BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. Introduction

On December 30, 2013, The Dayton Power and Light Company ("DP&L") filed its original application seeking authority to transfer, sell, or decommission some or all of its generation assets. On February 25, 2014, DP&L filed a supplemental application, proposing to transfer its generation assets to an affiliate, but also noting 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] On March 4, 2014, the Attorney Examiner established a comment cycle for responding to DP&L's supplemental application. On March 25, 2014, the Retail Energy Supply Association ("RESA")[2] timely filed comments opposing aspects of DP&L's supplemental application, as did ten other parties.

The following are Reply Comments from RESA in response to the other ten sets of comments.

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[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.

II. Overview of Initial Comments in Response to DP&L's Supplemental Application

RESA strongly supports the divestiture by the electric distribution utilities of their generation assets. RESA is not alone in this regard as similar positions were expressed by FirstEnergy Solutions Corp. ("FES") and AEP Generation Resources Inc. ("AEP Generation") both of whom noted their support for the concept of corporate separation of DP&L's legacy generation assets from its regulated utility assets.[3] While there is unanimity between DP&L and the commentators that the legacy generation should be divested, all of the commentators believed that the DP&L Supplemental Plan as filed was suboptimal. RESA and the other interested stakeholders found serious flaws with certain terms in DP&L's Supplemental Application.

The opposition to the DP&L Supplemental Application in the initial comments was not only universal, but came from the whole spectrum of interested stakeholders including those representing competitive providers, residential customers, small commercial customers, industrial customers and the Commission's staff. RESA requests that the Commission in its Opinion and Order require amendments to the Amended Supplemental Application, and at a minimum reject DP&L's requests (a) that rate payers retain responsibility for future environmental liabilities and costs associated with the divested generation; (b) to charge all distribution customers for the cost of the divestiture;[4] and (c) to retain its interest in Ohio Valley Electric Corporation ("OVEC") and to charge all distribution customers for the OVEC costs not currently recovered through its fuel rider.

[3] FES Comments at 1; AEP Generation Comments at 1. Although not expressly listed in the citations in these Reply Comments, all references to prior comments will be those filed in this proceeding on March 25, 2014.
[4] DP&L asks to recover these generation-related costs, but does not specifically identify how it proposes to recover these generation-related costs. (Supplemental Application at 5)

III. The Commission should reject DP&L's proposal to have all rate payers remain responsible for its legacy generation's environmental costs after divestiture.

The Commission should reject DP&L's request to have shopping customers pay for its transfer of competitive generation assets.

The Commission should reject DP&L's plan to retain interest in a portion of Ohio Valley Electric Corporation (OVEC) generation assets and to charge all distribution customers for the OVEC costs not currently recovered through its fuel rider.

Outside of DP&L, none of the commentators or parties oppose the above three RESA positions. In fact, the Commission's Staff and the Ohio Consumers' Counsel ("OCC") for similar and additional reasons propose the same three amendments to the Supplemental Application.[5] The Staff also adds a procedural issue noting that DP&L, before asking for departure from the Commission policy that utilities divest themselves of competitive generation assets, must first actually try to comply with the policy.[6] Additionally, AEP Generation, Industrial Energy Users-Ohio ("IEU"), Ohio Energy Group ("OEG"), Ohio Partners for Affordable Energy ("OPAE"), Ohio Manufacturers' Association Energy Group ("OMA Energy Group"), FES, and Direct Energy Services LLC/Direct Energy Business LLC in their comments strongly oppose ratepayer responsibility for divested generation assets.

RESA's main argument, that DP&L is proposing to impermissibly recover generation-related costs after divesting itself of the generation assets, was also espoused by the OCC, IEU, OEG and OPAE.[7] DP&L's generation-related costs should be paid for only by the standard service customers who make use of that generation's power. Shopping customers purchase generation from their suppliers and pay for all the generation-related costs as part of their competitive retail electric service providers' 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

[5] Staff Comments at 3-5; OCC Comments at 9-20.
[6] Staff Comments at 4-5.
[7] OCC Comments at 12-13, 16-17; IEU Comments at 15; OEG Comments at 4-6; and OPAE Comments at 2-3.

benefit the standard service customers. DP&L admitted, at least with regard to the future environmental liabilities, that those future environmental liabilities are "directly related to the rendering of service to standard service customers."[8] Charging shopping customers for costs associated with the generation service would be an impermissible subsidy and 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. It is also inequitable to make shopping customers pay for generation expenses for generation they do not purchase or use.

Moreover, the environmental liabilities component of the DP&L supplemental application raises another regulatory issue. Once title for the generation assets has passed to the new owner, be it an affiliate or a corporate stranger, DP&L wants the risk of future unknown environmental costs to not be borne by the new owner, but by future DP&L distribution customers instead. It is not even known at this time whether any post-2016 environmental liabilities exist or their amount. Staff and OMA Energy Group likewise stated that these liabilities are unknown.[9] In light of these significant unknowns, the Commission should not grant a blanket transfer of risk.

Finally, RESA, Staff, OCC, and OEG separately noted that divestiture costs associated have not been recoverable from customers by other electric distribution utilities,[10] pointing to the same Commission precedent.[11] FES and Duke Energy Ohio Inc. ("Duke") advocated more generally that the same corporate separation requirements imposed on Duke and Ohio Power

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[8] Supplemental Application at 4.
[9] Staff Comments at 3; OMA Energy Group Comments at 3.
[10] RESA Comments at 5; Staff Comments at 4; OCC Comments at 16-17; and OEG Comments at 6.
[11] *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; and *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.

Company be imposed on DP&L.[12] Since it was reasonable and appropriate for Duke and Ohio Power Company 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.

IV. Conclusion

For all of the foregoing reasons, DP&L's proposals to allow it to recover environmental liabilities, OVEC costs, and generation divestiture costs 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.

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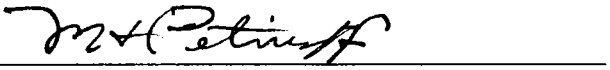
[12] FES Comments at 8; Duke Comments at 1-2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments were served this 7th day of April 2014, via email on the parties listed below.



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