's generation-related costs, which costs are designed solely to benefit standard service customers. Therefore, DP&L's proposals to allow it to recover environmental liabilities, Ohio Valley Electric Corporation costs, and generation divestiture costs should be borne by DP&L's standard service customers only, if granted.

## II. Arguments against DP&L's Proposed Recovery of Future Environmental Liabilities

DP&L wants to "retain the liability" for future environmental liabilities associated with owning the generation assets. DP&L explained that those liabilities are "directly related to the rendering of service to standard service customers."[3] DP&L's proposal, however, asks to defer all unknown future environmental liabilities directly related to standard service and proposes to recover them from *all* customers (not just standard service offer customers). There is little question that the environmental liabilities related to DP&L's current generation assets are generation-related costs. To allow for recovery of those liabilities, as DP&L asks, from all distribution customers puts part of the standard service generation cost burden on the shopping customers. This proposal is contrary to the construct of Ohio's Electric Energy Policy, which prohibits competitive services from subsidizing utility service. *See*, Section 4928.02(H), Revised Code. Having a distribution rider that charges shopping customers for environmental costs associated with the generation service used by only standard service customers would be an impermissible subsidy. It is also inequitable on its face to make shopping customers pay for generation expenses for generation they do not purchase or use. In sum, since environmental costs associated with the generation units pledged to standard service are competitive costs, any such costs must only be paid by standard service customers.

This component of the DP&L supplemental application poses one other regulatory issue. Once title of the Legacy Generation has passed to the new owner, be it an affiliate of the utility or a corporate stranger, DP&L is asking that the risk of future unknown environmental costs not be borne by the new owner, but by future DP&L distribution customers. Since it is not known at this time whether any post-2016 environmental liabilities exist, DP&L is suggesting a blanket transfer of risk.

[3] Supplemental Application at 4.

RESA does not recommend any definitive approval by the Commission of unknown costs. Prior to 2016, if the generation unit is used and useful, then its costs can be a part of the charges for the standard service. After the property is divested, facts have to be shown to demonstrate why the future distribution customers (rather than future owner) should be responsible. In light of these significant unknowns, the Commission should not grant a blanket transfer of risk.

## III. Arguments against DP&L's Proposed Recovery of Ohio Valley Electric Corporation Costs

The Ohio Valley Electric Corporation ("OVEC") generates electricity. DP&L is part owner. DP&L asked for authority to retain its interest (4.9%) in OVEC and to defer the OVEC costs that are not currently recovered through DP&L's fuel rider, along with carrying costs.[4] DP&L proposes to recover those deferred expenses from *all* customers.

Here again, DP&L is asking the Commission to allow collection of generation-related costs from all of its distribution customers, including those who are shopping. If the Commission were to allow DP&L to defer with carrying charges and then recover these unrecovered OVEC costs, the shopping customers would pay for DP&L's generation costs as well as the generation costs of their suppliers. This proposal is both contrary to statute and unfair, just like the environmental liability proposal discussed above. Authority to collect the unrecovered OVEC costs must be permitted only through a bypassable rate.

## IV. Arguments against DP&L's Proposed Recovery of Divestiture Costs

DP&L asks to recover its costs for separating its generation assets. DP&L identified those costs as including financing costs, redemption costs, amendment fees, investment banking

[4] Supplemental Application at 6-7.

fees, advisor costs, taxes and others.[5] DP&L's request here is less detailed than the other two areas noted above. DP&L asks to recover these generation-related costs, but does not specifically identify how it proposes to recover these generation-related costs. The Commission should recognize that these costs are related to DP&L's generation service and, at a minimum, not permit them to be collected from shopping customers.

RESA notes that generation-related costs associated with implementing corporate separation have not been recoverable from customers by other electric distribution utilities. For instance, Duke Energy Ohio, Inc. entered into a stipulation in October 2011, pursuant to which the costs of implementing corporate separation have not been recoverable from customers, and the Commission approved that term. *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, Stipulation at 27 and Opinion and Order at 45-46. Likewise, Ohio Power Company agreed to not collect the generation-related costs associated with implementing corporate separation from its customers. *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to Its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Application at 8 and Finding and Order at 15-17. Since it was reasonable and appropriate for Duke and OPC to not recover from customers their generation-related costs associated with implementing corporate separation, the Commission should likewise conclude here that those same types of costs cannot be recoverable from DP&L's customers, especially shopping customers.

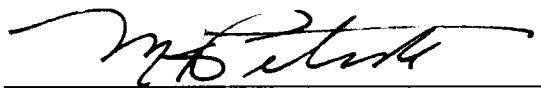
[5] Supplemental Application at 5.

## V. Conclusion

DP&L's supplemental application contains proposals that are contrary to Ohio law, contrary to Commission precedent, and are unfair. The Commission should recognize that DP&L's requests to recover environmental liabilities, Ohio Valley Electric Corporation costs, and generation divestiture costs are overreaching and must be limited, if granted at all. If DP&L is permitted to recover these three costs, it should be only through bypassable rates so that shopping customers are not required to pay for DP&L's generation at the same time they are purchasing generation from competitive suppliers.

RESA appreciates this opportunity to file these comments in response to DP&L's supplemental application in this matter.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments were served this 25th day of March 2014, via email on the parties listed below.

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Summary: Comments Comments electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association