

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
The Dayton Power and Light Company  
AES Ohio Generation, LLC  
Docket No. EC16-173-000

November 9, 2016

Randall Griffin  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, Ohio 45432

Reference: Joint Application for Authorization of Disposition of Jurisdictional Assets  
and Merger Under Section 203(a)(1) of the Federal Power Act

Dear Mr. Griffin:

On August 25, 2016, you filed an application on behalf of The Dayton Power and Light Company (Dayton Power) and AES Ohio Generation, LLC (AES Ohio) (collectively, Applicants) pursuant to sections 203(a)(1)(B) and 203(a)(1)(D) of the Federal Power Act<sup>1</sup> requesting Commission authorization for a transaction whereby Dayton Power will transfer certain generation assets to AES Ohio (Proposed Transaction).

Please be advised that the application is deficient and the Commission requires additional information in order to process it. Accordingly, please respond to the information requested below.

**Cross-Subsidization –“safe harbors”**

In the Application you represent that the Proposed Transaction is: (1) a transaction that does not involve a utility with captive customers; and (2) subject to review by a state Commission. Commission staff requires further explanation of these statements.

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<sup>1</sup> 16 U.S.C. § 824b (2012).

1. For purposes of section 203, the Commission has defined captive customers as “any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation[.]”<sup>2</sup> Please explain whether Dayton Power has any wholesale electric customers (including, but not limited to, requirements customers), wholesale transmission, or retail electric energy customers served under cost-based regulation.
2. If you have customers served under cost-based regulation, please explain whether they meet the definition of captive customers used above. If so, then please explain why such captive customers should not be a concern for purposes of the Commission’s review of whether the Proposed Transaction results in inappropriate cross-subsidization.
3. The Commission has stated it “intends to defer to state commissions where the state adopts or has in place ring-fencing measures to protect customers against inappropriate cross-subsidization or the encumbrance of utility assets for the benefit of the ‘unregulated’ affiliates.”<sup>3</sup> Please explain in detail any ring-fencing provisions that the Public Utilities Commission of Ohio has in place to protect customers, including restrictions on intra-company transfers, dividend payments, and provisions of services.

#### **Cross-subsidization – Exhibit M representations**

4. The Application represents that Dayton Power is a transmission-owning member of PJM Interconnection, L.L.C.<sup>4</sup> Additionally, the Application represents that the Proposed Transaction will not result in 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.<sup>5</sup> Please reconcile these statements.

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<sup>2</sup> 18 C.F.R. § 33.1(b)(5) (2016).

<sup>3</sup> *FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060, at P 18 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008).

<sup>4</sup> Application at 4.

<sup>5</sup> Application at Exhibit M.

5. The Application represents that the Proposed Transaction will not result in any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act. Please explain what, if any, affiliate contracts or agreements will exist between Applicants immediately following the closing of the Proposed Transaction. Also, please explain whether there is a mechanism for the transfer of benefits from Dayton Power to AES Ohio, within any affiliate contract.

### **Cross-subsidization – Other**

6. Section 203(a)(4) is not an absolute prohibition on the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. If the Commission determines that the cross-subsidization, pledge or encumbrance will be consistent with the public interest, such action may be permitted.<sup>6</sup> Please provide a detailed explanation regarding why any cross-subsidization will be consistent with the public interest in the context of the Proposed Transaction.

The information requested in this letter will constitute an amendment to the application. The application will not be a completed application for purposes of section 33.11(a) of the Commission's regulations, 18 C.F.R. § 33.11(a) (2016), until the information requested in this letter is submitted. A notice of amendment will be issued upon receipt of your response.

This letter is issued pursuant to the authority delegated to the Director, Division of Electric Power Regulation – West, under 18 C.F.R. § 375.307(a)(1)(v)(2016) and is interlocutory. This order is not subject to rehearing pursuant to 18 C.F.R. § 385.713 (2016). Please file the requested information within 30 days of the date of this letter.

Please submit your response electronically.

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<sup>6</sup> Supplemental Policy Statement, 120 FERC ¶ 61,060, at n.14 (2007).

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In addition, please provide a copy of the response to all parties that have either requested or been granted intervention in this proceeding. Failure to respond to this letter within the time period specified may result in an order rejecting the filing.

Sincerely,

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation – West

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