

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of : Case No. 16-0395-EL-SSO
The Dayton Power and Light Company for
Approval of Its Electric Security Plan :

In the Matter of the Application of : Case No. 16-0396-EL-ATA
The Dayton Power and Light Company for
Approval of Revised Tariffs :

In the Matter of the Application of : Case No. 16-0397-EL-AAM
The Dayton Power and Light Company for
Approval of Certain Accounting Authority :
Pursuant to Ohio Rev. Code § 4905.13

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM
IN OPPOSITION TO MOTION TO INTERVENE AND
REQUEST FOR LEAVE TO FILE MOTION TO INTERVENE
OUT OF TIME OF MURRAY ENERGY CORPORATION**

The Commission should reject the untimely attempt by Murray Energy Corporation ("Murray Energy") to inject itself into this proceeding¹ because it fails to show either good cause or extraordinary circumstances to justify its last minute intervention. Ohio Rev. Code § 4903.221; Ohio Admin. Code § 4901-1-11. Murray Energy has been on notice for nearly a year that its stated interest in this proceeding – the continued operation of Killen and Stuart Stations (pp. 10-11) – was at risk. Nevertheless, it sat back while The Dayton Power and Light Company ("DP&L") and a diverse group of experienced parties spent months negotiating the January 30, 2017 Stipulation and Recommendation ("Stipulation"), which (a) does not provide for the closure of either plant, and (b) will be considered at an evidentiary hearing in two

¹ Feb. 13, 2017 Murray Energy Corporation's Motion to Intervene and Memorandum in Support ("Motion to Intervene").

weeks. This last minute attempt to intervene threatens to prolong and delay these proceedings unnecessarily and should not be permitted.

I. MURRAY ENERGY HAS BEEN ON NOTICE FOR NEARLY A YEAR THAT THE CONTINUED OPERATION OF KILLEN AND STUART STATIONS WAS AT RISK

On February 22, 2016, DP&L commenced this proceeding and proposed the Reliable Electricity Rider ("RER") to support various coal-fired generating facilities, including Killen and Stuart Stations.² DP&L stated that those plants were "at risk of closure" due to "adverse conditions in the energy and capacity markets, and a series of new and upcoming environmental regulations." Application, p. 1. It further stated that the RER was designed to "contribute to the economic sustainability" of the plants. *Id.* at 4. Accord: Feb. 22, 2016 Testimony of Craig L. Jackson, p. 14 ("Without the RER, there are simply not enough financial resources to invest at a level necessary to optimally maintain the Coal Plants in the short-term"). Thus, DP&L was forthcoming that the viability of those plants was at issue.

That issue was even more apparent when Sierra Club moved to intervene and challenge DP&L's reliance on coal plants. Apr. 6, 2016 Motion to Intervene by Sierra Club. Opposing the RER, Sierra Club argued:

"DP&L is proposing a 'Reliable Electricity Rider' to cover the net costs of its ownership share of six coal-fired generation facilities that will soon be owned by its affiliate. If approved, this rider would subsidize the continued operation of these generation plants for ten years. Absent such subsidy, these plants may not be economically viable. Sierra Club's interest in reducing reliance on coal-fired generation would, therefore, be directly and adversely impacted if the Company's proposal were approved."

² Feb. 22, 2016 Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan ("Application").

Id. at 5 (citations omitted) (emphasis).³

On September 23, 2016, DP&L withdrew its RER proposal⁴ and later filed an Amended Application proposing an alternative Distribution Modernization Rider ("DMR").⁵ Sierra Club challenged the Amended Application, submitting testimony that DP&L "is planning to invest significant capital in these [coal-fired] assets" and the DMR should not be approved without a plan "to reduce . . . reliance" on those units. Nov. 11, 2016 Direct Testimony of Tyler Comings, p. 3. Again, the continued operations of Killen and Stuart Stations was at risk.

At about the same time, the parties began extensive settlement negotiations. During those talks, DP&L publicly stated that as part of this proceeding, "the company is involved in ongoing discussions to find sustainable solutions to market-driven challenges," and that "[i]n some of these discussions, various parties to the ESP case have raised the subject of the closure of Killen and Stuart Stations." Nov. 17, 2016 "DP&L considering closure of two plants," Dayton Daily News (attached as Exhibit A).

The negotiations culminated in the Stipulation, which provides that "[a]ssuming FERC approval, DP&L agrees to transfer its generation assets and non-debt liabilities to AES Ohio Generation, LCC, an affiliated subsidiary of DPL Inc., within 180 days following final Commission approval of this Stipulation, provided that the Commission approves this Stipulation without material modifications." Stipulation, II.1.c. While the Stipulation states that DP&L will

³ The deadline to intervene in this proceeding was June 30, 2016. Apr. 11, 2016 Entry, p. 2.

⁴ Sept. 23, 2016 The Dayton Power and Light Company's Notice of Withdrawal of Reliable Electricity Rider Proposal ("Notice of Withdrawal of RER").

⁵ Oct. 11, 2016 Amended Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan ("Amended Application").

commit to commence a sale process to sell to a third party its ownership in Conesville, Miami Fort and Zimmer Stations, the Stipulation does not address Killen or Stuart Stations. Stipulation, II.1.d.

II. MURRAY ENERGY HAS FAILED TO SHOW EITHER GOOD CAUSE OR EXTRAORDINARY CIRCUMSTANCES TO INTERVENE

Pursuant to Ohio Rev. Code § 4903.221(A), the Commission "may, in its discretion, grant motions to intervene which are filed after [a deadline established by the Commission in a particular proceeding] for good cause shown." (Emphasis added). In addition to that statutory requirement, "[a] motion to intervene which is not timely will be granted only under extraordinary circumstances." Ohio Admin. Code § 4901-1-11(F) (emphasis added).

The Commission has "frequently denied untimely motions to intervene where no extraordinary circumstances were present." Jan. 7, 2016 Entry, p. 6, In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, et al., Case No. 14-1693-EL-RDR, et al. (citing Dec. 13, 2011 Opinion and Order, In re AEP Ohio, Case No. 10-2376-EL-UNC; Aug. 7, 2013 Opinion and Order, In re FirstEnergy, Case No. 11-5201-EL-RDR; Aug. 25, 2014 Opinion and Order, pp. 3-4, In re Greenwich Windpark, Case No. 13-990-EL-BGN).

In addition, when a prospective intervenor fails to offer any grounds for good cause or extraordinary circumstances, the Commission denies the motion to intervene. Nov. 18, 2015 Finding and Order, p. 4 n. 1, In the Matter of the Application of Ohio Power Co. to Adjust Its Economic Development Rider Rate, Case No. 15-1400-EL-RDR ("OMAEG, however, offers no extraordinary circumstances or any other explanation that would justify granting its untimely

motion. Accordingly, OMAEG's motion to intervene should be denied.") (emphasis added); Oct. 5, 2000, In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5 Ohio Administrative Code, Case No. 99-938-TP-COI.

It has been nearly a year since Murray Energy first knew that the continued operation of Killen and Stuart Stations was at risk in this proceeding. It has been (a) 364 days since DP&L filed its initial Application explaining the risk to those plants, (b) 320 days since Sierra Club intervened to challenge financial support to those plants, (c) 150 days since DP&L withdrew its RER proposal supporting those plants, (d) 101 days since Sierra Club submitted testimony challenging the alternative DMR absent a plan to reduce reliance on those plants, and (e) 95 days since DP&L publicly announced that Killen and Stuart could be closed as part of a settlement of this proceeding.

The Stipulation does not even provide for the closure of Killen or Stuart, the only stated interest of Murray Energy (pp. 10-11). Instead, Murray Energy cites a January 30, 2017 DP&L press release (attached as Exhibit B) stating that "Stuart and Killen plants are anticipated to close in mid-2018," and the February 6, 2017 Testimony of Sharon R. Schroder in support of the Stipulation stating (p. 21) that "DP&L has committed to closing . . . two coal-fired generation assets (1210 MW total), assuming that the Stipulation is approved without material modification." Thus, any plan or commitment to close Killen and Stuart Stations is separate and apart from the Stipulation. Indeed, DP&L already has authority to transfer its generation assets to an unregulated affiliate. Sept. 17, 2016 Finding and Order, p. 22, Case No. 13-2420-EL-UNC.

Moreover, even if its Motion to Intervene had been timely, Murray Energy has failed to state any interest that actually is at issue in this case and, thus, will not contribute significantly to the full development and equitable resolution of this proceeding. Ohio Rev. Code § 4903.221(B)(1) and (4); Ohio Admin. Code § 4901-1-11(B)(1) and (4). In addition, its late intervention would only prolong and delay this case and cause prejudice to DP&L, which has not had the opportunity to request discovery from Murray Energy as it has from parties who timely intervened. Ohio Rev. Code § 4903.221(B)(3); Ohio Admin. Code § 4901-1-11(B)(3).

The Motion to Intervene should, therefore, be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to Motion to Intervene and Request for Leave to File Motion to Intervene Out of Time of Murray Energy Corporation has been served via electronic mail upon the following counsel of record, this 20th day of February, 2017:

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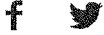
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DP&L considering closure of two plants

BUSINESS By Thomas Gnau - Staff Writer



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Posted: 2:51 p.m. Thursday, November 17, 2016

Dayton Power & Light Inc. leaders are considering whether to close two power-generating stations near the Ohio River.

“As part of DP&L’s electric security plan (ESP) filing at the Public Utilities Commission of Ohio, the company is involved in ongoing discussions to find sustainable solutions to market-driven financial challenges,” DP&L spokeswoman Mary Ann Kabel said in an email Thursday.

“DP&L’s goal has always been to continue our long history of providing safe, reliable and sustainable energy solutions and service to our customers, communities and to the state of Ohio,” she wrote in an email. “In some of these discussions, various parties to the ESP case have raised the subject of the closure of Killen and Stuart Stations. At this time, no decision has been reached.”

Kabel did not immediately say who those “various parties” are or when a decision may be made on the future of the stations.

RELATED: DP&L CEO: Power will get more expensive.

Both facilities are older, coal-fired stations operating at a time when coal-fired plants are seen as more costly to run. Coal in recent years has been more expensive than natural gas, thanks to hydraulic “fracking” techniques and other factors.

The J.M. Stuart station and the Killen station are both on the Ohio River in Adams County in Southern Ohio.

The Killen station is co-owned, with DP&L having a 67 percent stake in the facility. The company has a 35 percent stake in the Stuart facility.

DP&L co-owns with other utilities five plants that are coal-fired. About two-third of its power generation is coal-fired and a third is natural gas-generated, DP&L President and Chief Executive Tom Raga told the Dayton Daily News earlier this year.

RELATED: Manufacturers group wary of DP&L charges.

DP&L has an electric security plan or “ESP” before the Public Utilities Commission of Ohio (PUCO), in a bid to make sure its rates are high enough to keep the company financially healthy.

This week, the Dayton Daily News reported that DP&L representatives are lobbying for proposed legislative language that would amend existing state law, letting the PUCO raise electric rates if a utility’s financial integrity is at stake.

Last month, DP&L applied to the PUCO for a new rider — or additional charge — to customers’ bills, citing “significant threats to its financial integrity.”

In July, Fitch Ratings revised its outlook for DP&L to “negative” from “stable.” The revision followed the Ohio Supreme Court’s rejection in June of DP&L’s “service stability rider” — a ruling which Fitch said at the time “could have material negative credit impact”

EXHIBIT A

DP&L Reaches Agreement with Various Intervenors in Electric Security Plan Case

DAYTON, Ohio – January 30, 2017 – The Dayton Power and Light Company (DP&L), a subsidiary of The AES Corporation (NYSE: AES), today in conjunction with nine intervening parties, filed a settlement to its Electric Security Plan (ESP) pending at the Public Utilities Commission of Ohio (PUCO). In addition, the Company and Sierra Club have reached agreement in principle that will add Sierra Club to the list of parties agreeing to settlement. Upon completion of a few remaining details, DP&L anticipates Sierra Club will formally join the settlement later this week, as well as one other party. The parties agreed to a six-year settlement which includes components that will strengthen DP&L's infrastructure, end its ownership in 2,093 MW of coal-fired generation and integrate renewable generation.

In the meantime, DP&L has asked for an extension of the hearing date by one week to February 8, 2017, in order to allow time for parties currently not joining the settlement, including the PUCO Staff, to file testimony. A final decision by the PUCO is expected by March 31, 2017. If the PUCO agrees to the proposed settlement, the average residential customer in the DP&L service territory, using 1,000 kWh on the Company's Standard Service Offer, can expect a monthly bill increase of \$2.39.

"While this settlement is still subject to approval by the PUCO, we believe it meets our goals of providing the company an opportunity to achieve the credit metrics necessary to establish financial stability. This settlement also provides DP&L's customers safe, affordable and reliable service and prepares our system for the future," said DP&L President and CEO Tom Raga. "We have a proud history of serving our customers and if approved, this settlement ensures we will do that for many years to come."

The settlement includes a five-year Distribution Infrastructure Rider (DIR) that will enable the implementation of a smart grid and advanced metering. A Distribution Modernization Rider (DMR) will be dedicated to continuing DP&L's debt repayment to enable the Company to make additional capital expenditures to modernize and maintain DP&L's transmission and distribution systems. During the sixth year of the plan, both distribution riders will expire and no longer be collected.

If approved by the PUCO, the plan also calls for the Company to exit 100 percent of its interest in 2,093 MW of coal-fired generation. Specifically, the Company will begin the closure process of the two coal-fired, co-owned plants it operates in Adams County. The Stuart and Killen plants are anticipated to close in mid-2018. Additionally, DP&L committed to commence a sales process for its ownership shares in the Conesville, Miami Fort and Zimmer plants.

Other features of the settlement include competitive retail market enhancements, a plan to procure solar and wind generation, economic development funds for both the DP&L service territory and the communities neighboring the Stuart and Killen power plants, funds for low-income customers, and a commitment by DP&L to maintain its headquarters inside the City of Dayton.

A copy of today's agreement is available at <http://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=16-0395>

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EXHIBIT B

This foregoing document was electronically filed with the Public Utilities

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Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

Summary: Memorandum The Dayton Power and Light Company's Memorandum in Opposition to Motion to Intervene and Request for Leave to File Motion to Intervene Out of Time of Murray Energy Corporation electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company