

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**COMMENTS OF THE OMA ENERGY GROUP**

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**I. INTRODUCTION**

On September 4, 2013, the Public Utilities Commission of Ohio (“Commission”) issued an Opinion and Order in Case Number 12-0426-EL-SSO (“ESP Proceeding”) which, in pertinent part, ordered the Dayton Power and Light Company (“DP&L”) to file an application by December 31, 2013 relating to its plan to divest its generation assets. On December 30, 2013, DP&L submitted an application for authority to transfer or sell its generation assets and to waive certain filing requirements (“Application”). The attorney examiner subsequently established a February 4, 2014 deadline for the filing of initial comments on the Application.

On January 30, 2014, the Ohio Manufacturers’ Association Energy Group (“OMAEG”) filed a motion to intervene in this proceeding. OMAEG subsequently submitted initial comments on February 4, 2014. In its initial comments, OMAEG argued that the lack of information present in DP&L’s Application made it difficult for OMAEG to issue substantive comments at that time.

On February 25, 2014, DP&L filed a supplemental application to transfer or sell its generation assets (“Supplemental Application”). The attorney examiner subsequently established a March 25, 2014 deadline for purposes of filing comments on the Supplemental

Application. OMAEG submitted comments on March 25, 2014, again arguing that the Supplemental Application lacked information sufficient for OMAEG to issue substantive comments and that DP&L's request to maintain responsibility for future environmental liabilities associated with its historic ownership of generation facilities should be denied.

On May 23, 2014, DP&L filed an amended supplemental application to transfer or sell its generation assets ("Amended Supplemental Application"). The attorney examiner subsequently established a June 30, 2014 deadline for purposes of filing comments on the Amended Supplemental Application. OMAEG hereby submits its comments on the Amended Supplemental Application.

## **II. COMMENTS**

First, DP&L's proposal to transfer its generation assets to an affiliate on or before May 31, 2017 does not comply with the Commission's June 4, 2014 Entry on Rehearing in its ESP Proceeding. The Entry on Rehearing ruled on DP&L's Application for Rehearing which requested, in part, that the Commission reconsider its decision to accelerate DP&L's transfer date to January 1, 2016 and to reinstate its May 31, 2017 deadline.<sup>1</sup> In drafting its Amended Supplemental Application, DP&L apparently assumed that its Application for Rehearing would be granted and the transfer date of May 31, 2017 would be reinstated. However, in the Commission's June 4, 2014 Entry on Rehearing in the ESP Proceeding, the Commission established a transfer date for DP&L of no later than January 1, 2017. Accordingly, DP&L's proposal to transfer its generation assets by no later than May 31, 2017 is inconsistent with the Commission's order and DP&L must transfer or sell its generation assets by no later than January 1, 2017.

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<sup>1</sup> See *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-0462-EL-SSO, Fourth Entry on Rehearing at 4-6 (June 4, 2014).

Further, DP&L has once again failed to provide sufficient information in its Amended Supplemental Application as required by the PUCO's rules,<sup>2</sup> and which would allow substantive comments on its proposal. The Amended Supplemental Application still proposes two distinct options for transfer. DP&L proposes to either "(1) transfer its generation assets to an affiliate ('Track1'); or (2) if an acceptable offer is forthcoming, then to transfer its generation assets to an affiliate, which would then sell those assets to the third party ('Track 2')." <sup>3</sup> While DP&L provides additional information regarding its reduction of debt and release of its First Mortgage Bond, DP&L has still failed to provide sufficient information to allow substantive comments.

Similar to its Supplemental Application, DP&L has failed to identify when it will sell its assets, the proposed sale price, to whom the assets will be transferred, whether debt will transfer with the assets, the amount of debt which may be transferred with the assets, when DP&L will provide other essential information about this transaction, refinancing costs associated with the transfer of the generation assets, the potential impact on DP&L if the generation assets are transferred in a restructuring completed through a distribution and contribution of the assets to an unregulated affiliate, the affect of the sale or transfer on the standard service offer,<sup>4</sup> and any mechanisms that may be available to provide increased flexibility in the transaction, such as a prohibition on DP&L paying dividends to DPL, Inc.<sup>5</sup> As such, the Amended Supplemental Application still shows an unresolved state of affairs associated with DP&L's transfer or sale of its generation assets which prevents interested parties from properly evaluating and commenting upon DP&L's Amended Supplemental Application. Given the lack of information, interested

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<sup>2</sup> See Rule 4901:1-37-19(c)(1), OAC.

<sup>3</sup> See *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, Amended Supplemental Application at 2 (May 23, 2014).

<sup>4</sup> See Rule 4901:1-37-09(c)(2), O.A.C.

<sup>5</sup> Staff Comments at 2 (March 25, 2014); Industrial Energy Users-Ohio Comments at 4-5 (March 25, 2014); FirstEnergy Solutions Corp. Comments at 6-8 (March 25, 2014).

parties cannot effectively protect their interests by analyzing the comprehensive effects of DP&L's plan or potential plans to transfer its generation assets. The parties likewise cannot offer meaningful comments on all aspects of the plan at this time, as the plan still appears to be in a state of limbo.

Further, the Amended Supplemental Application fails to address a number of issues raised by intervening parties through previous comments regarding the Supplemental Application. Specifically, DP&L does not offer anything new with respect to its retention of responsibility for future environmental liabilities. Although a number of intervenors, including OMAEG, Staff, Industrial Energy Users-Ohio, Ohio Energy Group, AEP Generation Resources Inc., and Ohio Partners for Affordable Energy, stated in their comments to the Supplemental Application that DP&L should not be allowed to retain environmental liabilities after the transfer of its generation assets, DP&L included nearly the exact same language regarding the environmental liabilities in its Amended Supplemental Application. DP&L failed to provide any additional information to support its position that it should be allowed to retain responsibility for environmental liabilities after the sale or transfer of its generation assets. OMAEG's position regarding environmental liabilities remains the same: DP&L does not have a legal right to retain these liabilities after the transfer or sale of its generation assets. Accordingly, OMAEG incorporates by reference herein its comments on DP&L's Supplemental Application regarding DP&L's request to retain environmental liabilities after the transfer or sale of its generation assets.

### **III. CONCLUSION**

Despite the utility's attempt in its pleading to supply additional information, DP&L's Amended Supplemental Application still fails to provide a sufficiently detailed and specific plan

for its transfer or sale of assets as required by the Commission's rules and interested parties are still unable to analyze the plan and its possible outcomes in a fully-informed manner. Accordingly, OMAEG requests that the Commission deny DP&L's Amended Supplemental Application in its entirety as incomplete. Alternatively, OMAEG requests the opportunity to file substantive comments subsequent to DP&L revising, with certain, detailed information on its plan to sell or transfer its generation assets, its Amended Supplemental Application.

In any event, the Commission should deny as unlawful DP&L's request to retain responsibility for future environmental liabilities associated with its historic ownership of generation facilities. Additionally, without a complete, firm, and detailed plan, and without the appropriate analysis of such and its impact on customers, DP&L's requests for waivers of certain rules and a waiver of the hearing should be denied.

Respectfully submitted,



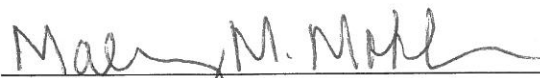
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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on June 30, 2014.

  
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