

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**INDUSTRIAL ENERGY USERS-OHIO'S
COMMENTS ON THE DAYTON POWER AND LIGHT COMPANY'S
AMENDED SUPPLEMENTAL APPLICATION**

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Pursuant to the Attorney Examiner's May 30, 2014 Entry, Industrial Energy Users-Ohio ("IEU-Ohio") hereby submits Comments on the Amended Supplemental Application filed by The Dayton Power and Light Company ("DP&L") on May 23, 2014, in the above-captioned matter. IEU-Ohio supports a divestiture of DP&L's generating assets under lawful and reasonable terms and conditions. DP&L's Amended Supplemental Application, however, contains terms that are unlawful, unjust, unreasonable, and contrary to the public interest. Accordingly, the Public Utilities Commission of Ohio ("Commission") should either reject the unlawful or unreasonable terms and conditions or, consistent with its rules, set the Amended Supplemental Application for a hearing.

I. APPLICABLE STANDARD

Commission Rule 4901:1-37-09(D), Ohio Administrative Code ("O.A.C."), addresses an application of an electric distribution utility ("EDU") to divest its generating assets and provides:

[u]pon the filing of such application [to 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. The 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.

Furthermore, Rule 4901:1-37-09(C), O.A.C., states that an application to sell or transfer generation assets shall, at a 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.
- (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.

II. INTRODUCTION

DP&L has filed three applications in this proceeding requesting authority to transfer its generating assets. The first application¹ was filed on December 30, 2013. The Commission issued an Entry on January 3, 2014 requesting comments and reply comments on DP&L's December 30, 2013 Application. Through comments and reply comments (filed February 4, 2014 and February 19, 2014, respectively), parties demonstrated that DP&L's December 30, 2013 Application was unjust and unreasonable and was largely devoid of the information necessary to properly analyze DP&L's proposed asset divestiture.

¹¹ Application of The Dayton Power and Light Company to Transfer or Sell Its Generation Assets (Dec. 30, 2013) (hereinafter "Application").

On February 25, 2014, DP&L filed a Supplemental Application.² The Supplemental Application still failed to provide the necessary information regarding the terms and conditions of a transfer and information regarding the effect of the transfer on the standard service offer (“SSO”). Even though DP&L could not describe the terms of the proposed transfer to meet the minimum requirements of the Commission’s rules, DP&L also sought to secure additional authority to shift economic and environmental risks associated with its generation assets to customers.

On March 4, 2014, the Commission issued an Entry seeking comments and reply comments on DP&L’s Supplemental Application. Parties filed comments and reply comments on March 25, 2014, and April 7, 2014, respectively. The March 25, 2014 and April 7, 2014 comments and reply comments identified that DP&L’s Supplemental Application was unjust, unreasonable, and contrary to the public interest because it still lacked sufficient detail regarding its proposed asset transfer. Additionally, the parties demonstrated that the terms and conditions proposed by DP&L in the Supplemental Application were unlawful and unreasonable.

On May 23, 2014, DP&L filed an Amended Supplemental Application in the above-captioned matter regarding its proposal to transfer its generating assets. While the Amended Supplemental Application contains a few more details than the Supplemental Application, it still falls well short of clearly setting forth the terms and conditions of the proposed asset transfer; still fails to demonstrate how the asset transfer will affect future SSO prices; and retains terms and conditions that the parties demonstrated were unlawful and unreasonable in the March 25, 2014 and April 7, 2014

² Supplemental Application of The Dayton Power and Light Company to Transfer or Sell Its Generation Assets (Feb. 25, 2014) (hereinafter “Supplemental Application”).

comments and reply comments. In the Amended Supplemental Application, DP&L again seeks a waiver of the Commission's rule that requires this matter be set for a hearing.

The limited additional details provided in the Amended Supplemental Application generally address DP&L's long-term debt, including its mortgages and pollution control bonds, and DP&L's plan to pay down its long-term debt following an asset divestiture (through either proceeds from a sale or through hoped-for additional cash flows between 2016 and 2018). DP&L has provided a few additional details through responses to discovery requests; however, much of the information sought in discovery remains outstanding.

While it seeks to secure general authority to divest all of its generating assets under certain terms and conditions, on June 13, 2014, DP&L filed an application in Case No. 14-1084-EL-UNC ("East Bend Application") to sell its ownership in the East Bend Unit to Duke Energy Kentucky, Inc. ("Duke Kentucky"). The East Bend Application contains terms and conditions that vary from the Amended Supplemental Application filed in this proceeding. The Commission has directed interested parties to file comments and reply comments on the East Bend Application by July 18, 2014, and August 1, 2014, respectively.

As discussed in more detail below, as well as in IEU-Ohio's prior comments, reply comments, Joint Motion for Hearing and Joint Reply to the Motion for Hearing filed with the Office of the Ohio Consumers' Counsel ("OCC"), the Commission should not approve the Amended Supplemental Application and should not approve DP&L's request for a waiver of a hearing in this matter. Instead, the Commission should find

that, on its face, the Amended Supplemental Application is unlawful, unjust, unreasonable, and contrary to the public interest. Accordingly, the Commission should either reject the unlawful and unreasonable terms and conditions or, alternatively, the Commission should set the matter for a hearing in accordance with its rules.

III. ARGUMENT

A. DP&L's Amended Supplemental Application fails to clearly set forth the terms and conditions of its proposed asset divestiture

The application must “[c]learly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same.”³ Despite this being DP&L's third attempt to provide a complete application that clearly sets forth the terms and conditions of its proposed asset divestiture, the Amended Supplemental Application still falls well short.

As in the prior filings, DP&L does not provide any detail regarding the terms of the transfer. It does not identify the transferee of the assets, stating it will transfer its generation assets to its unregulated affiliate and that it is alternatively “exploring the possibility of selling some or all of its generation assets to a third party.”⁴ It does not state the date of transfer, only offering that a sale to a third party could occur “as early as 2014/2015.”⁵ It fails to state the amount of the purchase price if the assets are sold, offering only that the price will be at fair market value and that it will state the fair market value “no later than 75 days before the transfer date.”⁶

³ Rule 4901:1-37-09(C)(1), O.A.C.

⁴ Amended Supplemental Application at 2, 6.

⁵ *Id.* at 7.

⁶ *Id.* at 6.

DP&L's Amended Supplemental Application further proposes to retain environmental liabilities associated with the historical operation of its generation assets and to seek to recover clean-up costs related to these liabilities from all customers.⁷ DP&L fails to identify any legal authority on which the Commission may approve its request or the magnitude of these liabilities or the generation assets to which the liabilities relate. Moreover, DP&L fails to identify how and when it will seek to recover the cost of these liabilities from customers.

Moreover, DP&L requests authority "to defer the costs associated with OVEC which are not currently being recovered through DP&L's fuel rider."⁸ As with the environmental clean-up costs it seeks to have customers pay, DP&L does not provide any legal basis that would permit the Commission to order this recovery or details regarding the magnitude of costs that it will not recover through the fuel rider.⁹ DP&L also fails to identify whether it would apply off-system sales margins from Ohio Valley Electric Corporation ("OVEC") against the costs it is requesting authority to defer for future collection. DP&L is essentially asking for a blank check.

Some of the basic and essential detail that is missing from the Amended Supplemental Application, however, has been provided by DP&L in the East Bend Application regarding the East Bend Unit.¹⁰ In the East Bend Application, DP&L identifies the agreed-upon sale price, the net book value, the date the sale was

⁷ *Id.* at 11-12.

⁸ *Id.* at 13-14.

⁹ *Id.*

¹⁰ In the East Bend Application, DP&L included the proposed transferee, the sale price, the debt that DP&L proposes to retain, and the debt that DP&L proposes to transfer. In total, the East Bend Application, which addresses only one of DP&L's generating units, totals 114 pages; DP&L's Amended Supplemental Application addressing the proposed divestiture of all of DP&L's generating units totals 12 pages.

reached, the buyer of the asset, and the specific debt and liabilities that are proposed to be transferred and those liabilities which are proposed to remain with DP&L. This basic information contained in the East Bend Application is the basic information that is necessary to begin to comply with Rule 4901:1-37-09(C)(1), O.A.C. While there may be issues with the East Bend Application (interested parties have not yet filed comments on that application), it is much more thorough than the Amended Supplemental Application which covers all of DP&L's generating assets instead of the sole unit covered in the East Bend Application.

Furthermore, the terms and conditions of the proposed sale of the East Bend Unit to Duke Kentucky are not identical to the terms and conditions proposed by DP&L in its applications in this proceeding.¹¹ Accordingly, it is even more unclear as to the terms and conditions DP&L is seeking approval of in this proceeding and the justification for the proposed terms and conditions in the Amended Supplemental Application.

Finally, many of the details that DP&L omitted from all three of its applications in this case have been sought through discovery. DP&L has responded to approximately 200 discovery requests served by OCC through initial and three sets of supplemental responses. In response to an overwhelming majority of the discovery requests, DP&L responds that the requested information is not currently known by DP&L. In responses to numerous other discovery requests, DP&L has indicated that it will supplement its discovery response (without providing any indication of when the supplemental response will be provided) and in other instances has indicated that it will produce

¹¹ For instance, in this proceeding, DP&L requested authority to retain all of the environmental liabilities associated with its generating units. In the East Bend Application, DP&L has proposed, and Duke Kentucky has agreed to assume, all of the environmental liabilities associated with the East Bend Unit.

responsive non-privileged documents (without identifying the documents it plans to produce or indicating when it plans to produce the documents). DP&L's claimed ignorance in this case is also inconsistent with the additional details DP&L included in the East Bend Application.

In summary, the Amended Supplemental Application does not clearly set forth the terms and conditions of the transfer as required by the Commission's rules.

B. DP&L has not demonstrated how the transfer will impact the SSO and ignores significant adverse consequences of the Amended Supplemental Application

The Amended Supplemental Application must "[d]emonstrate how the sale or transfer will affect the current and future standard service offer established pursuant to section 4928.141 of the Revised Code"¹² and "how the proposed sale or transfer will affect the public interest."¹³ Like its first two applications in this proceeding, in the Amended Supplemental Application, DP&L states, in relation to the two requirements stated above, that it will provide an SSO through a 100% competitive bidding process ("CBP") after it divests the assets.¹⁴ DP&L also states that "[t]he Commission found in DP&L's ESP case that DP&L separating its generation assets was a benefit of DP&L's ESP and was in the public interest" and implies that this statement demonstrates that the Amended Supplemental Application is in the public interest.¹⁵ Both of DP&L's claims are incorrect.

Although DP&L states that its SSO rates beginning June 1, 2017 will be set 100% through a CBP, DP&L fails to include any analysis or even a statement about the

¹² Rule 4901:1-37-09(C)(2), O.A.C.

¹³ Rule 4901:1-37-09(C)(3), O.A.C.

¹⁴ Amended Supplemental Application at 17.

¹⁵ *Id.*

effect of its proposed asset transfer on SSO rates. DP&L's statement also ignores the fact that it has proposed to continue existing non-bypassable charges and has proposed to lay the accounting foundation for future non-bypassable charges, which will affect SSO customers and shopping customers. DP&L has failed to provide any analysis as to how its proposed continued and new non-bypassable charges will affect the existing and future SSO. Moreover, DP&L has not revealed the impact of the proposed modification to its capital ratio, discussed below, and whether that modification may be the impetus for additional future financial support in the form of yet another request for a non-bypassable charge. Without a quantification of the magnitude of those charges, DP&L cannot demonstrate the impact of its Amended Supplemental Application on the SSO.

Additionally, the Commission never determined that the terms and conditions of DP&L's proposed generation asset divestiture is in the public interest—nor could it have made such a finding without reviewing the specific terms and conditions upon which DP&L proposed to divest its generation assets. As discussed further below, because the terms and conditions proposed by DP&L are unlawful and unreasonable, DP&L's Amended Supplemental Application is not just, reasonable, or in the public interest.

C. DP&L's Amended Supplemental Application proposes terms and conditions that are unlawful, unreasonable, and not in the public interest

1. If permitted to continue, the Service Stability Rider ("SSR") should terminate after the generation assets are divested

The Amended Supplemental Application states that DP&L will transfer its generation assets to an affiliate at fair market value on or before May 31, 2017.¹⁶ The

¹⁶ *Id.* at 1-2.

Amended Supplemental Application also provides that “if an acceptable offer is forthcoming” then DP&L would transfer and sell its generating assets to a third party as soon as 2014/2015.¹⁷ The Amended Supplemental Application further states that “[r]egardless of the specific timing or mechanics of divestiture, the underlying legal basis supporting the Commission’s Order in DP&L’s ESP case (Case No. 12-426-EL-SSO) outlining the need for DP&L’s Service Stability Rider during the entire term of the ESP remains unchanged.”¹⁸ DP&L argues that because it is not a structurally separated utility, the losses of each company (distribution, transmission, or generation) may adversely affect the entire utility. DP&L further claims that “[g]iven current poor market conditions, DP&L could sustain a serious, continuing financial loss that strongly supports the ongoing need to recover the SSR throughout the term of the ESP.”¹⁹

DP&L’s arguments in the Amended Supplemental Application are the same as the arguments it presented in its Supplemental Application. IEU-Ohio incorporates by reference its comments on the Supplemental Application,²⁰ which demonstrate that the SSR should terminate when DP&L divests its assets.

Additionally, if DP&L truly needs additional cash flow to pay down its debt, it should have decreased the dividend it paid to its parent company, not increased it. In the midst of its recent electric security plan (“ESP”) case where DP&L claimed it needed an additional and non-bypassable revenue stream to secure its financial integrity, DP&L paid \$145 million in dividends (for calendar year 2012) to its parent company.²¹ In

¹⁷ *Id.* at 2, 7.

¹⁸ *Id.* at 10.

¹⁹ *Id.*

²⁰ Comments of Industrial Energy Users-Ohio at 7-8 (Mar. 25, 2014).

²¹ DP&L’s Fourth Supplemental Responses to OCC 1-79 (see Attachment A).

2013, DP&L increased that dividend to \$190 million.²² Instead of sending all of this cash to its sole investor (while claiming it is in a position of severe financial integrity requiring a \$110 million annual bailout from its customers), the prudent thing may be to retain this money and pay down its own debt.

The SSR is an unlawful rider designed to supplement generation-related revenue. Notwithstanding the lack of legal basis for the SSR, the economic justification is also faulty. The inclusion of the SSR continuing after the assets are divested as a term and condition of the Amended Supplemental Application is therefore unjust and unreasonable.

2. DP&L's requests to retain environmental liabilities and for accounting modifications to defer related clean-up costs are unlawful and unreasonable

Just like it did in its prior applications, DP&L also seeks authorization: (1) to retain responsibility for future environmental clean-up costs associated with its "historic ownership of its generation facilities" and "to allow it to seek recovery for prudently incurred environmental clean-up costs for real property that had been used and useful for the production of electricity for the benefit of the customers of DP&L;" and (2) for accounting modifications to permit it to defer the clean-up costs with interest at its cost of debt.²³ In its March 25, 2014 Comments, IEU-Ohio demonstrated that DP&L's request was unlawful and unreasonable, and IEU-Ohio incorporates its prior arguments by reference.

Additionally, as demonstrated in the East Bend Application, buyers are willing to take on the environmental liabilities associated with DP&L's generating assets as part of

²² *Id.*

²³ Amended Supplemental Application at 11-12.

a sale. If buyers are willing to assume responsibility for future environmental liabilities, there is no reason to leave those liabilities with DP&L for eventual recovery from DP&L's customers, even if such a request were lawful.

Accordingly, the Commission should reject DP&L's unlawful and unreasonable request to retain the environmental liabilities associated with its generating assets.

3. DP&L's request to defer OVEC costs is unlawful and unreasonable

Just as it did in its prior applications, in the Amended Supplemental Application DP&L requests authority to retain its contractual rights and obligations under the Inter-Company Power Agreement ("ICPA"), which covers the OVEC generating units. DP&L further requests "accounting authority pursuant to Ohio Rev. Code § 4905.13, to permit DP&L to defer the costs associated with OVEC which are not currently being recovered through DP&L's fuel rider."²⁴ DP&L proposes to accrue carrying costs on these expenses and to collect them from all customers at a date to be determined in another Commission proceeding.²⁵

As previously explained in IEU-Ohio's March 25, 2014 Comments, DP&L's proposal to retain its rights and obligations related to the OVEC generating units are unlawful and unreasonable.²⁶ Further, in discovery responses provided by DP&L since March 25, 2014, DP&L has confirmed that it has made no attempts to actually transfer its rights and obligations related to the OVEC generating units.²⁷ Finally, although DP&L claims that it does not expect to receive consent to transfer the generating units,

²⁴ *Id.* at 14. In discovery, DP&L indicated it was recovering approximately \$2 million per month related to OVEC through its fuel rider. DP&L's Fourth Supplemental Response to OCC 1-30 (see Attachment A).

²⁵ Amended Supplemental Application at 13-14.

²⁶ Comments of Industrial Energy Users-Ohio at 14-18 (Mar. 25, 2014).

²⁷ DP&L's Fourth Supplemental Response to OCC 1-24 (see Attachment A).

DP&L has admitted in discovery that over the last 20 years there have been three transfers of interest in the OVEC generating units that occurred under Section 9.183 of the ICPA.²⁸ Again, Section 9.181 of the ICPA allows a transfer of a sponsoring company's rights and obligations related to the OVEC units with the unanimous consent of the other sponsoring companies.²⁹ Section 9.183 provides a right of first refusal to the other sponsoring companies of OVEC, but does not require the consent of the other parties before the rights and obligations of a sponsoring party may be transferred to a third party.

Despite the fact that the ICPA provides DP&L with the means to transfer its interest in OVEC, DP&L has made no attempts to transfer its interests in OVEC. Instead, DP&L has proposed that its customers bear the cost of its refusal to act. The Commission should not indulge DP&L's request for customers to bear additional unlawful non-bypassable charges—especially when they are related to costs that could be avoided through prudent action.

4. DP&L is seeking to retain debt that may expose customers to unreasonable leverage

Like its prior applications, in the Amended Supplemental Application DP&L has sought authority to retain debt that may expose customers to unreasonable leverage. As explained in IEU-Ohio's March 25, 2014 Comments, DP&L's request is unlawful and unreasonable.

Additionally, since IEU-Ohio filed its March 25, 2014 Comments, DP&L has provided additional clarification through the Amended Supplemental Application and

²⁸ DP&L's Fourth Supplemental Response to OCC 1-33 (see Attachment A).

²⁹ A copy of the ICPA was attached to IEU-Ohio's March 25, 2014 Comments.

discovery responses that further highlight why DP&L's request is unlawful and unreasonable. In the Amended Supplemental Application and in responses to discovery, DP&L has made it clear that the proceeds of any sale of its generating units will not flow directly to DP&L.³⁰ Instead, DP&L states that the assets would first be transferred to DPL, Inc., who would in turn sell the assets to a third party. DPL, Inc. would receive the proceeds of the sale, and at that time DP&L states that it would expect DPL, Inc. to make an equity contribution in DP&L of approximately \$150-\$175 million. Thus, there is no guarantee that the proceeds of a sale of DP&L's generating units will actually be available to pay down any amount of debt at DP&L.

The approval of DP&L's merger was predicated on certain customer protections regarding the retention of a reasonable equity ratio. DP&L now seeks to renege on that commitment. The Commission should not authorize the highly leveraged position that could result from DP&L's proposal.

5. DP&L is seeking authority to unreasonably saddle its customers with the costs of its generation divestiture

DP&L requests authority to recover "all financing costs, redemption costs, amendment fees, investment banking fees, advisor costs, taxes, and related costs that it incurs" in divesting its generating assets.³¹ DP&L estimates that these costs will be up to \$10 million in the case of a transfer of the assets to its affiliates, and up to \$45 million in the case of a sale to a third party.³² DP&L's request is unlawful and unreasonable.

³⁰ DP&L's Supplemental Response to OCC 1-74 (see Attachment A).

³¹ Amended Supplemental Application at 12.

³² *Id.* at 13.

As discussed in IEU-Ohio's March 25, 2014 Comments, DP&L's request to recover generation-related costs from customers is unlawful and unreasonable.³³ Ohio law provides that DP&L's generating business is on its own in the competitive market and DP&L's opportunity to recover any generation-related costs is limited to DP&L's obligation to provide default SSO service to non-shopping customers. Ohio law does not provide DP&L with any authority to recover the costs of transferring its generating units from customers. Accordingly, the Commission should reject this unlawful and unreasonable term and condition of the Amended Supplemental Application.

6. The Commission should deny DP&L's request to waive a hearing

Rule 4901:1-37-09(D), O.A.C., states that when the Commission receives an application seeking approval for the transfer of generation assets, "[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" and may set a hearing if it determines that the application appears unjust, unreasonable, or not in the public interest. In the Amended Supplemental Application, DP&L again requests that the Commission waive the hearing requirement.³⁴

IEU-Ohio has already thoroughly discussed DP&L's request for a waiver of the hearing requirement in IEU-Ohio's March 25, 2014 Comments, the Joint Motion for Hearing, and Joint Reply to the Motion for Hearing, and incorporates its prior arguments by reference. For the reasons previously stated by IEU-Ohio, the Commission should strike the unlawful and unreasonable provisions from the Amended Supplemental

³³ See Comments of Industrial Energy Users-Ohio at 9-12 (Mar. 25, 2014) (there is no lawful basis to establish such a charge under Ohio law).

³⁴ Amended Supplemental Application at 18.

Application or the Commission should set the Amended Supplemental Application for a hearing because, on its face, it is unlawful, unjust, unreasonable, and contrary to the public interest.

IV. CONCLUSION

As discussed herein, and in IEU-Ohio's other pleadings in this matter, DP&L's asset divestiture plans, including the Amended Supplemental Application, all suffer from a lack of detail. Without this detail, it is impossible for the Commission to find that the Amended Supplemental Application is lawful, just, reasonable, and in the public interest. Furthermore, DP&L's Amended Supplemental Application contains various terms and conditions that are unlawful and unreasonable. Because the Amended Supplemental Application is unlawful, unjust, unreasonable, and contrary to the public interest on its face, the Commission should set the matter for a hearing and direct DP&L to file testimony supporting the Amended Supplemental Application.

Respectfully submitted,

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ATTACHMENT A

INT-79. Please identify all dividends paid by DP&L to its parent companies, DPL Inc. or AES, during 2013 and 2014 to date.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (no hearing set), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. Subject to all objections, DP&L states that it paid dividends to DPL Inc. in 2012, 2013 and YTD March 2014, as follows:

2012:	\$145 million
2013:	\$190 million
YTD March 2014:	\$0

DP&L did not pay dividends to AES in 2012, 2013 or YTD March 2014.

INT-30. Please identify the OVEC costs that DP&L is currently recovering through its Fuel Rider, including the account number, the amount, a description of the charges, and who pays the charges.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (no hearing set), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. Subject to all objections, DP&L states that the Fuel Rider recovers OVEC costs from standard service offer customers that are recorded in purchase power FERC account 555. The costs recovered so far in 2014:

January = \$2,292,567.60
February = \$2,036,514.01
March = \$2,121,858.57
April = \$1,682,512.00

INT-24. Please identify all efforts DP&L/AES has taken to obtain consent from other OVEC members to allow it to transfer its ownership in OVEC to a third party or one of its affiliates.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (no hearing set), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. Subject to all objections, DP&L states none.

INT-33. Regarding OVEC Sponsoring Companies being unable to obtain the necessary consents from other OVEC members to allow a member to transfer its ownership interest in OVEC to a stand-alone GenCo.;

- a) Did DP&L withhold its consent pertaining to AEP Ohio's request to transfer its contractual commitments to AEP Generation?
- b) Is DP&L aware of which sponsoring companies withheld consent?
- c) If the response to (b) is affirmative, please identify those companies.
- d) Other than AEP, has DP&L been requested by any OVEC member to consent to allow a member to transfer its ownership interest in OVEC to a stand-alone GenCo;
- e) If response to (d) is affirmative, has DP&L ever granted consent;
- f) If response to (e) is affirmative, what member(s) has DP&L granted consent;
- g) Has DP&L ever been requested by any OVEC member to consent to allow a member to transfer its ownership interest in OVEC to an affiliate of that member;
- h) If the response to (g) is affirmative, did DP&L grant its consent?

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (no hearing set), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In

addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. Subject to all objections, in response to questions (a) and (b), DP&L states that DP&L did not develop a position with regard to the transfer of AEP's share of OVEC, and is not aware of which sponsoring companies withheld their consent. In response to question (c), DP&L states N/A. In response to questions (d) through (h), DP&L states OVEC's corporate existence dates back to its formation in 1952, and DP&L's records are incomplete over that period.

With respect to questions (d), (e), and (f) relating to sales to stand-alone generators, DP&L states that, to the best of its recollection, there have been three sales to non-affiliates that have occurred with respect to OVEC interests in the last 20 years. The three sales were from Allegheny Energy to Buckeye Power Generating (See FERC Docket EC04-135); from FirstEnergy to Buckeye Power Generating (see FERC Docket No. EC09-51) and from FirstEnergy to Peninsula Generation Cooperative, an affiliate of Wolverine Power (see FERC Docket No. EC11-10). On information and belief, each sale went through the right of first refusal process set forth in the Inter-Company Power Agreement ("ICPA"), section 9.183, and each purchaser had the requisite credit rating that permitted the transaction to take place under section 9.183. DP&L and the other Sponsoring Companies did consent to a waiver of certain aspects of that section 9.183 process for the 2004 transaction between Allegheny Energy and Buckeye Power.

In response to questions (g) and (h) relating to transfers to affiliates, a comparison of the signatories to early agreements to the current list of owners indicates that there have been transfers of interests within and among subsidiaries of the companies now known as AEP, Duke FirstEnergy as the result of prior reorganizations and acquisitions. DP&L believes, but in the

absence of records cannot state with certainty, that at the time of these earlier transfers of interests, each of the transferees was a "Permitted Assignee" as defined in the ICPA and the transfers took place pursuant to section 9.182 and without the need for an approval by DP&L or the other Sponsoring Companies.

INT-74. Will DP&L receive all the proceeds of the sale? If not, please explain.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (no hearing set), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time. Subject to all objections, DP&L clarifies it will not receive the sale proceeds. In its Amended Supplemental Application, DP&L states that "in the event that the Company executes a sale of the generation portfolio (the "Sale") as early as 2014/2015 then; (1) immediately prior to the closing of the Sale, DP&L will transfer specified generation assets and liabilities of DP&L's electric generation business (the "Asset Transfer") to a newly-formed Delaware limited liability company, GenCo subsidiary, pursuant to an Asset Contribution Agreement and, (2) immediately following the Asset Transfer, DP&L will distribute all of its interests in GenCo subsidiary to DPL Inc. The contract for the sale of the assets would be between DPL Inc., and a prospective buyer." As the selling entity DPL, Inc will receive the sales proceeds; however as included in DP&L's Amended Supplemental Application, DPL will make a capital contribution in DP&L at the time of sale of at least \$150-\$175 million. Additional information regarding the possible sale of DP&L's generation assets to a third party is included in DP&L's Amended Supplemental Application.

CERTIFICATE OF SERVICE

In Accordance with Rule 4901-1-05, Ohio Administrative Code, "The PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties." In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio's Comments on The Dayton Power and Light Company's Amended Supplemental Application* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 30th day of June 2014, via electronic transmission.

/s/ Matthew R. Pritchard

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