

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Dayton Power and Light : Case No. 14-1084-EL-UNC
Company's Planned Sale of East Bend Unit 2 :
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**NOTICE BY APPLICANT THE DAYTON POWER AND LIGHT COMPANY OF
APPROVAL BY THE FEDERAL ENERGY REGULATORY COMMISSION**

On July 16, 2014, the Federal Energy Regulatory Commission authorized the acquisition by Duke Energy Kentucky, Inc. of the interest held by The Dayton Power and Light Company in the East Bend Unit 2 generating facility. A copy of the Order Authorizing Acquisition of Generating Facilities, Docket No. EC14-103-000, is attached as Exhibit A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice by Applicant The Dayton Power and Light Company of Approval by the Federal Energy Regulatory Commission has been served via electronic mail upon the following counsel of record, this 23rd day of July, 2014:

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148 FERC ¶ 62,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Kentucky, Inc.

Docket No. EC14-103-000

ORDER AUTHORIZING ACQUISITION OF
GENERATING FACILITIES

(Issued July 16, 2014)

On June 16, 2014, Duke Energy Kentucky, Inc. (Duke Kentucky or Applicant) filed an application pursuant to 203(a)(1)(D) of the Federal Power Act (FPA)¹ requesting Commission authorization for the acquisition by Duke Kentucky of the interest held by The Dayton Power and Light Company (Dayton) in the East Bend Unit 2 generating facility (East Bend Unit 2) (Transaction).

Applicant states that Duke Kentucky is a direct subsidiary of Duke Energy Ohio, Inc., and a wholly-owned, indirect subsidiary of Duke Energy Corporation (Duke Energy). Duke Kentucky is affiliated with five Duke Energy subsidiaries that are electric utility operating companies: Duke Energy Carolinas, LLC, Duke Energy Progress, Inc., Duke Energy Florida, Inc., Duke Energy Indiana, Inc., and Duke Energy Ohio, Inc. According to Applicant, Duke Kentucky also is affiliated with generating companies that own and operate gas-fired plants in Ohio, Pennsylvania, Illinois, and Indiana, and with subsidiaries of Duke Energy Renewables, Inc. that develop, own, and operate wind and solar projects throughout the country.

Applicant states that Duke Kentucky operates in northern Kentucky, and its principal lines of business include generation, transmission, distribution and sale of electricity, and the sale and transportation of natural gas. It serves approximately 140,000 retail electric customers, but has no wholesale requirements customers. Duke Kentucky operates approximately 1,039 megawatts (MW) of generating facilities, and about 107 circuit miles of transmission lines and 2,134 miles of distribution lines. Duke Kentucky's retail electric operations are subject to the jurisdiction of the Kentucky Public Service Commission, and Duke Kentucky's wholesale sales and transmission operations are subject to the Commission's jurisdiction. Duke Kentucky has Commission-granted authorization to sell wholesale power at market-based rates. Applicant submits that Duke Kentucky's transmission facilities are subject to the functional control of PJM

¹ 16 U.S.C. § 824b (2012).

Interconnection, L.L.C. (PJM). Duke Kentucky also provides natural gas services to approximately 100,000 retail customers in northern Kentucky.

Applicant states that Dayton, an Ohio corporation, is a subsidiary of DPL Inc., which in turn is a subsidiary of The AES Corporation. Dayton operates within the geographic footprint of PJM. Dayton provides electric distribution services to more than 500,000 retail customers in the Dayton, Ohio area in west central Ohio, subject to the jurisdiction of the Public Utilities Commission of Ohio. Dayton owns or controls approximately 3,304 MW of electric generating capacity, which includes about 2,586 MW of undivided ownership interests in co-owned generating facilities such as East Bend Unit 2. According to Applicant, Dayton has received Commission authorization to make wholesale sales of electric energy at market based rates, and does not have any captive or bundled wholesale customers.

Applicant states that East Bend Unit 2 is a 600 MW coal-fired generating unit. The unit, located in Kentucky, is owned 69 percent by Duke Kentucky and 31 percent by Dayton. Duke Kentucky serves as the operator of the unit pursuant to the East Bend Unit 2 Operation Agreement.

Applicant states that, on May 15, 2014, Duke Kentucky and Dayton entered into the Purchase and Sale Agreement (Agreement), pursuant to which they agreed that Dayton would sell, and Duke Kentucky would purchase, Dayton's 31 percent interest in East Bend Unit 2, which includes, among other things, Dayton's rights to and interests in (i) tangible assets located at the plant or primarily used in the operation of the plant (including equipment, motor vehicles, tools, parts and fuel and other inventory), (ii) real property, buildings, improvements, fixtures, and leasehold interests relating to the plant, (iii) emissions allowances, (iv) rights under various contracts related to the plant, permits, and (v) books and records associated with East Bend (collectively, East Bend Facilities). The Agreement also provides for Duke Kentucky to assume certain present and future liabilities, including environmental liabilities arising from or related to the operation or retirement of the East Bend Facilities. The Agreement further provides that, following closing, Duke Kentucky will acquire all rights or interests in the electricity generated at the plant, including any and all of PJM's Reliability Pricing Model capacity revenues with respect to such generation. Applicant submits that the Transaction includes a negotiated purchase price, subject to certain customary post-closing adjustments.

Applicant notes that the sale of East Bend Unit 2 does not include the transfer of any interconnection facilities, such as generator leads or step-up transformers, which the Commission classifies as transmission facilities for the purposes of its analysis under FPA section 203. Applicant states that Duke Kentucky has and will continue to own and operate East Bend Unit 2's interconnection facilities.

Applicant states that the Transaction is consistent with the public interest because

it will have no adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

Applicant states that the Transaction will not have an adverse effect on horizontal competition in PJM. Applicants submit that PJM is the only market relevant to the Transaction because East Bend Unit 2 is located in PJM and there is no overlap in generation ownership between Duke Kentucky and its affiliates (Duke Energy PJM Companies) and Dayton and its affiliates in any other market that is affected by the Transaction. Applicants continue that the amount of capacity that Duke Kentucky will acquire under the Transaction represents 0.1 percent of the installed capacity in PJM, and the Duke Energy PJM Companies' post-Transaction share of the total installed capacity in PJM will equal approximately 4.57 percent. Applicant submits that the transfer of 0.1 percent of the installed capacity in PJM generates a *de minimis* Herfindahl-Hirschman Index change of roughly 0.45 points.²

Applicant states that Transaction will not have an adverse impact on vertical competition because the Transaction does not involve any electric transmission facilities, including the limited interconnection facilities that connect East Bend Unit 2 to the grid. In addition, Duke Kentucky has turned over operational control of its transmission facilities to PJM, and wholesale transmission service over such facilities will continue to be provided pursuant to the rates and terms of the PJM Open Access Transmission Tariff (PJM OATT) on file with the Commission, mitigating vertical market power concerns.

Applicant states that the Transaction will have no adverse effect on rates, because Duke Kentucky does not have any wholesale requirements customers that take service under formula rate arrangements. As to transmission rates, no transmission facilities that are part of the bulk transmission system or included in transmission ratebase will be transferred to Duke Kentucky. Therefore, Applicant submits that the Transaction will not cause Duke Kentucky to incur additional transmission costs that will flow through to customers under the PJM OATT.

In any event, Duke Kentucky commits to holding wholesale power and transmission customers harmless from any transaction costs related to the Transaction for a period of five years following the closing date of the Transaction. Applicant's

² Applicant uses capacity numbers for Duke Energy PJM Companies from Duke Energy's Northeast Region triennial update, filed on January 17, 2014, in Docket No. ER14-1076, which was accepted for filing on May 27, 2014. Likewise, Applicant uses capacity numbers from the AES Corporation's Northeast triennial update, filed on December 26, 2013, in Docket No. ER10-3145, which was accepted for filing on April 8, 2014.

commitment is interpreted to include all transaction-related costs, not only costs related to consummating the transaction.³ The Commission will be able to monitor the Applicant's hold harmless provision under its authority under section 301(c) of the FPA and the books and records provision of PUHCA 2005, and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.⁴

If Applicant seeks to recover transaction-related costs through their wholesale power or transmission rates they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If Applicant seeks to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as in the instant 203 docket. In this case the filing would be a compliance filing in both the section 203 and section 205 dockets. If Applicant seeks to recover transaction-related costs in a filing whereby they are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* section 205 docket as well as in the instant section 203 docket. In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket. The Commission will notice such filings for public comment. In such filings, Applicant must: (1) specifically identify the transaction-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Transaction, in addition to any requirements associated with filings made under section 205.⁵ Such a hold harmless commitment will protect customers' wholesale power and transmission rates from being adversely affected by the Transaction.

Applicant states that the Transaction will not have an adverse impact on regulation, at either the federal or state level. The Transaction will not diminish the Commission's regulatory authority. Duke Kentucky and Dayton each will remain a "public utility" as defined in FPA Section 201(e) and will continue to be subject to the Commission's jurisdiction under the FPA. Further, the Commission will continue to have jurisdiction over wholesale sales from East Bend Unit 2 after the Transaction closes. Accordingly, Applicant submits that the Transaction will have no adverse effect on federal regulation.

³ *PPL Corporation and E.ON U.S. LLC*, 133 FERC ¶ 61,083 (2010).

⁴ *PPL Corporation and E.ON U.S. LLC*, 133 FERC ¶ 61,083 (2010), *ITC Midwest LLC and Northern States Power Company*, 133 FERC ¶ 61,169 (2010), and *BHE Holdings Inc. and Main & Maritimes Corporation*, 133 FERC ¶ 61,231 (2010).

⁵ *Id.*

Applicant states that the Transaction also will not adversely affect state regulation. After the Transaction closes, Duke Kentucky and Dayton will continue to be subject to regulation by their respective state public utility commissions. Accordingly, the Transaction will have no adverse effect on state regulation.

With respect to cross-subsidization, Applicant states that, based on facts and circumstances known to them or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns, or provides transmission service over, jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on June 17, 2014, with comments, protests or interventions due on or before July 7, 2014. Dayton filed a timely motion to intervene with comments in support of the Transaction. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214)(2013)³ Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁶ The foregoing authorization may result in a change in status. Accordingly, Applicant is advised that it must comply with the requirements of Order No. 652. In addition, Applicant shall make appropriate filings under section 205 of the FPA, to implement the

⁶ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

Transaction.

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to the information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc. must comply with all applicable reliability and cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

After consideration, it is concluded that the Transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

- (1) The Transaction is authorized upon the terms and conditions described in this Order and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;
- (5) If the Transaction results in changes in the status or the upstream ownership of Applicant's affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2013) shall be made;
- (6) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) Duke Kentucky shall account for the Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Duke Kentucky shall submit

its final accounting entries within six months of the date that the Transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

- (8) Applicant must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Transaction; and
- (9) Applicant shall notify the Commission within 10 days of the date that the Transaction has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation – West under 18 C.F.R. § 375.307(2013). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713(2013).

Steve P. Rodgers
Director
Division of Electric Power Regulation - West

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Case No(s). 14-1084-EL-UNC

Summary: Notice by Applicant The Dayton Power and Light Company of Approval by the Federal Energy Regulatory Commission electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company