

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
The Dayton Power and Light Company ) Case No. 14-1084-EL-UNC  
for Authority to Sell its Interest in East )  
Bend Unit 2. )

FINDING AND ORDER

The Commission finds:

- (1) The Dayton Power and Light Company (DP&L) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.
- (2) On September 4, 2013, the Commission issued its Opinion and Order in Case No. 12-426-EL-SSO, et al., authorizing DP&L to establish its second electric security plan (ESP), as modified by the Commission. Subsequently, on September 6, 2014, the Commission issued an Entry Nunc Pro Tunc modifying the Order. The Commission's Order directed DP&L to divest its generation assets by December 31, 2016. *In re The Dayton Power and Light Company*, Case No. 12-426-EL-SSO, et al., (*ESP II*), Opinion and Order (Sept. 4, 2013) at 16.
- (3) On March 19, 2014, the Commission issued an Entry on Rehearing in *ESP II* directing DP&L to divest its generation assets by January 1, 2016. *ESP II*, Second Entry on Rehearing (March 19, 2014) at 31. However, on June 4, 2014, the Commission issued a subsequent Entry on Rehearing modifying the date for DP&L to divest its generation assets to January 1, 2017. *ESP II*, Fourth Entry on Rehearing (June 4, 2014) at 5.
- (4) Pursuant to the Commission's order in *ESP II* for DP&L to divest its generation assets, DP&L filed an application on June 13, 2014, for authority to sell its interest in the East Bend Unit 2 (East Bend) generation asset. In its application, DP&L requests that the Commission initiate expedited proceedings, including waiver of any otherwise applicable

public or evidentiary hearing process, and establish an accelerated procedural schedule with a comment and reply comment period.

- (5) On June 20, 2014, the attorney examiner issued an Entry establishing a procedural schedule in this matter with a request for comments and reply comments on DP&L's application. Subsequently, on July 17, 2014, the attorney examiner granted a motion filed by Staff for additional time to file comments and reply comments. Comments were filed in this case by Industrial Energy Users - Ohio (IEU-Ohio) and the Ohio Consumers' Counsel (OCC). Reply comments were filed by DP&L and Staff.
- (6) On July 23, 2014, DP&L filed a notice in this case indicating that the Federal Energy Regulatory Commission (FERC) had authorized the acquisition by Duke Energy Kentucky, Inc. (DEK) of the interest held by DP&L in East Bend. FERC's authorization of the acquisition of East Bend can be found in FERC Docket No. EC14-103-000.

#### Procedural Matters

- (7) In its application, DP&L requests that the Commission waive a hearing under Ohio Adm.Code 4901:1-37-09(D). DP&L asserts that the Commission should grant DP&L's waiver request because a comment process, along with Staff's evaluation, is sufficient for the Commission to evaluate the proposed transfer expeditiously. Further, DP&L asserts that waiving a hearing in this matter would be consistent with the Commission's Order in AEP's and Duke's generation asset transfer cases, in which no hearings were required. *AEP Corporate Separation*, Opinion and Order (Oct. 17, 2012) at 11; *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (Nov. 22, 2011) at 46. Staff agrees with DP&L that a hearing is not necessary in this proceeding. (DP&L App. at 4-5; Staff Reply at 2.)

IEU-Ohio argues that the Commission should either reject DP&L's application outright or deny DP&L's waiver

request and set this matter for hearing. However, OCC argues that DP&L's waiver request should be rejected only if DP&L maintains its request to recover transaction costs from customers. (IEU-Ohio Comments at 1, 7; OCC Comments at 7-8.)

- (8) The Commission finds that DP&L's request for waiver of Ohio Adm.Code 4901:1-37-09(D) is reasonable and should be granted. The Commission finds that a hearing is not necessary in this matter and that DP&L has shown good cause for a waiver of the rule. DP&L has provided all of the necessary information for us to evaluate the proposed sale of East Bend to DEK. We note that DP&L has agreed not to recover transaction costs related to the sale of its ownership interest in East Bend. Therefore, there are no remaining issues to be addressed pursuant to a hearing in this matter.
- (9) Additionally, we find that DP&L should file in this case a notice informing the Commission of the details of the sale within five days of the closing, as well as notice informing the Commission of final settlement of post-closing costs within 90 days of the closing.

#### Comments

- (10) IEU-Ohio and OCC argue that DP&L's application is unjust, unlawful, unreasonable, or not in the public interest because DP&L requested in the application to collect all of its transaction costs associated with the sale of East Bend. IEU-Ohio asserts that the Commission held in AEP's corporate separation case that generation-related costs associated with complying with Ohio's corporate separation law are not recoverable from an electric distribution utility's (EDU's) distribution customers. *In re Ohio Power Company*, Case No. 12-1126-EL-UNC, (AEP Corporate Separation), Opinion and Order (Oct. 17, 2012) at 17. OCC states that its only objection to DP&L's application is DP&L's proposal to charge customers for transaction costs associated with the sale of its interest in

East Bend. (IEU-Ohio Comments at 2-4; OCC Comments at 9.)

Staff asserts in its reply comments that DP&L has indicated that it is no longer seeking recovery of transaction costs. However, Staff requests that the Commission formally reject DP&L's request for recovery of any transaction or financing costs from DP&L customers. (Staff Reply at 2.)

DP&L asserts in its reply comments that it formally withdraws its request to recover any financing costs, redemption costs, amendment fees, investment banking fees, advisor costs, taxes, and other related costs that DP&L incurs in the sale of its ownership interest in East Bend. (DP&L Reply at 1-2.)

- (11) The Commission finds that the issue raised by IEU-Ohio and OCC regarding transaction costs is now moot. We accept DP&L's withdrawal of its request to recover any financing costs, redemption costs, amendment fees, investment banking fees, advisor costs, taxes, and other related costs that DP&L incurs in the sale of its interest in East Bend. Accordingly, DP&L is not authorized to recover these costs from customers.
- (12) IEU-Ohio argues that DP&L's application is unjust, unreasonable, and not in the public interest because it fails to hold its customers harmless from the debts and liabilities related to East Bend. IEU-Ohio asserts that the Purchase and Sale Agreement indicates that DP&L will retain an unquantified amount of indebtedness associated with its East Bend ownership interest. Further, IEU-Ohio avers that the application does not address other debt associated with DP&L's ownership interest in East Bend. Specifically, IEU-Ohio asserts that pollution control revenue bonds (PCRBs) related to East Bend may remain on DP&L's books. (IEU-Ohio Comments at 4-6.)

DP&L argues in its reply comments that IEU-Ohio's argument lacks merit. DP&L asserts that retention of PCRBs related to East Bend is reasonable because the

transaction was freely negotiated at arm's-length. DP&L asserts that the transaction would provide DP&L with consideration in addition to the purchase price of East Bend; specifically, DEK would assume various liabilities, and the transaction would eliminate East Bend as a source of negative financial performance for DP&L. DP&L notes that the liabilities that DEK would assume include environmental liabilities. (DP&L Reply at 2-3.)

Additionally, DP&L argues that it could not transfer PCRBs related to East Bend to DEK even if DEK agreed to assume it. DP&L avers that the debt at issue, which is approximately \$35 million in PCRBs issued in 1979, has always been an indirect obligation by DP&L. DP&L asserts that the bonds are backed by DP&L's First Mortgage Bonds and are serviced by consolidated cash flows from DP&L. The bonds were not issued against the sole and undivided credit of East Bend. Finally, DP&L argues that even if it could transfer the PCRBs, such a transfer would require a reduction in purchase price, which would not place DP&L or its customers in a better position. (DP&L Reply at 2-3.)

- (13) The Commission finds that the debt of approximately \$35 million from PCRBs issued in 1979 may remain with DP&L and will be included in DP&L's total debt for purposes of complying with the capital structure requirements ordered by the Commission in DP&L's generation asset divestiture proceeding. *In re The Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC, Finding and Order (Sept. 17, 2014) at 16-19. We find that DP&L has demonstrated that this debt is and always has been an indirect obligation of DP&L. This debt was not issued against the sole and undivided credit of East Bend; therefore, in this case, the debt is not required to transfer with DP&L's ownership interest in East Bend. Further, we agree with DP&L that even if it were capable of transferring this debt, it would provide no financial benefit to customers or DP&L because it would likely result in an adjustment to the purchase price of the asset.

- (14) IEU-Ohio argues that DP&L failed to demonstrate how its *application will affect the current and future standard service offer (SSO) price or how it is in the public interest.* IEU-Ohio notes that pursuant to Ohio Adm.Code 4901:1-37-09, DP&L must demonstrate how the proposed sale will affect the SSO and the public interest. IEU-Ohio avers that by stating that the application will not have a material effect on the SSO, DP&L implies that it will have some effect. (IEU-Ohio at 6-7.)

On reply, DP&L argues that the application will not have a material effect on the terms and conditions under which it will provide SSO service. DP&L notes that its ownership interest in East Bend comprises only approximately 7 percent of DP&L's total generating capacity. Further, DP&L notes that the Commission ordered it to divest its generation assets, and by doing so the Commission *implicitly confirmed that divestiture is in the public interest.* (DP&L Reply at 3-4.)

- (15) The Commission finds that DP&L has complied with Ohio Adm.Code 4901:1-37-09 by demonstrating that the sale of East Bend to DEK will not have a material affect on SSO service and is in the public interest. We found in the *ESP II* proceeding that the divestiture of DP&L's generating assets is a qualitative benefit of the ESP and that divestiture will result in the implementation of a fully competitive retail market in DP&L's service territory in accordance with R.C. 4928.02(B) and (C). *ESP II*, Opinion and Order (Sept. 4, 2013) at 51. This move to a fully competitive retail market serves the public interest by aligning the rates paid by SSO customers with the retail market. Accordingly, we find that DP&L's sale of its interest in East Bend will not materially affect the SSO and is in the public interest.

It is, therefore,

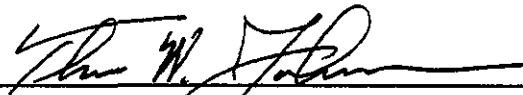
ORDERED, That DP&L's application to sell its interest in East Bend Unit 2 to Duke Energy Kentucky, Inc. be approved. It is, further,

ORDERED, That DP&L's motion for waiver of Ohio Adm.Code 4901:1-37-09 be granted. It is, further,

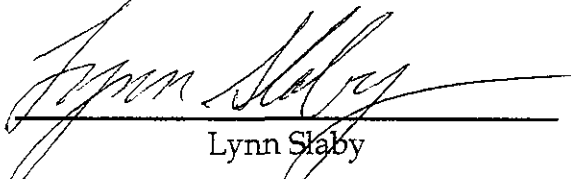
ORDERED, That DP&L inform the Commission of the details of the transaction within five days of the closing and the final settlement of post-closing costs within 90 days of the closing. It is, further

ORDERED, That a copy of this Finding and Order be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Thomas W. Johnson, Chairman

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Steven D. Lesser

  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

BAM/GAP/sc

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**SEP 17 2014**

  
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Barcy F. McNeal  
Secretary