

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of The AES )  
Corporation, Dolphin Sub, Inc., DPL Inc. and ) Case No. 11-3002-EL-MER  
The Dayton Power and Light Company for )  
Consent and Approval for a Change of )  
Control of The Dayton Power and Light )  
Company. )

In the Matter of the Application of The Dayton )  
Power and Light Company for Approval ) Case No. 08-1094-EL-SSO  
of Its Electric Security Plan. )

In the Matter of the Application of The Dayton )  
Power and Light Company for Approval ) Case No.08-1095-EL-ATA  
of Revised Tariffs. )

In the Matter of the Application of The Dayton )  
Power and Light Company for Approval of ) Case No. 08-1096-EL-AAM  
Certain Accounting Authority Pursuant to )  
Section 4905.13, Revised Code. )

In the Matter of the Application of The Dayton )  
Power and Light Company for Approval of Its ) Case No. 08-1097-EL-UNC  
Amended Corporate Separation Plan. )

In the Matter of the Application of The Dayton )  
Power and Light Company for Approval of ) Case No. 12-426-EL-SSO  
its Market Rate Offer. )

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In the Matter of the Application of The Dayton )  
Power and Light Company for Approval of ) Case No. 12-427-EL-ATA  
Revised Tariffs.

In the Matter of the Application of The Dayton )  
Power and Light Company for Approval of ) Case No. 12-428-EL-AAM  
Certain Accounting Authority.

In the Matter of the Application of The Dayton )  
Power and Light Company for the Waiver of ) Case No. 12-429-EL-WVR  
Certain Commission Rules.

In the Matter of the Application of The Dayton )  
Power and Light Company to Establish ) Case No. 12-672-EL-RDR  
Tariff Riders.

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**JOINT MOTION SEEKING ENFORCEMENT OF APPROVED  
SETTLEMENT AGREEMENTS AND  
ORDERS ISSUED BY THE PUBLIC UTILITIES COMMISSION OF OHIO  
AND MEMORANDUM IN SUPPORT**

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**September 26, 2012**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The AES Corporation, Dolphin Sub, Inc., DPL Inc. and The Dayton Power and Light Company for Consent and Approval for a Change of Control of The Dayton Power and Light Company.	)	Case No. 11-3002-EL-MER
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In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan.	)	Case No. 08-1094-EL-SSO
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In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	)	Case No.08-1095-EL-ATA
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In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Section 4905.13, Revised Code.	)	Case No. 08-1096-EL-AAM
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In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.	)	Case No. 08-1097-EL-UNC
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In the Matter of the Application of The Dayton Power and Light Company for Approval of its Market Rate Offer.	)	Case No. 12-426-EL-SSO
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In the Matter of the Application of The Dayton ) Power and Light Company for Approval of ) Revised Tariffs.	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton ) Power and Light Company for Approval of ) Certain Accounting Authority.	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton ) Power and Light Company for the Waiver of ) Certain Commission Rules.	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton ) Power and Light Company to Establish ) Tariff Riders.	Case No. 12-672-EL-RDR

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**JOINT MOTION SEEKING ENFORCEMENT OF APPROVED  
SETTLEMENT AGREEMENTS AND  
ORDERS ISSUED BY THE PUBLIC UTILITIES COMMISSION OF OHIO**

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On June 24, 2009, the Public Utilities Commission of Ohio ("Commission") issued an Opinion and Order ("ESP I Order") in Case Nos. 08-1094-EL-SSO, *et al.* ("ESP I Case") adopting a stipulation and recommendation ("ESP I Settlement") and approving an electric security plan ("ESP") for The Dayton Power & Light Company ("DP&L"). Among other things, the ESP I Settlement contained the following provisions:

The current RSS [RSC] charge will continue as a nonbypassable charge through December 31, 2012. Through December 31, 2012, shopping customers who return to DP&L shall pay the Standard Service Offer ("SSO") rate under the applicable tariff. In 2011 and 2012, governmental aggregation customers who elect not to pay the RSS [RSC] will return to DP&L at a market-based rate. DP&L will develop and file for approval a market-based rate calculated consistent with Section 4928.20(J), Revised Code, by July 1, 2010.<sup>1</sup>

\* \* \*

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<sup>1</sup> ESP I Settlement at 4 (Section 3).

DP&L will file a new ESP and/or MRO case by March 31, 2012 to set SSO rates to apply for period beginning January 1, 2013. At least 120 days prior to March 31, 2012, DP&L will consult with interested Signatory Parties to discuss the filing.<sup>2</sup>

On November 22, 2011, the Commission issued a Finding and Order ("Merger Order") in Case No. 11-3002-EL-MER ("*Merger Case*") adopting stipulations and recommendations ("Merger Settlement") and authorizing a change in control resulting in DPL Inc. (DP&L's parent corporation) becoming a wholly-owned subsidiary of The AES Corporation ("AES"). Prior to the Merger Order, AES, DPL Inc. and DP&L represented to the Commission that the merger would result in reasonable rates. More specifically, AES, DPL Inc. and DP&L represented that:

The Commission is required to determine whether the merger will result in service at a "reasonable rate." Ohio Rev. Code § 4905.402(B). In the Application (p.10), Applicants demonstrated that the merger would not affect DP&L's rates because DP&L has an established Electric Security Plan ("ESP") from Case No. 08-1094-EL-SSO that extends through December 31, 2012.<sup>3</sup>

In compliance with the deadline established by the ESP I Settlement and on March 30, 2012, DP&L filed an application seeking approval of a market rate offer ("MRO") form of SSO under Sections 4928.141 and 4928.142, Revised Code, as well as other relief in Case Nos. 12-426-EL-SSO, *et al.* ("*MRO Case*"). On September 7, 2012, DP&L filed a Notice of Withdrawal of Market Rate Offer Application ("MRO Withdrawal Notice") containing the following sentence:

Please take notice that Applicant The Dayton Power and Light Company withdraws without prejudice its March 30, 2012 Application for a Market Rate Offer in this docket.<sup>4</sup>

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<sup>2</sup> ESP I Settlement at 7 (Section 9).

<sup>3</sup> *Merger Case*, Applicants' Reply Comments at 11 (August 18, 2011).

<sup>4</sup> MRO Withdrawal Notice at 1.

Also on September 7, 2012, in the *MRO Case* and before filing either a new MRO application or an ESP application, DP&L filed a Motion to Set Procedural Schedule for Its Electric Security Plan Filing (“ESP Procedural Motion”). In the ESP Procedural Motion, DP&L states that it intends to file an ESP application on or before October 8, 2012 in the *MRO Case*.<sup>5</sup> The ESP Procedural Motion indicates that DP&L expects the Commission to issue a final order on the yet-unseen ESP application sooner than the Commission is required to initiate a proceeding in response to an application seeking an MRO.<sup>6</sup> As a consequence of the MRO Withdrawal Notice and DP&L’s recent expression of its intentions to file an ESP application on or about October 8, 2012, DP&L has effectively frustrated the purpose of the March 31, 2012 filing deadline contained in the ESP I Settlement.

In any event, DP&L’s unilaterally-made decisions now make it highly likely that a new ESP (“ESP II”) or MRO will not lawfully be approved by the Commission prior to January 1, 2013. In this circumstance, Ohio law specifies that ESP I shall continue until such time as the Commission lawfully approves a successor SSO. This legal reality requires, in the current context, an identification of what ESP I provisions survive beyond December 31, 2012.

This Joint Motion Seeking Enforcement of Approved Settlement Agreements And Orders Issued by the Public Utilities Commission of Ohio (“Joint Motion”) proactively

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<sup>5</sup> DP&L’s ESP Procedural Motion is the subject of a Joint Memorandum In Opposition to Motion to Set Procedural Schedule filed with the Commission on September 17, 2012. In addition to the objections and concerns expressed in the Joint Memorandum In Opposition, DP&L’s proposal to file an ESP application in the *MRO Case* presents complications as a result of the very different procedural structure and specified timing of Commission determinations that exist in an MRO case and do not exist in an ESP case. Section 4928.141, Revised Code, permits an electric distribution utility (“EDU”) to simultaneously submit applications for an MRO and an ESP. It does not provide for an EDU to file an MRO application, withdraw the MRO application and then file an ESP application in the MRO proceeding.

<sup>6</sup> Pursuant to Section 4928.142(B)(3), Revised Code, the Commission must initiate a proceeding within 90 days once an MRO application is filed. DP&L’s ESP Procedural Motion proposes December 17, 2012 as the issuance date of a final order on the ESP application to be filed on or about October 8, 2012.

requests that the Commission require DP&L to comply with Commission-approved settlement agreements previously agreed upon by filing tariffs that delete the nonbypassable Rate Stabilization Charge ("RSC") provision to be effective for all bills rendered on or after January 1, 2013. The portions of the ESP I settlement quoted above clearly state that the RSC authorized as part of ESP I only runs through December 31, 2012.

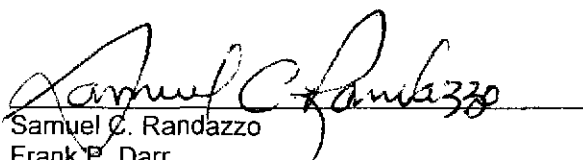
Section 4928.141(A), Revised Code, states that: "Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code." Since the SSO approved in the *ESP I Case* specifies that the life of the nonbypassable RSC only runs through December 31, 2012, Section 4928.141, Revised Code, requires the Commission to enforce ESP I's termination of the nonbypassable Rate Stabilization Surcharge ("RSS") effective December 31, 2012.

The thrust of the relief requested in the foregoing Joint Motion is to proactively secure the compliance mandated by Section 4928.141, Revised Code. The need for the requested relief is precipitated by DP&L's choices that culminated in the MRO Withdrawal Notice and its stated intentions to file an ESP application on or before October 8, 2012 (less than three months before January 1, 2013).

For the reasons explained in the Memorandum in Support attached hereto and incorporated herein by reference, promptly granting the relief requested herein will provide shopping and non-shopping customers with a better ability to project future electricity bills, compare SSO prices with prices available from competitive retail electric service ("CRES") providers and make such future electric bills more stable and certain.

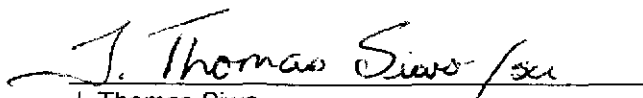
The requested relief will also better frame the required MRO versus ESP comparison that the Commission must make before it can approve any ESP that DP&L may propose in a future application.

Respectfully submitted,



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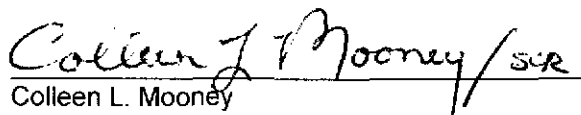
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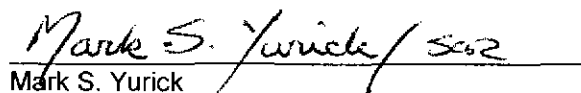
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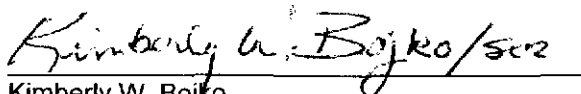
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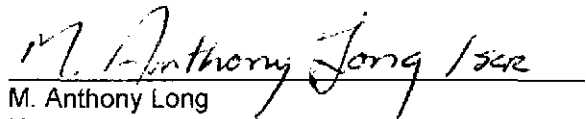
**\*SolarVision is only a party in Case Nos.  
12-426-EL-SSO, et al.**



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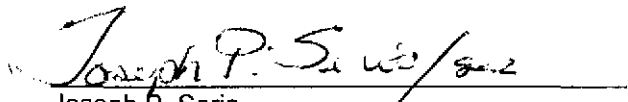
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**MEMORANDUM IN SUPPORT**

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On June 24, 2009, the Public Utilities Commission of Ohio ("Commission") issued an Opinion and Order ("ESP I Order") in Case Nos. 08-1094-EL-SSO, *et al.* ("ESP I Case") adopting a stipulation and recommendation ("ESP I Settlement") and approving an electric security plan ("ESP") for The Dayton Power & Light Company ("DP&L"). Among other things, the ESP I Settlement contained the following provisions:

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<sup>7</sup> ESP I Settlement at 4 (Section 3).

DP&L will file a new ESP and/or MRO case by March 31, 2012 to set SSO rates to apply for period beginning January 1, 2013. At least 120 days prior to March 31, 2012, DP&L will consult with interested Signatory Parties to discuss the filing.<sup>8</sup>

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The Commission is required to determine whether the merger will result in service at a "reasonable rate." Ohio Rev. Code § 4905.402(B). In the Application (p.10), Applicants demonstrated that the merger would not affect DP&L's rates because DP&L has an established Electric Security Plan ("ESP") from Case No. 08-1094-EL-SSO that extends through December 31, 2012.<sup>9</sup>

In compliance with the deadline established by the ESP I Settlement and on March 30, 2012, DP&L filed an application seeking approval of a market rate offer ("MRO) form of SSO under Sections 4928.141 and 4928.142, Revised Code as well as other relief in Case Nos. 12-426-EL-SSO, *et al.* ("*MRO Case*"). On September 7, 2012, DP&L filed a Notice of Withdrawal of Market Rate Offer Application ("MRO Withdrawal Notice") containing the following sentence:

Please take notice that Applicant The Dayton Power and Light Company withdraws without prejudice its March 30, 2012 Application for a Market Rate Offer in this docket.<sup>10</sup>

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<sup>8</sup> ESP I Settlement at 7 (Section 9).

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Also on September 7, 2012, in the *MRO Case* and before filing either a new MRO application or an ESP application, DP&L filed a Motion to Set Procedural Schedule for Its Electric Security Plan Filing (“ESP Procedural Motion”). In the ESP Procedural Motion, DP&L states that it intends to file an ESP application on or before October 8, 2012 in the *MRO Case*. The ESP Procedural Motion indicates that DP&L expects the Commission to issue a final order on the yet-unseen ESP application sooner than the Commission is required to initiate a proceeding in response to an application seeking an MRO.<sup>11</sup> As a consequence of the MRO Withdrawal Notice and DP&L’s recent expressions of its intentions to file an ESP application on or about October 8, 2012, DP&L is effectively frustrating the purpose of the March 31, 2012 filing deadline contained in the ESP I Settlement.

In any event, DP&L’s unilaterally-made decisions now make it highly likely that a new ESP (“ESP II”) or MRO will not lawfully be approved by the Commission prior to January 1, 2013. In this circumstance, ESP I shall continue until such time as the Commission lawfully approves a successor SSO. This legal reality requires, in the present context, an identification of what ESP I provisions survive beyond December 31, 2012.

Leaving the issue raised by the foregoing Joint Motion unresolved (as DP&L would, based on its actions, seem to prefer) is unreasonable and contrary to the public interest. The issue raised by the foregoing Joint Motion is not a new issue. Indeed, DP&L has recognized the issue and urged the Commission to delay addressing the issue.

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<sup>11</sup> Pursuant to Section 4928.142(B)(3), Revised Code, the Commission must initiate a proceeding within 90 days once an MRO application is filed. DP&L’s ESP Procedural Motion proposes December 17, 2012 as the issuance date of a final order on the ESP application to be filed on or about October 8, 2012.

For example, several interested parties in the *Merger Case* filed comments urging the Commission to address issues regarding the subsequent SSO for purposes of determining the proposed merger's impact on future rates. DP&L affirmatively requested that the Commission not address these issues, and succeeded in avoiding Commission resolution of these questions as part of the *Merger Case*. Attached hereto as Appendix A is a letter supplied by AES' and DP&L's counsel to counsel for the Industrial Energy Users-Ohio ("IEU-Ohio") and referencing the *Merger Case*. The letter confirms that AES and DP&L knew that some parties to the ESP I proceeding viewed the Commission-approved ESP I Settlement as requiring an end to the RSC as of December 31, 2012.<sup>12</sup> Thus, this request should not come as a surprise to DP&L.

Additionally, since there is already robust competition in DP&L's service territory, the Commission's decision on this matter will not thrust DP&L into the competitive market before DP&L is prepared. There is a long history of customer shopping in DP&L's service territory and successful customer acquisition by DP&L's CRES provider affiliates, DPL Energy Resources ("DPLER") and DP&L Energy. "As of December 31, 2011, approximately 47% of DP&L's load has switched to CRES providers with DPLER acquiring 87% of the switched load."<sup>13</sup> "DP&L also sells electricity to DPLER, an

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<sup>12</sup> DPL Inc.'s Annual Report, pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934 (otherwise known as the 10-K and cited herein as the "2011 10-K") filed on March 28, 2012 for the year 2011 states, at page 23, as follows:

...as the local distribution utility, DP&L has an obligation to serve customers within its certified territory and under the terms of its ESP Stipulation, as it is the provider of last resort (POLR) for standard offer service. DP&L's current rate structure provides for a nonbypassable charge to compensate DP&L for this POLR obligation. The PUCO may decrease or discontinue this rate charge at some time in the future.

<sup>13</sup> DPL Inc. 2011 10-K at 40. "In 2010, DPLER began providing CRES services to business customers in Ohio who are not in DP&L's service territory." DPL Inc. 2011 10-K at 12.

affiliate, to satisfy the electric requirements of its retail customers.”<sup>14</sup> This is not a circumstance where AES, DPL Inc. or DP&L can rightfully claim that the relief sought by the Joint Motion (elimination of the RSC pursuant to the terms of ESP I) will suddenly introduce DP&L or its affiliates to “customer choice.” And, the terms of the Commission-approved ESP I Settlement already make the RSC bypassable in the case of community aggregation programs that elect to have any returning SSO customers pay a market-based price for the generation supply portion of the SSO.<sup>15</sup>

The Commission’s decision on this matter will also not negatively impact DP&L’s capacity cost recovery. DP&L’s SSO customers compensate DP&L for generation capacity service based on the capacity pricing methodology established by PJM Interconnection, L.L.C.’s (“PJM”) Reliability Pricing Model (“RPM”). CRES providers serving retail customers in DP&L’s service area, including DPLER, likewise pay the RPM-based price for generation capacity service and thus compete for customers based on their relative energy prices. This is not a circumstance where the generation business interest of the incumbent EDU is, or will be, negatively affected as a result of an obligation to make capacity available to CRES providers at a price that provides CRES providers with a competitive advantage relative to compensation for generation capacity service which the EDU has obtained or is obtaining from SSO customers.<sup>16</sup>

As indicated above, the timing of DP&L’s efforts to establish a new SSO through an MRO or ESP now makes it likely that neither a new MRO nor ESP will be in effect prior to January 1, 2013. This timing and the provisions of ESP I combine to suggest

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<sup>14</sup> DPL Inc. 2011 10-K at 7.

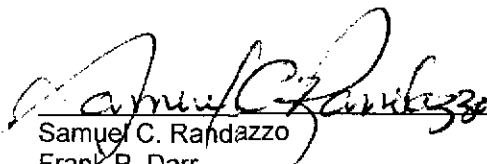
<sup>15</sup> DPL Inc.’s 2011 10-K states (at page 40) that nine organizations in DP&L’s service area have filed with the Commission to initiate governmental aggregation programs.

<sup>16</sup> DP&L’s PJM RPM Rider, applicable to SSO customers, compensates DP&L for RPM-related charges from PJM, including, but not limited to: Locational Reliability Charges, Capacity Resource Deficiency, RPM Auction Revenues, Generation Resource Rating Test, and Peak Hour Period Availability.

that the Commission should promptly identify the provisions of ESP I that cease as of December 31, 2012 and thereafter no longer apply to determine electric bills of shopping and non-shopping customers alike.

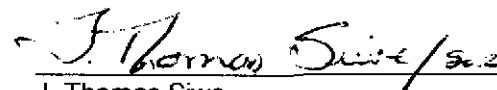
Accordingly, the parties who are submitting the foregoing Joint Motion urge the Commission to grant the relief requested therein. More specifically, the parties urge the Commission to direct DP&L to refile its ESP I tariffs to remove the RSC effective for service rendered on or after January 1, 2013. Granting such relief and doing so promptly will cause DP&L to comply with the Commission-approved ESP I Settlement, provide shopping and non-shopping customers with a better ability to project future electricity bills, compare SSO prices with prices available from CRES providers and make such future electric bills more stable and certain. The requested relief will also better frame the required MRO versus ESP comparison that the Commission must make before it can approve any ESP that DP&L may propose in a future application.

Respectfully submitted,



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October 26, 2011

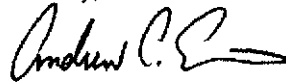
Sam Randazzo  
McNees Wallace & Nurick LLC  
21 E. State Street, 17<sup>th</sup> Floor  
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Re: AES/DP&L Merger Case No. 11-3002-EL-MER

Dear Sam:

You asked for a letter acknowledging that Industrial Energy Users-Ohio advanced its position that the RSC component of DP&L's current standard service terminates no later than December 31, 2012 in accordance with the February 24, 2009 settlement approved by the Commission in Case Nos. 08-1094-EL-SSO *et al.* On behalf of The AES Corporation and The Dayton Power and Light Company, this letter acknowledges that you raised this argument on behalf of your client in Case No. 11-3002-EL-MER.

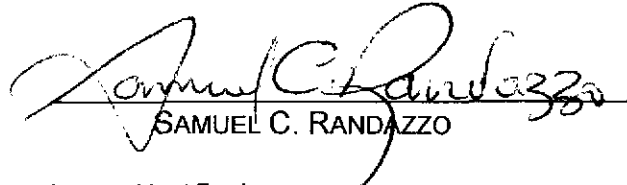
Sincerely,



Andrew C. Emerson

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Motion Seeking Enforcement of Approved Settlement Agreements and Orders Issued by the Public Utilities Commission of Ohio and Memorandum in Support* was served upon the following parties of record this 26<sup>th</sup> day of September 2012, via hand-delivery, electronic transmission, or first class mail, U.S. postage prepaid.



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