ORIGINAL

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 GENERATING STATION AND FOR SUCCESSION TO THE DECLINATION OF THE COMMISSION'S JURISDICTION IN ACCORDANCE WITH THE COMMISSION'S ORDER IN CAUSE NO. 41685	)	**CAUSE NO. 45038** **APPROVED:** MAR 21 2018

<u>ORDER OF THE COMMISSION</u>

Presiding Officers:
Sarah E. Freeman, Commissioner
Brad J. Pope, Administrative Law Judge

On January 12, 2018, AES Ohio Generation, LLC ("AOG") and Montpelier Generating Station, LLC ("Montpelier Generating" or "Buyer") (collectively, "Joint Petitioners") filed with the Indiana Utility Regulatory Commission ("Commission") their Verified Joint Petition ("Joint Petition") in this Cause. In the Joint Petition, Joint Petitioners seek Commission approval for the sale of the Montpelier Generating Station ("Montpelier Station") from AOG to Montpelier Generating and for a continuation of the Commission's decision to decline to exercise jurisdiction in accordance with the Commission's August 9, 2000 Order in Cause No. 41685 ("41685 Order"). Joint Petitioners also prefiled the direct testimony and attachments of witnesses Mark E. Miller, President for AOG, and James Maiz, President of Montpelier Generating.

On January 29, 2018, the Commission granted the Motion for Administrative Notice filed on January 12, 2018, by Joint Petitioners. On February 23, 2018, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the testimony of Peter M. Boerger, PhD., Senior Utility Analyst in the OUCC's Electric Division.

A public evidentiary hearing was convened in this Cause on March 8, 2018, at 1:30 p.m. in Hearing Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC were present and offered their respective evidence into the record, which was admitted without objection.

Based on the applicable law and evidence presented, the Commission now finds:

1. <u>Commission Jurisdiction and Notice</u>. Due, legal, and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. AOG's ownership of Montpelier Station makes it a public utility as defined by Ind. Code § 8-1-2-1 and, thus, subject to this Commission's jurisdiction.[1] 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. Pursuant to Ind. Code §§ 8-1-2-83(a), 8-1-2-84, and 8-1-2.5-5, the Commission has jurisdiction over the purchase of utility property. Accordingly, the Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause.

2. Joint Petitioners' Characteristics and Business. 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 is wholly owned by DPL Inc. and indirectly owned by its ultimate parent company, The AES Corporation. AOG serves no retail customers within Indiana.

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 Rockland Capital, LLC, 24 Waterway Avenue, Suite 800, The Woodlands, Texas. 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.

3. Background. On December 15, 2017, 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 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 Cause. Prior to closing, Kimura will assign its right to acquire Montpelier Station under the APA to Montpelier Generating.

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

The Montpelier Station is located in Wells County, Indiana, and is the only asset owned by AOG in Indiana. The Montpelier Station has an aggregate capacity of approximately 236 MW (nameplate) and includes interconnection facilities and metering facilities necessary to connect the generation assets to the transmission system of Indiana Michigan Power Company ("I&M"), control room facilities, equipment used to communicate real time information with I&M, AOG, and PJM, oil storage tanks and oil inventory, and other miscellaneous facilities and spare parts. 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 Montpelier Station.

4. Relief Requested. Joint Petitioners seek Commission approval as necessary for the

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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.

sale of the Montpelier Station and approval of Montpelier Generating's succession to the Commission's declination of jurisdiction in the 41685 Order, with the exception that no additional Commission approvals would be needed for Montpelier Generating to transfer the Montpelier Station assets in an internal corporate reorganization. Finally, Joint Petitioners request that the Commission release and terminate, without condition, AOG from all further duties and obligations contained within the 41685 Order.

5. Joint Petitioners' Evidence. Mr. Miller, President for AOG, testified that Joint Petitioners seek Commission approval for the sale to Montpelier Generating of AOG's entire interest in the Montpelier Station. The primary assets are four combustion turbines with a nameplate capacity totaling 236 MW. The sale also includes all the ancillary property and real property at the site. Mr. Maiz, President of Montpelier Generating, testified that Montpelier Generating has authority to conduct business in the state of Indiana as a foreign limited liability company. He also testified that Montpelier Generating will operate the Montpelier Station and will sell energy, capacity, and ancillary services exclusively at wholesale pursuant to market-based rate authority, except for reactive power sales that will be made pursuant to a cost-of-service rate schedule. He explained that Montpelier Generating's sales from the Montpelier Station and all rates from those sales will be subject to regulation by FERC. He also stated that Montpelier Generating, individually or through affiliates, does not own and is not currently affiliated with any utility in Indiana.

Mr. Maiz testified that Montpelier Generating has the technical, financial, and managerial capability to own and operate the Montpelier Station. He said that Montpelier Generating is an indirect subsidiary of Rockland Power Partners III, LP, an investment fund managed by Rockland Capital, LLC ("Rockland"). Rockland's commercial and investment team is led by a partnership group that has worked together since the late 1990s and collectively has over 85 years of experience in the power industry. In addition to the investment team, Rockland has a team of experienced professionals that have vast technical, operational, and financial expertise. This includes multiple Rockland employees who individually have over 25 years of experience operating and managing power plants. Mr. Maiz testified that Rockland has managed over ten GW of electric generating capacity in the U.S. and that consistent with other similar acquisitions, Rockland will provide the overall asset management services to the Montpelier Station, including all executive and managerial oversight. He said that Rockland hired NAES Corporation to provide the day-to-day on-site operating and maintenance services for the Montpelier Station. He added that NAES manages over 250 power plants across the U.S. and in 12 other countries. He explained that NAES will hire each current employee who provides services to the Montpelier Station and who wishes to accept an offer of employment. The Commission understands that NAES has, in fact, made offers to all employees and that all offers have been accepted effective as of the closing of the transaction.

Mr. Maiz testified that Montpelier Generating commits to assuming and complying with all the conditions of the 41685 Order that remain applicable post-construction of the Montpelier Station. Specifically, these conditions include:

- 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.

- 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.

- 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.

- 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.

- 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.[2]

- 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.

- 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.

- Montpelier Generating agrees to file with the Commission an annual report as provided in Ind. Code § 8-1-2-49 and to provide such other information as the Commission may from time to time request.

- Montpelier Generating has or will obtain all appropriate air permits in accordance with the law.

- 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.

Mr. Maiz also testified that Montpelier Generating is requesting that the Commission's order in this Cause clarify that the 41685 Order requirement for pre-approval of any future transfer be limited to a transfer to unaffiliated entities. He explained that the 41685 Order carves out certain types of transactions where the stock of DPL Energy is sold. He stated that as applied to Montpelier Generating, this would allow, for example, the equity interests in Montpelier Generating to be transferred to another affiliate entity within the ultimate parent company of Montpelier Generating. He explained that without the requested clarification, it is not certain that this would allow a drop-

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2 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.

down of the assets into a subsidiary of Montpelier Generating or a dividend up to Montpelier Generating's parent with a drop-down to an entity also owned 100% by Montpelier Generating's parent.

Mr. Miller testified that the sale will have no direct effects on Indiana retail customers as neither AOG nor Montpelier Generating have retail sales customers in Indiana. He added that while Montpelier Generating may have a different bidding strategy than AOG, the effect on wholesale prices and the indirect effect the wholesale prices may have on retail prices would be extremely small. Mr. Maiz agreed with Mr. Miller, adding that Montpelier Generating will continue to make wholesales sales under market-based rates subject to FERC jurisdiction and oversight.

Mr. Miller stated that the sale of the Montpelier Station is in the public interest because the Montpelier Station, in the hands of Montpelier Generating, will continue to provide the benefits that the Commission identified in the 41685 Order, namely supporting electric reliability in Indiana and doing so with minimal or no effect on the reliability of the interconnecting transmission company or any neighboring system and with its output subject to FERC oversight, regulation, and market forces. Mr. Maiz added that Montpelier Generating will operate the Montpelier Station in a manner consistent with good utility practice which will continue to support electric reliability in Indiana.

Finally, Mr. Miller emphasized that Joint Petitioners are asking the Commission to find that upon closing of the transaction, none of the conditions in the 41685 Order will continue to apply to AOG, which would then no longer be a utility under Indiana law.

6. **OUCC's Evidence.** Dr. Boerger, Senior Utility Analyst in the OUCC's Electric Division, testified that a decision regarding a request such as the one in this proceeding should be based upon two considerations: (1) whether the buyer of the facility possesses the financial, technical, and managerial ability needed to operate the generating facility; and (2) whether the buyer accepts the requirements and restrictions placed by the Commission upon the entity that was originally approved to build and operate the facility.

Dr. Boerger testified that with respect to managerial ability, Montpelier Generating provided details about Rockland's 28 separate private equity transactions and provided the contract establishing the relationship between Montpelier Generating's parent entity and Rockland. Dr. Boerger testified that regarding technical ability, NAES Corporation appeared to be capable of providing day-to-day and on-site operating and maintenance services. As to financial ability, Dr. Boerger testified that Montpelier Generating provided evidence showing that capital has been raised by the ultimate parent company, Rockland Power Partners III, LP. He stated that in combination with Rockland Power Partners III, LP's managerial relationship to Rockland Capital, LLC, this evidence provides adequate assurance of the financial capability of Montpelier Generating.

Dr. Boerger stated that Montpelier Generating commits to be bound by conditions in the 41685 Order as set out in Mr. Maiz's testimony and that the OUCC does not object to Montpelier Generating's request for clarification that the requirement for approvals for any future transfer of the assets does not apply to internal transfers within Montpelier Generating's corporate group, but only to transfers to an unaffiliated entity. Dr. Boerger added that it would be reasonable for the Commission to require that for transfers within Montpelier Generating's corporate group, an organizational chart should be provided to the Commission in filings under this Cause so that the Commission has a current record of the entity's position within the corporate group. In conclusion, Dr. Boerger stated that Joint Petitioners' request for approval of the sale of the Montpelier Station to Montpelier Generating is reasonable and should be approved and that the request for clarification limiting the need for future Commission approvals of transfers to only those made to unaffiliated entities be approved subject to the informational filing requirement.

7. <u>Commission Findings</u>. Ind. Code § 8-1-2-84 provides that any public utility may sell its used or useful property, plant, or business, or any part thereof, to any other public utility at a price and on terms approved by the Commission. In the Joint Petition, Joint Petitioners request that the Commission determine that it is unnecessary to make an evaluation of the book value and sales price because the costs of the assets have never been included for recovery under a typical utility rate base/cost of service process. Instead, 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 FERC.

The evidence indicates that the proposed transaction will have no direct effects on Indiana retail rates because neither AOG nor Montpelier Generating will make retail sales in Indiana. Any indirect effects from the influence on wholesale prices on retail rates will be *de minimis* due to the small size of the Montpelier Station relative to the size of the wholesale market in which it competes. We find that it is unnecessary to make an evaluation of the book value and sales price because the costs of the assets have never been included for recovery under a typical utility rate base/cost of service process.

Ind. Code § 8-1-2.5-5 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. Ind. 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 . . . ." Ind. Code § 8-1-2.5-5(b) provides:

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

Montpelier Generating will become a "public utility" and an "energy utility" and has requested that the Commission decline to exercise its jurisdiction with respect to the sale of electric power generated by the Montpelier Station. Montpelier Generating commits to be bound by conditions in the 41685 Order as specifically set out in Mr. Maiz's testimony and in the body of this Order, with the exception that no additional Commission approvals would be needed for Montpelier Generating to transfer the Montpelier Station assets in an internal corporate reorganization. Dr. Boerger testified that the Commission should require Montpelier Generating to supply an organizational chart in filings under this Cause so that the Commission has a current record of the entity's position within the corporate group. Mr. Maiz and Dr. Boerger testified that Montpelier Generating has the financial, technical, and managerial ability to operate the Montpelier Station. Dr. Boerger concluded that Joint Petitioners' request for approval of the sale of the Montpelier Station is reasonable and should be approved, subject to the informational filing requirement.

Based on the evidence presented, we find that Montpelier Generating has the financial, technical, and managerial ability to operate the generating facility and that Montpelier Generating commits to be bound by conditions in the 41685 Order, as specifically set out in Mr. Maiz's testimony and in the body of this Order, with the exception that no additional Commission approvals would be needed for Montpelier Generating to transfer the Montpelier assets in an internal corporate reorganization. We therefore approve as reasonable Joint Petitioners' request for the sale of the Montpelier Station. However, Montpelier Generating shall be subject to the conditions in the 41685 Order, as specifically set out in Mr. Maiz's testimony and in the body of this Order. The sale of the Montpelier Station is in the public interest because Montpelier Station, in the hands of Montpelier Generating, will continue to provide the benefits that the Commission identified in the 41685 Order, namely supporting electric reliability in Indiana and doing so with minimal or no effect on the reliability of the interconnecting transmission company or any neighboring system and with its output subject to FERC oversight, regulation, and market forces.

Based on the evidence presented, we find that Montpelier Generating's request for clarification limiting the need for future Commission approvals of transfers to only those made to unaffiliated entities should be approved.

As a condition of this Order and our continued declination of jurisdiction, Montpelier Generating shall file an annual report under this Cause as provided in Ind. Code § 8-1-2-49. The annual report shall be signed by a responsible officer of Montpelier Generating and shall certify the following:

(1) Montpelier Generating has not sold any power generated by the Montpelier Station to retail energy customers in Indiana.

(2) Montpelier Generating has not sold any power generated by the Montpelier Station directly to a regulated Indiana utility.

(3) Montpelier Generating has not entered into any affiliate contracts with a regulated Indiana utility.

(4) The Montpelier Station has not been sold to an unaffiliated entity.

(5) If the Montpelier Station is internally transferred within Montpelier Generating's corporate group, Montpelier Generating shall include an updated organizational chart similar to that shown in Pub. Ex. 1, Att. PMB-3.

We also approve Joint Petitioners' request that the Commission release and terminate, without condition, AOG from all duties and obligations contained within the 41685 Order upon the sale of the Montpelier Station to Montpelier Generating.

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

1. The proposed sales of assets from AES Ohio Generation, LLC to Montpelier Generating Station, LLC is approved.

2. Upon conclusion of the sale of the Montpelier Station to Montpelier Generating, Montpelier Generating shall succeed to the declination of jurisdiction granted by the 41685 Order, subject to the terms and conditions specifically set out in Paragraph 5 of this Order with a clarification that a future Commission review of a proposed future transfer by Montpelier Generating shall apply only with respect to transfers to unaffiliated entities. However, Montpelier Generating is required to submit an organizational chart with its annual filing if Montpelier Generating's position within the corporate group should change or if the Montpelier Station is internally transferred.

3. Upon the closing of the proposed sale, AES Ohio Generation, LLC shall no longer be a public utility as defined in the Public Service Commission Act or an energy utility and is released from all obligations and duties with respect to the requirements set forth in the 41685 Order.

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

HUSTON, FREEMAN, AND WEBER CONCUR; ZIEGNER ABSENT:

APPROVED: MAR 21 2018

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

Mary M Becerra

Mary M. Becerra
Secretary of the Commission