

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)

**VERIFIED JOINT PETITION AND
REQUEST FOR ADMINISTRATIVE NOTICE**

AES Ohio Generation, LLC ("AOG" or "Seller") and Montpelier Generating Station, LLC ("Montpelier Generating" or "Buyer") (collectively "Joint Petitioners") seek the approval of the Indiana Utility Regulatory Commission ("Commission") on an expedited basis for the sale of the Montpelier Generating Station, as described herein, from AOG to Buyer and for a continuation of the Commission's decision to decline to exercise jurisdiction in accordance with the Commission's August 9, 2000 Order (hereinafter the "41685 Order"). Joint Petitioners further request that the Commission take administrative notice of the 41685 Order, as discussed below and attached hereto.

In support of this Petition, Joint Petitioners state the following:

I. Identification of Petitioners

1. AOG is an Ohio Limited Liability Company organized and existing under the laws of the State of Ohio with its principal place of business at 1065 Woodman Drive, Dayton, Ohio. AOG was formerly known as DPL Energy, LLC and earlier, DPL Energy, Inc. These were legal names changes only and did not involve the transfer of any assets or stock. AOG

owns a Peaking Plant known as the Montpelier Generating Station located in Wells County, Indiana and other facilities located in Ohio. The Montpelier Station is contained within a fenced area housing four combustion turbines with the capability of combusting natural gas or diesel oil and with an aggregated capacity of approximately 236 MW (nameplate), interconnection facilities and metering facilities necessary to connect the generation assets to the transmission system of Indiana Michigan Power Company (“IMPC”), control room facilities, equipment used to communicate real time information with IMPC, AOG, and PJM Interconnection, LLC, oil storage tanks and oil inventory, and other miscellaneous facilities and spare parts located within the fenced area. The transaction includes approximately 101 acres of real property (subject to existing easements held by third parties) on which the Montpelier Station is sited and “buffer lands” that are adjacent to the Station. The Montpelier Station is the only asset owned by AOG in Indiana. AOG is wholly owned by DPL Inc., and indirectly owned by its ultimate parent company, The AES Corporation. AOG is affiliated with, but is neither owned by nor owns, Indianapolis Power & Light Company.

2. As found in the Commission’s order in *Petition of DPL Energy, Inc.*, Cause No. 41685 (IURC 8/9/2000) (“41685 Order”) (p. 2, 5), AOG’s ownership of Montpelier Station makes it a public utility under Indiana law and, thus, subject to this Commission’s jurisdiction.¹ In the 41685 Order, for reasons stated therein and discussed further below, the Commission declined to exercise its jurisdiction over Petitioner and its construction, financing and operation of the Montpelier Peaking Plant conditioned on certain specified commitments and obligations. *Id.* at 8-9. Particularly relevant to this Petition, one of those conditions was that: “The Petitioner shall notify the Commission of any sale or transfer of the facilities approved herein and seek

¹ Subsequent to this order DPL Energy, Inc. reformed as DPL Energy, LLC, and in 2016, continued its limited liability company existence as AES Ohio Generation, LLC, pursuant to a legal name change.

approval of the transfer, if appropriate.” *Id.* at 8.

3. Montpelier Generating is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at c/o Rockland Capital, LLC, 24 Waterway Avenue, Suite 800, The Woodlands, Texas 77380. Montpelier Generating is not currently subject to the Commission’s jurisdiction but accepts such jurisdiction for the purposes of this Petition and ongoing requirements relating to its future ownership of the Montpelier Station.

4. On December 15, 2017, and after arms-length negotiations, AOG, its affiliate The Dayton Power and Light Company (“DP&L”), Kimura Power, LLC (“Kimura”) (a direct parent of Montpelier Generating), and, for limited purposes, Rockland Power Partners III, LP (an affiliate of Montpelier Generating), entered into an Asset Purchase Agreement (“APA”) under which certain of AOG’s peaking generation assets would be sold to Kimura or its affiliate designees. Except for the Montpelier Station, all other assets to be sold are located in Ohio and are not the subject of this Joint Petition. Prior to closing, Kimura will assign its right to acquire Montpelier Station under the APA to Montpelier Generating. The sale of assets under the APA is contingent on obtaining necessary regulatory approvals including approvals from the Federal Energy Regulatory Commission (“FERC”), the Ohio Power Siting Board (“OPSB”) and, with respect to the Montpelier Station, this Commission.

5. Montpelier Generating has the necessary technical, financial, and managerial capability to own and operate the Montpelier Station. Montpelier Generating is an indirect subsidiary of Rockland Power Partners III, LP, an investment fund managed by Rockland Capital, LLC (“Rockland”). Rockland’s team specializes in the purchase and optimization of independent power projects. Since its inception in 2003, Rockland and affiliates have overseen

the deployment of several billion dollars in debt and equity capital across dozens independent power projects in the U.S. and Europe. Please visit Rockland's website at www.rocklandcapital.com for additional information about its portfolio.

6. Montpelier Generating will continue to sell power generated by the Montpelier Station solely into wholesale markets pursuant to FERC-approved market-based rate authority. Montpelier Generating will also continue to receive reactive power revenues as currently received by AOG and paid by PJM Interconnection, LLC, under FERC-approved rates.

7. As set forth more fully below, Montpelier Generating agrees to accept the same terms and conditions as those imposed on AOG by the 41685 Order, with the exception that a request is made to clarify that no additional Commission approvals would be needed for Montpelier Generating to transfer the Montpelier assets in an internal corporate reorganization. Montpelier Generating or its internal successors in interest would seek Commission approval for any transfer to an unaffiliated entity.

II. Relief Sought.

8. Joint Petitioners request that the Commission grant approvals as necessary for the sale of the facility, approve Montpelier Generating's succession to the Commission's decision to decline jurisdiction in the 41685 Order, and release and terminate, without condition, AOG from all further duties and obligations contained within the 41685 Order.

III. Governing Authority

9. The relief sought in the petition is governed by the terms of the 41685 Order and the Stipulation and Settlement Agreement attached thereto, and by the Public Service Commission Act, as amended, including Ind. Code §§ 8-1-2-83(a), 8-1-2-84, and 8-1-2.5-5.

IV. Request for Administrative Notice

10. Pursuant to 170 IAC 1-1.1-21(f), Joint Petitioners request that the Commission take administrative notice of its April 9, 2000 Order in Cause No. 41685. A copy of that order is attached hereto for administrative convenience.

11. Joint Petitioners further note that in Cause No. 44868, the Commission has recently granted relief similar to that which is being requested here with respect to a joint petition that was filed by AEP Generating Company and a buyer of one of its Indiana generating stations that was also the subject of an earlier order in which the Commission declined jurisdiction contingent on conditions. The Commission there approved the sale, continued to decline jurisdiction, with the condition that the buyer assume all the obligations under the earlier order that had been issued to AEP Generating Company (or its predecessor in interest).²

V. Further Background

12. As noted above, in its 41685 Order, the Commission previously declined to exercise its jurisdiction over the construction and operations of the Montpelier Station. As described therein, the Commission's decision not to exercise jurisdiction was founded on an uncontested Stipulation that was approved by the Commission and findings that were summarized in Paragraph 7 of the order that:

- (a) "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 sales for resale subject to the jurisdiction of FERC under provisions of the Federal Power Act."
- (b) Petitioner warranted that it had obtained all local approvals and was not seeking the right to exercise eminent domain rights or public rights-of-way and was also not seeking recovery of costs through a

² *AEP Generating Company, et al.*, Cause No. 44868, Jan. 4, 2017.

rate base/rate of return process typically associated with public utility rates.

- (c) The public interest standard was met because FERC regulation and market forces would determine the wholesale rates that could be charged, additional peaking capacity is “expected to improve electric reliability in Indiana”, and there was minimal impact on the reliability of the interconnecting transmission company or any neighboring system.³

13. Although the Commission generally declined to exercise jurisdiction, it did so contingent on several requirements. The petitioner was required to file annual reports of its parent company, DPL Inc. and provide other information as the Commission may require from time-to-time. The petitioner was barred from using the powers of eminent domain or use of public rights-of-way and was further prohibited from making retail sales within the State of Indiana absent a further order of the Commission.⁴ And, of particular relevance to the matter now before the Commission: “The Petitioner shall notify the Commission of any sale or transfer of the facilities approved herein and seek approval of the transfer, if appropriate.”⁵ The Stipulation that was approved by the Commission also provided that: “Petitioner shall not transfer any assets associated with the peaking plant or any of the rights granted to Petitioner in the Cause, regardless of the method of transfer, without obtaining the prior approval of the Commission.”⁶

14. This Joint Petition is filed to seek such prior approval of the proposed transaction under which Montpelier Generating will become the ultimate owner of the Montpelier Station as described above.

15. Using the same measures relied on by the Commission in the 41685 Order, the public

³ *Id.* at pp. 6-7.

⁴ *Id.* at p. 9.

⁵ *Id.* at p. 8

⁶ Stipulation and Settlement Agreement, Cause No. 41685, Joint Exh. 1, ¶ 7.

interest will continue to be served after the transfer in that the output of the Montpelier Station will continue to support reliability in Indiana, will have no effects on retail rates because the output will be sold only into wholesale markets subject to FERC regulation and market forces, and will not change any interconnection effects that the Station has had on AEP or other neighboring systems. Additionally, Montpelier Generating, like AOG, will be a member of the PJM Interconnection, LLC, and will be subject to its rules regarding bidding into markets.

VI. The Plant to be Transferred

16. The utility plant to be transferred from AOG to Montpelier Generating is as follows:

- a. The Montpelier generation station comprised of four turbine generation assets with the capability to combust either natural gas or diesel oil with an aggregated capacity of approximately 236 MW (nameplate);
- b. Approximately 101 acres of real property (subject to existing easements held by third parties), generation step-up transformers, the interconnection and metering facilities owned by AOG that tie-in to the transmission system of the Indiana Michigan Power Company, necessary telecommunications equipment, oil storage tanks on site and oil inventory, miscellaneous control facilities and equipment, and spare parts on site.

VII. Requested Approach Regarding the Value of the Assets and Sales Price

17. The sales price of the Montpelier Station was not separately negotiated but is part of the overall price negotiated for the sale of certain of AOG's peaking generation facilities pursuant to the APA. Joint Petitioners request that the Commission find that the public interest does not, in this circumstance, require an evaluation of the sales price relative to book value of the assets. Consistent with the findings in the 41685 Order, costs associated with these assets have never been included for recovery under a rate base/cost of service process. Under AOG's ownership and continuing under Montpelier Generating's ownership, any recovery of costs will

be the result of sales made in competitive wholesale markets subject to the rules and regulations of the Federal Energy Regulatory Commission. Neither the book value nor the purchase price of a particular asset that is bidding into competitive markets is a factor in determining competitive wholesale market prices.

VIII. Representations and Commitments of Montpelier Generating

18. Pursuant to an Assignment and Assumption Agreement that is part of the Asset Purchase Agreement and as confirmed by the verified testimony of James Maiz, Montpelier Generating has agreed to abide and assume the requirements of the previously approved Stipulation in Cause No. 41685. Several of those requirements related to the construction phase of the Station and appear to have no ongoing applicability. To the extent, however, that they are still applicable, Montpelier Generating will assume such obligations even if not listed in the summary bullets below. As understood by Montpelier Generating, the following requirements, drawn from the Stipulation approved in 41685 Order and from the ordering paragraphs 3 through 5 of the 41685 Order, that are still applicable include:

- o Montpelier Generating will not permit another entity to connect to or obtain gas service from the connection that exists between a gas transmission line that crosses the Montpelier property and the Montpelier station.
- o Montpelier Generating 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.
- o Montpelier Generating agrees to be responsible for any material adverse impact on the transmission system caused by the operation of and/or sale from the Montpelier station.
- o In the event that Montpelier Generating wants to add additional peaking units or capacity at the site above the current level, Montpelier Generating will file a new petition with the Commission for such additions.

- o Montpelier Generating will notify the Commission of any sale or transfer of the Montpelier station or the rights granted to AOG and continued to Montpelier Generating herein and, regardless of the method of transfer, will seek approval of the transfer, if appropriate. The trading or sale of the equity interests of Montpelier Generating or of its direct parent, Kimura Power, LLC, or of its indirect parents, Taky Power, LLC or Rockland Power Partners III, LP, shall not constitute a transfer of assets or rights under this paragraph.⁷
- o Montpelier Generating agrees to obtain prior approval of the Commission before selling any electricity to an entity that is a Montpelier Generating affiliated regulated Indiana utility (or any affiliate thereof).
- o Montpelier Generating agrees to operate the Montpelier station in a manner consistent with good utility practice that will not harm or cause harm to Indiana retail customers.
- o Montpelier Generating agrees to file with the Commission an annual report as provided in I.C. 8-1-2-49 and to provide such other information as the Commission may from time to time request.
- o Montpelier Generating has or will obtain all appropriate air permits in accordance with the law.
- o So long as retail power supply remains an electric service subject to regulation by the Commission under Indiana law, Montpelier Generating will not sell at retail in the State of Indiana any of the electricity generated by the Montpelier station without further order of the Commission.

19. Montpelier Generating requests that the Commission order issued in this Joint Petition clarify that the requirement for approvals of any future transfer of the assets does not apply with respect to internal transfers within Montpelier Generating's corporate group, but only to transfers outside the group to an unaffiliated entity.

⁷ As discussed below, Montpelier Generating requests that the Commission's Order in this proceeding clarify that this requirement for prior Commission approval of a future transfer of the Montpelier station would not apply to an intra-corporate reorganization, but only to a sale or transfer to an unaffiliated entity. Prior to consummation of the proposed transaction, Rockland Power Partners II, LP ("RPP II") may acquire up to 9.99 percent of the voting interests in Taky Power, LLC. RPP II's general partner is Rockland Power Partners II GP, LLC, which is managed by Rockland Capital, LLC.

IX. Proposed Procedural Process

20. The Joint Petitioners request the Commission promptly conduct a prehearing conference to establish a procedural schedule in this Cause and issue an order on an expedited basis to allow the transaction to proceed to closing. In accordance with 170 IAC 1-1.1-15(e), Joint Petitioners will seek to enter into a stipulation with the Office of Utility Consumer Counsel (“OUCC”) regarding a procedural schedule in lieu of a prehearing conference.

X. Counsel

21. Counsel for Joint Petitioners who should be served with copies of all pleadings, Orders, and other documents in this proceeding are:

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WHEREFORE, the Joint Petitioners request that the asset transfers and associated relief described herein be approved by the Commission and that Joint Petitioners be granted all other relief appropriate in the premises.

Respectfully Submitted,

AES OHIO GENERATION, LLC



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VERIFICATION BY AES OHIO GENERATION, LLC

I, Mark E. Miller, President of AES Ohio Generation, LLC, hereby verify under the penalties of perjury that the foregoing representations are true to and correct the best of my knowledge, information and belief.

Dated: January 12, 2018

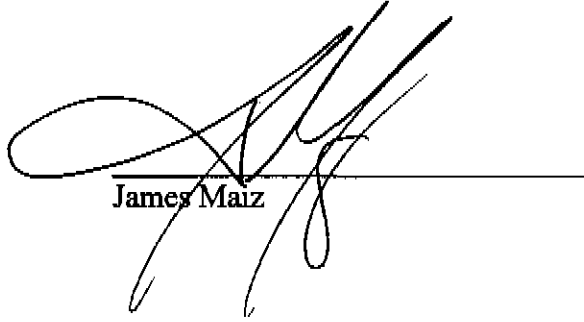
A handwritten signature in blue ink, appearing to read 'Mark E. Miller', is written over a horizontal line.

Mark E. Miller

VERIFICATION BY MONTPELIER GENERATING STATION, LLC

I, James Maiz, President of Montpelier Generating Station, LLC, hereby verify under the penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.

Dated: January 12, 2018



James Maiz

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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