

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED JOINT PETITION OF AES OHIO)
GENERATION, LLC AND MONTPELIER)
GENERATING STATION, LLC FOR APPROVAL)
OF THE SALE OF THE MONTPELIER) CAUSE NO. 45038
GENERATING STATION AND FOR)
SUCCESSION TO THE DECLINATION OF THE)
COMMISSION'S JURISDICTION IN)
ACCORDANCE WITH THE COMMISSION'S)
ORDER IN CAUSE NO. 41685)

PETITIONERS' SUBMISSION OF ADMINISTRATIVE NOTICE DOCUMENTS

AES Ohio Generation, LLC ("AOG") and Montpelier Generating Station, LLC ("Montpelier Generating") (jointly "Petitioners"), by counsel, hereby submits the following document, for which IPL is seeking Administrative Notice:

1. The Commission's Order dated August 9, 2000 in Cause No. 41685.

Respectfully Submitted,



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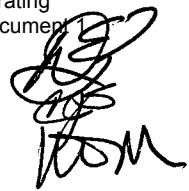
Counsel for Montpelier Generating Station,
LLC

CERTIFICATE OF SERVICE

The undersigned certifies that two copies of the foregoing was served this 12th day of January, 2018, via hand delivery or electronic mail to the following:

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INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
DPL ENERGY, INC. FOR THE INDIANA)
UTILITY REGULATORY COMMISSION TO)
DECLINE TO EXERCISE ITS)
JURISDICTION OVER PETITIONER AND)
ITS PROPOSED CONSTRUCTION,)
OWNERSHIP AND OPERATION OF)
GENERATION AND WHOLESALE SALE)
OF ELECTRICITY)

CAUSE NO. 41685

APPROVED:

AUG 09 2000

BY THE COMMISSION:

David E. Ziegner, Commissioner
David W. Hadley, Commissioner
Nikki G. Shoultz, Chief Administrative Law Judge

On March 15, 2000, DPL Energy, Inc. ("DPL" or "Petitioner") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") requesting that the Commission decline to exercise its jurisdiction over DPL's proposed construction, ownership and operation in connection with a proposed electric power generating facility ("DPL Facility" or "Peaking Plant") to be located in Wells County, Indiana. The Petitioner intends to make available the output from the proposed Peaking Plant in a competitive environment to public utilities that distribute and sell electricity at retail to Indiana customers.

On June 27, 2000, pursuant to notice given and published as required by law, a hearing on DPL's Petition was convened at 9:30 a.m. EST in Room E306, Indiana Government Center South, Indianapolis, Indiana. At the June 27th hearing, the presiding officers admitted into evidence the Stipulation and Settlement Agreement Entered Into by DPL Energy, Inc. and the Indiana Office of Utility Consumer Counselor (the "Stipulation"), dated and filed with the Commission on June 26, 2000. Additionally, the prefiled testimony and exhibits of the parties were accepted into evidence as support for the Stipulation. A final evidentiary hearing was held on July 6, 2000, where the presiding officers asked questions of the parties to clarify the Stipulation. The Petitioner and the Office of Utility Consumer Counselor ("OUCC") participated in both hearings and no members of the general public appeared or sought to testify on either occasion.

Based upon applicable law and evidence herein, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the Petition and the hearings in this Cause were duly given and published as required by law. Petitioner has asserted that if the Commission finds from the record evidence that Petitioner is a public utility for purposes of Indiana's utility

power plant construction law (I.C. 8-1-8.5-1, et seq.), then Petitioner would be an “energy utility” as defined by I.C. 8-1-2.5-2. The Commission may decline to exercise its jurisdiction pursuant to I.C. 8-1-2.5-1, et seq., including the Commission’s jurisdiction under I.C. 8-1-8.5-1, et seq., to issue certificates of public convenience and necessity for the construction of the Peaking Plant. Whether Petitioner may be determined to be a “public utility” as defined by Indiana law is pivotal to our ultimate conclusion in this matter. In order for the Commission to decline to exercise jurisdiction over Petitioner pursuant to I.C. 8-1-2.5 (or to issue Petitioner a certificate of public convenience and necessity under I.C. 8-1-8.5 if it retains such jurisdiction), the Commission must assert jurisdiction over Petitioner as a public utility. If Petitioner is not a public utility, then the Commission has no jurisdiction to exercise or decline to exercise.

Jurisdiction over Petitioner as a public utility for purposes of the construction and operation of the Peaking Plant requires a two-part analysis:

- (a) Does Petitioner own, operate, manage or control any plant or equipment within the state for the production, transmission, delivery or furnishing of power (I.C. 8-1-2-1(a)), and
- (b) Are Petitioner’s plant or equipment used “for service directly or indirectly to the public”, i.e., “publicly”. See United States Steel Corp. v. Northern Indiana Public Service Company, 486 N.E.2d 1082, 1084-85 (Ind. App. 1985); and Hidden Valley Lake Property Owners v. HVL Utilities, supra;

Petitioner clearly intends to be ultimately responsible for the operation and control of an electric generation facility. The evidence also clearly establishes that Petitioner’s construction and operation of the Peaking Plant is for the purpose of sale of the power generated by that plant in the wholesale market to entities that will in turn sell that power to public utilities within and without Indiana. The Commission has found in prior cases that a business that only generates electricity and then sells that electricity directly to public utilities is itself a public utility. See, e.g., In re Petition of Commonwealth Edison of Indiana, Inc., Cause No. 36093 (Ind. Util. Reg. Comm’n, June 12, 1990); In re Petition of AES Greenfield, LLC Cause No. 41361 (Ind. Util. Reg. Comm’n, March 11, 1999) wherein the Commission specifically found that it had jurisdiction over entities like Petitioner. Consequently, for purposes of the construction and operation of the Peaking Plant we find that Petitioner is a public utility within the meaning of I.C. 8-1-2-1. Therefore the Commission has jurisdiction over the parties and subject matter of this Cause.

2. Petitioner’s Characteristics and Business. DPL is an Ohio corporation, wholly-owned by DPL Inc., an Ohio corporation. The Petitioner has been admitted to do business in Indiana and its Certificate of Authority issued by the Indiana Secretary of State was filed with this Commission on March 15, 2000. DPL’s principal place of business is at P.O. Box 555, Dayton, Ohio 45401-555. The DPL Facility will be located in Wells County, Indiana on property that DPL has an option to purchase. DPL requests authority to construct a Peaking Plant of up to

400 megawatts that will be powered by gas to be delivered from Panhandle Eastern Pipeline Company's transmission lines. DPL intends to install either five (5) eighty (80) megawatt units, or eight (8) fifty (50) megawatt units. The parties have agreed that if DPL wants to add additional peaking units or capacity in the future beyond the initial 400 megawatts, DPL will file a new petition with the Commission for such additions. Additionally, if DPL has not installed all units totaling up to 400 megawatts within two years of the date of the Commission's Final Order (the "Expiration Date"), then DPL will file with the Commission, and concurrently provide to the OUCC, within thirty (30) days of the Expiration Date, a final report describing the number of units and total number of megawatts that have been installed by DPL with respect to this project. After the Expiration Date, DPL will file a new petition with the Commission for the installation of any peaking units or capacity beyond that which has been installed by the Expiration Date. The parties further agree that, after the Expiration Date, DPL shall have the right to seek from the Commission approval of such additional peaking units or capacity by whatever procedure is permitted or required under the then applicable law, whether that be to petition for declination of jurisdiction or otherwise.

Until otherwise permitted by a change in current Indiana law, any sales by DPL of electricity produced by the DPL Facility will be for resale into the wholesale market and not at retail. The wholesale electric energy sales will be at rates which will be subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

3. Relief Requested. DPL requested the Commission decline to exercise its jurisdiction over DPL, its construction and operation of the Peaking Plant, and over the sale of electricity generated by the Peaking Plant, except to the extent required to issue a certificate of public convenience and necessity under the Power Plant Construction Act, I.C. 8-1-8.5, if required for the construction of the Peaking Plant, and such reporting requirements as the Commission imposes on other merchant plants that do not sell electricity at retail.

4. Petitioner's Evidence. Petitioner presented the direct and supplemental testimony of Kirk N. Guy. Mr. Guy stated that the project involves the construction and operation of an electric generating facility, which will be located on land that DPL has an option to purchase located in Wells County, Indiana. The DPL Facility will have up to 400 megawatts of electric generation capability. All electric power output of the station will connect with AEP's electric transmission system at one of the two DeSoto-Sorenson 345kV circuits.

According to Mr. Guy, during the construction period, on-site preparations for construction will be conducted concurrently with the factory fabrication of various pieces of equipment. The factory-fabricated equipment will then be delivered to the site, which will have been prepared for receipt and installation of the equipment upon arrival. Mr. Guy stated that the power to be generated at the DPL Facility would be sold to wholesale purchasers such as marketers, investor-owned utilities, electric cooperatives, municipalities and other entities purchasing the power for resale.

Mr. Guy stated that the public interest would be served by granting the requested relief since the Peaking Plant will be in operation during the summer peaking months of 2001. Mr. Guy adds that numerous reports prepared by the North American Electric Reliability Council ("NERC"), the FERC and the East Central Area Reliability Region ("ECAR") cite the need for generating capacity in the ECAR region. These reports identify a reduction in capacity margins in the ECAR region caused by summer demand growth that exceeds the increase in net generating capacity. This facility will help production meet demand. He said that DPL met with AEP about an Interconnection Agreement and has commissioned an AEP system impact study. DPL will comply with all FERC orders relating to the proposed interconnect. Mr. Guy stated that DPL is a wholly-owned subsidiary of DPL Inc., which, through DP&L and DPL operates or has ownership interests in excess of 3,000 megawatts of generating capability and has assets in excess of \$3 billion.

The Petitioner also presented the Direct Testimony of Hertz Shamash, DP&L's Manager of Transmission Planning. Mr. Shamash testified that, upon a review of the System Impact Study-Phase I Power Flow Analysis provided by AEP, it appears that under normal system conditions, with all facilities in service, the loading on several facilities will increase slightly due to DPL's proposed addition. Mr. Shamash testified that the only heavily loaded facility is the DeSoto-Jay 138 kV line, which already exceeds normal rating without DPL's proposed project. The study indicates that under various "contingency conditions" (i.e., outages, etc.), the loading on various transformers and lines, (which generally are already heavily loaded at or above their respective emergency ratings without DPL's proposed addition), would increase. Mr. Shamash characterized the impact of DPL's proposed facility as nominal since all of the potential facility loading issues are preexisting. In response to the presiding officers' questions, Mr. Shamash testified that, despite the present overloading, the addition of the DPL Facility will not render the transmission system inoperable because AEP must notify the Open Access Same-Time Information System ("OASIS") that AEP has available transmission capacity before the DPL facility can operate. Finally, Mr. Shamash testified that the DPL Facility would provide a local source of generation and reactive support to the transmission system in the Montpelier area. This, he states, will help to support voltages in the area, particularly under various transmission and generation outage conditions.

5. OUC's Evidence. The OUC submitted no evidence in support of the Stipulation.

6. Stipulation and Settlement Agreement. The Stipulation, attached hereto as Attachment 1 and incorporated herein by reference, reflects the parties' agreement that the Commission shall decline to exercise its jurisdiction over Petitioner's construction and operation of the Peaking Plant. DPL warrants that it has obtained all local approvals for the siting of this facility, including approval from the Wells County Area Plan Commission for the development plan at the location for this project. The parties agree that the Petitioner's gas supply shall be connected to the existing transmission line that crosses its property, and such connection will be used to provide gas service only to Petitioner's Peaking Plant. No other entity shall connect to or obtain gas service from the Petitioner without prior Commission approval. The Petitioner waives

any special rights, powers and privileges granted to Indiana public utilities, including but not limited to the power of eminent domain and the use of public rights-of-way. However, Petitioner's public utility status for tax purposes shall not be affected by the Stipulation. The Petitioner acknowledges that it is required to pay for the costs of interconnection with AEP and that it will be responsible for costs that may be incurred under FERC tariffs and regulations. The Petitioner also agrees to be responsible for any material adverse impact on the transmission system caused by the operation of and/or sale from the Peaking Plant. The Petitioner agrees to operate its Peaking Plant in a manner consistent with good utility practice that will not harm or cause harm to Indiana retail customers.

The Petitioner agrees to file with the Commission and the OUCC quarterly status reports on the project's construction and agrees to file with the Commission annual reports as provided in I.C. 8-1-2-49 and to provide such other information as the Commission may from time to time request. Additionally, the Petitioner will notify the Commission and the OUCC of the project's in-service date and the output capacity of the plant approved herein. The Stipulation provides that the Petitioner agrees to file with the Commission a report, to be received before the plant begins commercial operation, containing the following information:

- Project ownership
- Project name
- Location
- Ownership of land
- Proposed capacity
- Actual capacity – summer & winter
- Number and size of units
- Unit type
- Fuel
- Fuel source
- Back-up fuel
- Firm utility sales
- In-service date
- Name, phone number & address of contact person(s) for the facility.

The parties agree that the Commission retains the right to revoke the partial declination of jurisdiction if it finds that the Petitioner is not making good faith efforts to complete the project as proposed. The Petitioner agrees that nothing in the Stipulation should be construed to replace or affect any approvals needed on environmental issues under Indiana and federal law from the Indiana Department of Environmental Management ("IDEM") or the U.S. Environmental Protection Agency. Finally, the Petitioner will notify the Commission within three (3) working days of submitting to IDEM any application for an environmental permit and approval of any permit issued by IDEM.

7. Discussion and Conclusions. While Petitioner will clearly be limited in its activities compared with most Indiana utilities, it will own and operate an electric generation facility and sell to wholesale purchasers the output therefrom. Thus, DPL will be a "public utility" as defined in the Public Service Commission Act. Indiana Code 8-1-2.5-5, however, authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over a public utility that is an energy utility if certain conditions are satisfied. Indiana Code 8-1-2.5-5 provides "the commission may enter an order, after notice and hearing, that the public interest requires the

commission to . . . decline to exercise, in whole or in part, its jurisdiction over . . . the energy utility . . .” Indiana Code 8-1-2.5-5(b) provides:

In determining whether the public interest will be served, the commission shall consider the following:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
- (2) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility’s customers, or the state.
- (3) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
- (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

The Petitioner is an “energy utility” and has requested that the Commission decline to exercise its jurisdiction with respect to the construction and operation of, and the sale of electric power generated by, the DPL Facility. As noted in Finding No. 2, Petitioner does not intend or request authority to sell the electricity generated by the DPL Facility to the general public or to any retail customer. Instead, the power will be generated solely for the sales for resale subject to the jurisdiction of FERC under provisions of the Federal Power Act. Sales of electric power to wholesale customers will be made by DPL pursuant to market based rates as authorized by the FERC.

DPL warrants that it has obtained all local approvals for the siting of the DPL Facility, including approval of the Wells County Area Plan Commission for the development plan at the location for the proposed facility. We note that no evidence was presented to indicate any local opposition to the siting of the DPL Facility. The Petitioner is not seeking or requesting authority to exercise any of the rights, powers or privileges of a public utility in the construction and operation of the DPL Facility, e.g., the power of eminent domain or the use of public rights-of-way. Further, Petitioner’s costs will not be recovered through a rate base/rate of return or other process typically associated with public utility rates. All economic risks associated with construction of the DPL Facility will be borne by Petitioner or a power marketer that purchases electricity generated by the DPL Facility.

Since DPL intends to engage solely in wholesale transactions, we administratively know that DPL must apply to the FERC for exempt wholesale generator (“EWG”) status. 15 U.S.C. § 79z-5(a)(1). In addition, the DPL Facility’s wholesale rates and charges for the sale of energy will be filed with the FERC and required to be just and reasonable, in conformity with standards set by the FERC. 16 U.S.C. § 824d. Once DPL’s filed rates are accepted by FERC, DPL will be subject to certain corporate and financial regulation, including the monitoring of its market sales

by the FERC. Further, Petitioner shall have obtained all appropriate air permits in accordance with the law.

The criteria set out in I.C. 8-1-2.5-5 for determining whether the public interest will be served by the Commission's declination of jurisdiction over the construction and operation of the DPL Facility are met here. Competitive forces in the wholesale power market and federal regulation of the DPL Facility operations render the exercise of jurisdiction by the Commission unnecessary at this time. Largely market forces, subject to the FERC's regulatory oversight, will determine DPL's wholesale rates. Market forces also will determine who will buy electric power from the DPL Facility.

By increasing the supply of peaking power generally available in the system, the addition of the proposed facility is expected to improve electric reliability in Indiana. The need for more peak power was demonstrated by the extreme heat events experienced in Indiana in June 1998 and July 1999. The proposed facility should reduce the cost of peak power and provide power, when most needed, which will promote energy efficiency and benefit DPL and its customers, as well as the State of Indiana. Finally, we find that the Petitioner, through the assets and experience of its parent corporation, clearly has the technical, financial and managerial capability to construct and operate the proposed station.

As part of our public interest analysis, we must determine whether the construction of the DPL Facility adversely impacts the reliability of the AEP or any neighboring system. We conclude, based on the evidence of record, that this phase of the project will only minimally impact the transmission system. This Commission will continue to monitor the continued impact of the facility on the reliability of the AEP or any neighboring system. We note that power from the DPL Facility will be transmitted to the transmission system of AEP and will enter the transmission grid at that point. The Petitioner does not propose to own or operate any transmission facilities. Any and all costs to modify AEP's transmission system to accommodate the interconnection will be borne by the Petitioner. If in the future Petitioner constructs transmission facilities or requests additional transmission capacity from AEP, this Commission's order should in no way be construed as to decline to exercise jurisdiction over any transmission facilities.

Insofar as the Stipulation requires DPL to "...provide such other information as the Commission may from time to time request," we now conclude that the Petitioner should notify the Secretary of the Commission and the OUCC in writing of: (a) the date on which construction of the DPL Facility begins; (b) the DPL Facility's in-service date and actual capacity – summer and winter once the plant becomes commercially operable; (c) the precise point of interconnection with AEP's transmission system; (d) when FERC issues its determination, if any, that the proposed DPL Facility qualifies as an exempt wholesale generator; and (e) when any permits have been obtained as required by law for the facility. Additionally, if significant developments occur in the construction process or if construction is completed prior to the due date for a quarterly status report filing contemplated by the Stipulation, DPL shall immediately notify the Commission of such development or construction completion.

In light of the foregoing findings, the Commission determines the Stipulation and the Commission's declination of jurisdiction over DPL as a public utility and an energy utility is in the public interest. The Commission accordingly declines to exercise jurisdiction over DPL's construction, financing and operation of the DPL Facility.

8. Revenues and Reports. The Petitioner is not granted authority to offer its power for retail sales to the general public. Therefore, pursuant to I.C. 8-1-6-3, any revenue that it derives from the sale of its electricity to another public or municipal utility for resale by the latter is not subject to the public utility fee. It appears that the most appropriate account for the Petitioner to book revenues from the proposed sales is FERC account 447. The FERC, in its Accounting and Reporting Requirements For Public Utilities And Licenses, effective February 12, 1985, defines Account 447 as follows:

447 Sales for resale.

- A. This account shall include the net billing for electricity supplied to other electric utilities or to public authorities for resale purposes.
- B. Records shall be maintained so as to show the quantity of electricity sold and the revenue received from each customer.

While we are declining to exercise our jurisdiction over the Petitioner's construction and operation of the DPL Facility, it should be a condition of this order and our continued declination of jurisdiction over Petitioner's operations that it file with the Commission an Annual Report of DPL, Inc., DPL's publicly traded parent company, as provided in I.C. 8-1-2-49, and provide such other information as the Commission may from time to time request. Petitioner shall notify the Commission of the in-service date of the plant and the output capacity of the plant approved herein as well as the items delineated above. The Petitioner shall notify the Commission of any sale or transfer of the facilities approved herein and seek approval of the transfer, if appropriate. With regard to future citation of the Stipulation, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, approved March 19, 1997.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Stipulation and Settlement Agreement entered into between Petitioner and the OUCC is hereby adjudged to be in the public interest and is hereby approved. With regard to future citation of the Stipulation, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, approved March 19, 1997.

2. Petitioner is hereby adjudged to be a "public utility" within the meaning of I.C. 8-1-2-1 for purposes of the construction and operation of the DPL Facility and is authorized to act as hereinafter described.

3. Petitioner shall not exercise any of the rights, powers or privileges of a public utility in the construction and operation of the DPL Facility, including the power of eminent domain and use of public rights-of-way.

4. So long as retail power supply remains an electric service subject to regulation by this Commission under Indiana law, Petitioner shall not sell at retail in the State of Indiana any of the electricity generated by the DPL Facility without further order of the Commission.

5. Based on the considerations described in Finding Paragraph 7 and subject to the limitations defined in Ordering Paragraphs 1 through 4 and the Stipulation, jurisdiction over Petitioner's proposed construction and operation of the DPL Facility as described herein be and is hereby declined and the gross revenues generated by sales for resale of the electricity generated by the DPL Facility are hereby adjudged to be exempt from the public utility fee prescribed by I.C. 8-1-6-1; provided, however, that the Petitioner shall notify the Secretary of the Commission in writing of the date construction begins, its final plant site, in-service date, actual capacity – summer and winter, the date of FERC EWG designation, the date when all permits are obtained, the interconnection point with AEP, and the supplemental notifications prescribed in Finding Paragraph 7, and provide the Commission such information as it may from time to time require, consistent with Finding Paragraph 8.

6. This Order shall be effective on and after the date of its approval.

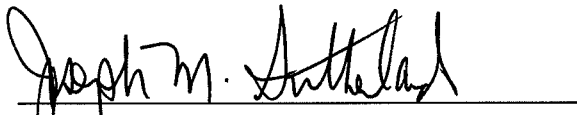
McCARTY, SWANSON-HULL AND ZIEGNER CONCUR;

HADLEY AND RIPLEY ABSENT:

APPROVED:

AUG 09 2000

**I hereby certify that the above is a true
and correct copy of the Order as approved.**


Joseph M. Sutherland
Secretary to the Commission

FILED

JUN 26 2000

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF DPL)
ENERGY, INC. FOR THE INDIANA UTILITY)
REGULATORY COMMISSION TO DECLINE)
TO EXERCISE ITS JURISDICTION OVER)
PETITIONER AND ITS PROPOSED)
CONSTRUCTION, OWNERSHIP, AND)
OPERATION OF ELECTRICAL GENERATION)
AND WHOLESALE SALE OF ELECTRICITY)

CAUSE NO. 41685

IURC
JOINT EXHIBIT

EXHIBIT NO.

6-27-00

DATE

REPORTER

STIPULATION AND SETTLEMENT AGREEMENT
ENTERED INTO BY DPL ENERGY, INC.
AND THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

DPL Energy, Inc. ("Petitioner") and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively the "Parties"), having been duly advised by their respective staff, experts and counsel, stipulate and agree for purposes of settling all matters in this Cause, that the terms and conditions set forth below represent a fair and reasonable resolution of all the issues in this Cause, subject to their incorporation in a final Commission order (the "Final Order") without modification or further condition, which may be unacceptable to any Party. If the Commission does not approve the Settlement Agreement in its entirety and incorporate it in a Final Order as provided above, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties. There are no other agreements in existence between the Parties relating to the matters covered by this Settlement Agreement which in any way affect this Settlement Agreement.

WHEREAS, Petitioner has filed a petition asking the Indiana Utility Regulatory Commission to decline to exercise its jurisdiction over the construction and operation of an electric peaking plant; and

WHEREAS, Petitioner and the OUCC have reached agreement regarding these matters.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. ~~The Commission~~ shall decline to exercise its jurisdiction over Petitioner's construction and operation of the peaking plant as described in the Petition. With regard to gas transmission lines, Petitioner shall connect to the existing transmission line which crosses its property, and such connection shall be used to provide gas service only to Petitioner's peaking plant. Petitioner agrees that no other person or entity shall connect to or obtain gas service from the Petitioner without prior Commission approval.
2. Petitioner agrees to give up all special rights, powers and privileges granted to public utilities selling at retail in Indiana. Examples of those rights, powers and privileges include but are not limited to the power of eminent domain and the use of public rights-of-way. Notwithstanding anything else in this paragraph, Petitioner's public utility status for tax purposes shall not be affected by this Agreement.
3. Petitioner represents and warrants that it has obtained all local approvals for the siting of this facility, and that Petitioner has not utilized any exemption for the siting of such facilities that would otherwise be available to public utilities in Indiana. Petitioner requested and received approval from the Wells County Area Plan Commission for the development plan at the location for this project. Petitioner further represents and

warrants that a copy of the System Impact Study dated March 2000 and prepared by American Electric Power for this project has been provided to the neighboring utilities, Cinergy and NIPSCO.

4. Petitioner agrees and acknowledges that it is required to pay for the costs of interconnecting with American Electric Power. Petitioner further agrees and acknowledges that under Federal Energy Regulatory Commission tariffs and regulations costs may be incurred for which Petitioner will be responsible. In accordance with applicable laws, tariffs and regulations, Petitioner agrees also to be responsible for any material adverse impact on the transmission system caused by the operation of and/or sale from Petitioner's peaking plant. Petitioner further agrees to operate its peaking plant in a manner consistent with good utility practice which will not cause harm to Indiana retail electric power consumers. To the extent permitted by law and/or regulation, Petitioner agrees to submit to the Commission's jurisdiction as to any dispute regarding alleged adverse impacts to Indiana retail consumers.
5. Petitioner agrees to file with the Commission, and concurrently provide to the OUCC, quarterly status reports on the project's construction. Petitioner understands and agrees that the Commission shall reserve the right to revoke the partial declination of jurisdiction granted in this Cause if it finds that the Petitioner is not making good faith efforts to complete the project as proposed. Such a revocation proceeding could be started on the Commission's own initiative or at the request of the OUCC or other interested party. Petitioner agrees to file with the Commission Annual Reports as provided in I.C. 8-1-2-49 and provide such other information as the Commission may from time to time request.

Petitioner shall notify the Commission and the OUCC of the in-service date of the plant and the output capacity of the plant approved herein.

Petitioner agrees to file with the Commission a report, to be received before the plant begins commercial operation, containing the following information: project ownership; project name; location; ownership of land; proposed capacity; actual capacity -- summer and winter; number and size of units; unit type; fuel; fuel source; back-up fuel; firm utility sales; in-service date; and name, phone number and address of contact person(s) for this facility.

Petitioner agrees that nothing in this Settlement Agreement should be construed to replace or affect any approvals needed on environmental issues under Indiana and federal law from the Indiana Department of Environmental Management (IDEM) or the U.S. EPA. Petitioner shall notify the Commission within three (3) working days of submitting to IDEM any application for an environmental permit and approval of any permit issued by IDEM.

6. Petitioner has requested authority to construct a peaking plant of up to 400 megawatts. Petitioner intends to install either five 80 megawatt units, or eight 50 megawatt units. If Petitioner wants to add additional peaking units or capacity in the future beyond the initial 400 megawatts, Petitioner will file a new petition with the Commission for such additions. Further, if Petitioner has not installed all units totaling up to 400 megawatts within two years of the Final Order (the "Expiration Date"), then Petitioner shall file with the Commission, and concurrently provide to the OUCC, within thirty days after the Expiration Date, a final report describing the number of units and total number of

megawatts which have been installed by Petitioner with respect to this project. After the Expiration Date, Petitioner shall file a new petition with the Commission for the installation of any peaking units or capacity beyond that which has been installed by the Expiration Date. Notwithstanding the foregoing, after the Expiration Date, Petitioner shall have the right to seek from the Commission approval of such additional peaking units or capacity by whatever procedure is permitted or required under the then applicable law, whether that be to petition for declination of jurisdiction or otherwise.

7. Petitioner shall not transfer any assets associated with the peaking plant or any of the rights granted to Petitioner in this Cause, regardless of the method of transfer, without obtaining the prior approval of the Commission. The trading or sale of the stock of DPL, Energy, Inc. and DPL Inc. shall not constitute a transfer of assets or rights under this paragraph.
8. Petitioner is not currently affiliated with any regulated utility operating in Indiana. Petitioner agrees to inform the Commission and the OUCC of any such affiliation at the time of its occurrence. Further, Petitioner agrees to obtain prior approval of the Commission before selling any electricity to such an affiliated regulated utility (or any affiliate thereof).
9. The evidence presented by Petitioner and the Parties in this Cause constitutes substantial evidence sufficient to support this Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement Agreement, as filed.

Such evidence shall be admitted into evidence without objection and the Parties hereby waive cross-examination.

10. This Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or any State Court of competent jurisdiction on these particular issues. This Settlement Agreement is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items and issues resolved herein in any future regulatory or other proceedings.
11. The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients who will be bound thereby.
12. This Settlement Agreement shall inure to the benefit of and be binding upon the successors, heirs and assigns of the Parties.

ACCEPTED AND AGREED this 26th day of June, 2000.

DPL Energy, Inc.

By: Kirk N. Guy *SKN*
Kirk N. Guy
Director of Peak
Generation Development

Indiana Office of Utility Consumer Counselor

By: Anne E. Becker
Anne E. Becker
Attorney for OUCC