

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan)))	Case No. 12-426-EL-SSO
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

**MOTION OF INDUSTRIAL ENERGY USERS-OHIO TO COMPEL DISCOVERY
RESPONSES FROM THE DAYTON POWER AND LIGHT COMPANY
AND MEMORANDUM IN SUPPORT
PUBLIC VERSION**

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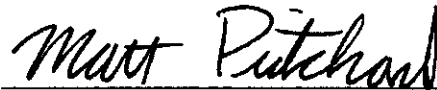
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to Establish Tariff Riders)	

**MOTION OF INDUSTRIAL ENERGY USERS-OHIO TO COMPEL DISCOVERY
RESPONSES FROM THE DAYTON POWER AND LIGHT COMPANY**

Pursuant to Rule 4901-1-23, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") moves to compel responses to the following discovery requests: IEU-Ohio's Interrogatories Nos. 10-10 through 10-18, 11-1, 12-2 through 12-6, and 12-10 through 12-12 and RPDs 10-1, 12-1 through 12-13, and 12-15 through 12-24. The reasons supporting this motion are set out in the accompanying memorandum in support.

Respectfully submitted,

A handwritten signature in black ink that reads "Matt Pritchard". The signature is written in a cursive, flowing style. The first name "Matt" is written in a larger, more prominent script, and "Pritchard" follows in a similar but slightly smaller script. The signature is positioned above a horizontal line.

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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Due to DP&L's repeated failures to provide IEU-Ohio with complete discovery responses, IEU-Ohio has now been forced to file its third Motion to Compel in this proceeding. Throughout the discovery process DP&L has engaged in a pattern of refusing to provide IEU-Ohio with the information that is necessary to review DP&L's financial integrity claim. IEU-Ohio's Tenth¹ and Eleventh² Sets included a number of

¹ Attachment A contains the Objections and Responses of the Dayton Power and Light Company to Industrial Energy Users-Ohio's Interrogatories and Requests for Production of Documents Upon the Dayton Power and Light Company – ESP, Tenth Set, February 1, 2013 ("DP&L's 10th Set of Responses").

interrogatories regarding DP&L's ability to reduce its expenses over the term of its proposed ESP and included Interrogatories about DP&L's ability to increase its total company revenue through an application to increase its distribution rates. DP&L claimed all of this information is privileged. IEU-Ohio's Twelfth³ Set included a number of interrogatories and requests for production of documents ("RPD") regarding presentations, reports, and analyses presented to DP&L's board of directors. These documents presented to DP&L's board of directors refer to a broad range of categories that IEU-Ohio believes could impact DP&L's total company financial integrity claim.

As described in more detail below, the information IEU-Ohio seeks in its Tenth, Eleventh, and Twelfth Sets is reasonably calculated to lead to the discovery of admissible evidence and DP&L's objections are meritless. IEU-Ohio contacted DP&L and informed DP&L that its discovery responses were incomplete but DP&L has not provided IEU-Ohio with complete discovery responses.⁴ Following the Attorney Examiners ruling during the deposition of DP&L witness Craig Jackson on February 21, 2013, IEU-Ohio followed up with counsel for DP&L to determine if IEU-Ohio and DP&L could resolve the current discovery dispute regarding potential expense reductions. On February 22, 2013, DP&L indicated that it had not yet determined if it would voluntarily supplement its responses to IEU-Ohio's expense reduction requests.⁵ Accordingly,

² Attachment B contains the Objections and Responses of the Dayton Power and Light Company to Industrial Energy Users-Ohio's Interrogatories Upon the Dayton Power and Light Company – ESP, Eleventh Set, February 4, 2013 ("DP&L's 11th Set of Responses").

³ Objections and Responses of the Dayton Power and Light Company to Industrial Energy Users-Ohio's Interrogatories and Requests for Production of Documents Upon the Dayton Power and Light Company – ESP, Twelfth Set, February 5, 2013 at 23 ("DP&L's 12th Set of Responses") (Attachment C).

⁴ See Attachment F (Affidavit of Matthew R. Pritchard).

⁵ *Id.*

IEU-Ohio seeks Commission intervention to resolve the parties' outstanding discovery dispute.

II. DISCOVERY STANDARDS

Rule 4901-1-16(B), Ohio Administrative Code ("O.A.C.") (General provisions and scope of discovery), states:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, depositions, and requests for admission.

Rule 4901-1-19(B), O.A.C. (Interrogatories and response time), provides:

Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served. An interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion

Additionally, Rule 4901-1-20(A)(2), O.A.C. (Production of documents and things; entry upon land or other property), provides that, subject to the scope of discovery in Rule 4901-1-16, O.A.C., a party may request another party to "[p]roduce for inspection, copying, sampling, or testing any tangible things which are in the possession, control, or custody of the party upon whom the request is served." (emphasis added).

Rule 4901-1-23, O.A.C., governs motions to compel and provides that any party may file a motion to compel with respect to:

- (1) Any failure of a party to answer an interrogatory served under rule 4901-1-19 of the Administrative Code.

- (2) Any failure of a party to produce a document or tangible thing or permit entry upon land or other property as requested under rule 4901-1-20 of the Administrative Code.
- (3) Any failure of a deponent to appear or to answer a question propounded under rule 4901-1-21 of the Administrative Code.
- (4) Any other failure to answer or respond to a discovery request made under rules 4901-1-19 to 4901-1-22 of the Administrative Code.

This Rule also treats evasive answers as a failure to answer.⁶ Finally, before the Commission allows a motion to compel to be filed, the party seeking discovery must exhaust all other reasonable means of obtaining discovery.

III. ARGUMENT

Although IEU-Ohio presented DP&L with valid discovery requests, DP&L has objected on grounds of relevance,⁷ burden,⁸ privilege and work product,⁹ proprietary,¹⁰ possession of DP&L's unregulated affiliate,¹¹ and vagueness.¹² As discussed below, these objections are meritless. Additionally, DP&L has ignored the 10-day response timeframe for discovery and also ignored the directive in the Attorney Examiners' November 14, 2012 Entry, in which the Attorney Examiners stated that if a party could not satisfy the 10-day timeframe to contact the requesting party to work out a mutually satisfactory solution. DP&L did not contact IEU-Ohio and instead included numerous

⁶ Rule 4901-1-23(B), O.A.C.

⁷ DP&L objected, on grounds of relevance, to Interrogatories 10-10 through 10-18, 11-1 and RPDs 10-1.

⁸ DP&L objected, on grounds of undue burden, to Interrogatories 10-10 through 10-15, 10-16 through 10-18, 11-1, 12-2 through 12-6, and 12-10 through 12-12 and RPDs 10-1, and 12-1 through 12-13 and 12-15 through 12-24.

⁹ DP&L objected, on grounds of privilege, to all the discovery requests subject of this motion to compel.

¹⁰ DP&L objected, on grounds of propriety, to Interrogatories 10-16, 10-17, 10-18, 12-2 through 12-6, and 12-10 through 12-12 and RPDs 10-1, 12-1 through 12-13, and 12-15 through 12-24.

¹¹ DP&L objected, on grounds of affiliate possession, to Interrogatories 12-2 through 12-6, and 12-10 through 12-12 and RPDs 12-1 through 12-13, and 12-15 through 12-24.

¹² DP&L objected, on grounds of vagueness, to Interrogatories 10-10 through 10-16.

responses in which DP&L unilaterally asserted that it would supplement its response at some point in the future.¹³ DP&L has not yet supplemented those responses.

A. IEU-Ohio's discovery requests are within the scope of discovery because they are reasonably calculated to lead to discovery of admissible evidence

IEU-Ohio's discovery requests that are the subject of this Motion to Compel seek two types of information: (1) information related to efforts by DP&L to enhance its revenue or reduce its expenses;¹⁴ and (2) presentations, analysis, and reports presented to DP&L's Board of Directors generally concerning DP&L's finances.¹⁵

Information related to DP&L's efforts to improve its financial integrity by reducing its expenses or increasing its revenue goes to the heart of DP&L's financial integrity claim: a claim that DP&L voluntarily put in front of the Commission. Accordingly, to the extent DP&L's Application and testimony regarding financial integrity is admissible as relevant in an ESP proceeding, IEU-Ohio's discovery requests that seek information related to DP&L's finances are reasonably calculated to lead to the discovery of admissible evidence.

The Commission has held that a utility's efforts to enhance its revenue and reduce its expenses are critically important in addressing a utility's financial integrity claim. In Case Nos. 88-170-EL-AIR, *et al.*, the Commission was presented with a financial integrity claim by The Cleveland Electric Illuminating Company and The Toledo Edison Company. Both companies filed applications for an increase in rates under Section 4909.18, Revised Code, and also filed motions seeking interim emergency rate

¹³ DP&L's responses to Interrogatories 12-2, 12-3, 12-4, and 12-11. Attachment C at 6-8, 15.

¹⁴ Interrogatories 10-10 through 10-18, and 11-1, and RPD 10-1.

¹⁵ Interrogatories 12-2 through 12-6, and 12-10 through 12-12 and RPDs 12-1 through 12-13 and 12-15 through 12-24.

relief. In addressing the interim rate relief based upon a financial integrity claim the Commission held, "[f]ifth, and perhaps most importantly, the Commission believes that the companies absolutely must take very aggressive steps to enhance their revenues and minimize their expenses particularly during this interim period in order to avoid the negative consequences of the current financial emergency."¹⁶ It is remarkable that DP&L has objected to information related to its projected expenses and revenues on grounds of relevance when DP&L uses its projected revenue and expenses to drive its financial integrity claim and request for the Service Stability Rider ("SSR") and switching tracker.

Information related to the presentations, analyses, and reports presented to DP&L's Board of Directors is discoverable because it is reasonably calculated to lead to the discovery of evidence that IEU-Ohio believes could impact DP&L's financial integrity claim. Interrogatory 12-3 requests information related to a discussion referenced in the board of directors' minutes regarding "[REDACTED]"

"[REDACTED]"¹⁷ Interrogatory 12-10 seeks information regarding the "[REDACTED]"
 "[REDACTED]"¹⁸ Interrogatory 12-11 seeks information regarding "[REDACTED]"¹⁹

Interrogatory 12-12(A) seeks information related to "[REDACTED]"
 "[REDACTED]"²⁰ RPD 12-2 seeks a presentation "[REDACTED]"²¹

¹⁶ *In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and to Increase Certain of its Fixed Schedules Fixing Rates and Charges for Electric Service*, Case Nos. 88-170-EL-AIR, *et al.*, Opinion and Order at 15 (Aug. 23, 1988) (emphasis added).

¹⁷ Attachment C at 7.

¹⁸ Attachment C at 14.

¹⁹ Attachment C at 15.

²⁰ Attachment C at 16.

These highlighted requests are indicative of all of the requests contained in IEU-Ohio's Twelfth Set, which is attached at Attachment C.

The information IEU-Ohio seeks through its request for the documents, presentations, and analyses presented to DP&L's board of directors and referenced in the board of directors' minutes are all reasonably calculated to lead to the discovery of admissible evidence. From the titles/descriptions of these documents, presentations, and analyses contained in the board of directors' minutes it is evident that they could impact DP&L's financial integrity claim and are therefore reasonably calculated to lead to the discovery of admissible evidence. For instance, DP&L's financial integrity claim presented through its ESP application and testimony in this proceeding is based upon "[REDACTED]" (Int. 12-11), and contains forecasted information ("[REDACTED]") (Int. 12-10). The descriptions and titles of the documents indicate that they contain the same categories of information that is contained in the financial integrity claim presented by DP&L.

Accordingly, the information that IEU-Ohio seeks in this Motion to Compel is reasonably calculated to lead to the discovery of admissible evidence.

B. DP&L's objection on grounds of proprietary is meritless because IEU-Ohio has entered into a Stipulated Protective Agreement with DP&L

DP&L objects to multiple discovery requests on grounds that the information is "proprietary, competitively sensitive or valuable, or constitutes trade secrets."²² For support, DP&L cites Rule 4901-1-24(A), O.A.C., which governs motions for protective

²¹ Attachment C at 17.

²² DP&L objected, on grounds of propriety, to Interrogatories 10-16, 10-17, 10-18, 12-2 through 12-6, and 12-10 through 12-12 and RPDs 10-1, 12-1 through 12-13, and 12-15 through 12-24. Attachment A at 24-26; Attachment C at 5-25.

orders. Division (A) allows the movant to seek a protective order that limits discovery in various manners. DP&L, however, did not seek to invoke Division (A) when it filed its motion for protective order along with its Application, instead filing its motion pursuant to Division (D) of that rule. Moreover, in its motion, DP&L only sought to “exempt from public disclosure certain information that is confidential, and competitively sensitive and trade secret information.”²³ IEU-Ohio would note that it has signed a stipulated protective agreement with DP&L, and therefore any information IEU-Ohio receives would not be disclosed to the public.²⁴ Because DP&L’s motion for protective order did not seek to limit discovery in any manner pursuant to Rule 4901-1-24(A), O.A.C., nor has the Commission imposed any restrictions under that rule, it is improper for DP&L to claim that rule as a basis for any objection.

C. The information IEU-Ohio seeks is within DP&L’s possession and control and therefore DP&L’s objection on grounds that DPL, Inc., (“DPL”) The AES Corp., (“AES”) and DPL Energy Resources (“DPLER”) are not subject to discovery is not applicable

DP&L objected to various discovery requests on grounds that the information was not in DP&L’s possession.²⁵ DP&L claimed that DPL, AES, and DPLER (its affiliate) are not parties to this proceeding and implied that DPL, AES, and DPLER are in possession of the relevant information or documents. The fact that these three entities are not parties to this proceeding or might have access to or possess certain

²³ Memorandum in Support of The Dayton Power and Light Company’s Motion for Protective Order at 1 (Oct. 5, 2012).

²⁴ IEU-Ohio, however, reserves the right to challenge DP&L’s claim of confidentiality as to any information IEU-Ohio does not believe is appropriately categorized as confidential or proprietary.

²⁵ DP&L objected, on grounds of affiliate possession, to Interrogatories 12-2 through 12-6, and 12-10 through 12-12 and RPDs 12-1 through 12-13 and 12-15 through 12-24. Attachment C at 6-25.

information or documents does not insulate DP&L from its responsibility for responding to appropriate discovery requests.

All of the information that IEU-Ohio seeks in its Twelfth Set was presented to DP&L's board of directors. The information and documents IEU-Ohio seeks are not solely DPL, DPLER, or AES information/documents. As discussed below, DP&L has access to the requested information and under Commission precedent that is all that is required. The Commission's "access" standard is also the standard applied in federal courts.

In Case No. 08-360-GA-CSS, the Commission granted a motion to compel filed against Columbia Gas of Ohio Inc. ("Columbia").²⁶ The Commission directed Columbia to provide the requested information "to the extent Columbia has access" to it.²⁷

Federal courts have reached similar results. In *Groesk v. Panther Transportation, Inc.*, 251 F.R.D. 162, 165 (M.D. Penn. 2008) the plaintiff served discovery upon the defendants seeking information related to the defendants' finances as well as the defendants' parent companies' finances in the context of a punitive damages action (the defendants' financial integrity had been placed in issue). The court in *Groesk* held that "[s]ince the information sought here is financial information which is necessarily produced by the relationship between the parent and subsidiary, the court finds that such information is under the subsidiary's control," and accordingly directed the defendants to produce the requested information.²⁸

²⁶ *In the Matter of the Complaint of The Manchester Group, LLC v. Columbia Gas of Ohio, Inc.*, Case No. 08-360-GA-CSS, Entry at 2 (Oct. 2, 2009) (granting the motion to compel "to the extent Columbia has access" to the relevant information sought in discovery).

²⁷ *Id.*

²⁸ *Groesk v. Panther Transp., Inc.*, 251 F.R.D. 162, 165 (M.D. Penn. 2008).

In *In re NTL Inc. Securities Litigation*, 244 F.R.D. 179, 181 (S.D.N.Y. 2007), the plaintiffs filed suit against the defendant, NTL, Inc., for securities violations; the case also involved various entities bearing the NTL name due to a demerger following a bankruptcy proceeding. After being served with discovery requests, the defendant noted that the requested information was no longer in its possession but rather the corporate files at issue were in the possession of the demerged entity who was not a party to the lawsuit. After the discovery process was wrapping up, the *Securities Litigation* Court learned that NTL had access to the demerged entity's records all along.²⁹ That court, quoting the Second Circuit Court of Appeals, noted that "[t]he test for the production of documents is control, not location."³⁰ The *Securities Litigation* Court continued, "'control' does not require that the party have legal ownership or actual physical possession of the documents at issue; rather, documents are considered to be under a party's control when that party has the right, authority, or practical ability to obtain the documents from a non-party to the action."³¹ Ultimately, the *Securities Litigation* Court sanctioned the defendants in the case for failing to preserve documents that they had control over.

In *Prokasch v. Cataline Lighting, Inc.*, 193 F.R.D. 633 (D. Minn. 2000), the plaintiffs filed a products-liability lawsuit against the defendant alleging that its product caused a fire in their home. The defendants responded to the plaintiffs' discovery requests and claimed that it had produced all responsive documents in its possession or

²⁹ *In re NTL Inc. Securities Int.*, 244 F.R.D. 179, 189-190 (S.D.N.Y. 2007).

³⁰ *Id.* (quoting *Marc Rich & Co. v. United States*, 707 F.2d 663, 667 (2d Cir.), *cert denied*, 463 U.S. 1215 (1983)).

³¹ *In re NTL Inc. Securities Int.*, 244 F.R.D. at 195 (quoting *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 146-47 (S.D.N.Y. 1997)).

control.³² The *Prokasch* Court concluded, however, that “under Rule 34, ‘control’ does not require that the party have legal ownership or actual physical possession of the documents at issue; rather, documents are considered to be under a party’s control when that party has the right, authority, or practical ability, to obtain the documents from a non-party to the action.”³³

Thus, the Commission’s precedent is in accordance with federal courts discovery practices and requires a party to produce documents that the party has access to.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus, it is irrelevant whether these documents, which were presented to the board of directors of DP&L, are in DP&L’s physical possession or DPL’s physical possession because DP&L employees ([REDACTED]) have access to the documents.

- D. The information IEU-Ohio seeks is not subject to the attorney-client privilege or work-product doctrine and good cause exists to require DP&L to produce any information deemed to be work-product.**

³² *Prokasch v. Cataline Lighting, Inc.*, 193 F.R.D. 633, 635. (D. Minn. 2000).

³³ *Id.* at 636 (quoting *Bank of New York v. Meridien BIAO Bank Tanzania, Ltd.*, 171 F.R.D. 135, 146 (S.D.N.Y.1997)).

³⁴ Attachment E at 1-8 (deposition page numbers 193-200).

³⁵ *Id.* at 3 (deposition page number 195).

³⁶ See, e.g., Attachment G.

DP&L objects to every request that is the subject of this Motion to Compel on grounds that the requests seek information that is privileged or work-product. DP&L bears the burden of demonstrating that the information sought by IEU-Ohio is protected under the attorney-client privilege or the work-product doctrine: a demonstration that DP&L cannot meet.³⁷ However, even if DP&L could demonstrate that the information was covered by the attorney-client privilege or work-product doctrine, DP&L waived those claims by voluntarily disclosing information on the same subject matter, *i.e.* DP&L's financial integrity claims. Finally, if DP&L could demonstrate that the information sought is work-product and the Commission concluded DP&L had not waived that defense, IEU-Ohio can still demonstrate good cause exists to compel production of the work-product in accordance with Civ.R. 26(B)(3).

1. Attorney-Client Privilege

"The attorney-client privilege exempts from discovery certain communications between attorneys and their clients in the course of seeking or rendering legal advice."³⁸ The privilege "is founded on the premise that confidences shared in the attorney-client relationship are to remain confidential"³⁹ and its purpose "is to encourage full and frank

³⁷ *MA Equipment Leasing I, LLC v. Tilton*, 2012-Ohio-4668, ¶ 20 (Ohio App. 10th Dist.) (citing *Waldmann v. Waldmann*, 48 Ohio St.2d 176, 178 (1976)); see, also, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Entry at 2, 7-8 (Jan. 27, 2011) ("Apart from general statements claiming that [the responses at issue] are privileged, appellants failed to show how the attorney-client and/or work product privilege applies to any particular document, and therefore the Commission finds that the attorney examiners did not err in finding that appellants failed to establish that either privilege applies to the documents in question.").

³⁸ *Sutton v. Stevens Painton Corp.*, 193 Ohio App.3d 68, 951 N.E.2d 91, 2011-Ohio-841 at ¶ 15 (citing *Boone v. Vanliner Ins. Co.*, 91 Ohio st.3d 209, 210 (2001)).

³⁹ *Sutton*, 2011-Ohio-841 at ¶ 16 (quoting *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 660 (1994)).

communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.”⁴⁰

Under the attorney-client privilege, “(1) [w]here legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless the protection is waived.”⁴¹

Further, for investigative facts and documents to be covered by the attorney-client privilege, “the relevant question is ... whether [the] investigation was ‘related to the rendition of legal services’”⁴² and requires “the client for whom the investigation was conducted [to] show that other *legal* advice or assistance was sought and that the investigation conducted was integral to that assistance.”⁴³

In *U.S. v. ISS Marine Services, Inc.*, 84 Fed. R. Serv. 3d 384, 2012 WL 5873682 at *5 (D.D.C. 2012), the District Court for the District of Columbia held that “the crux of the attorney-client privilege question in this case is the purpose(s) for which the investigation was conducted and the Audit Report was created.” “To be privileged, a communication must be ‘for the purpose of securing *primarily* either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding.’”⁴⁴ “In evaluating whether the primary purpose of a communication is to seek legal advice, some courts require a showing that the communication would not have been made “but for” the fact

⁴⁰ *Sutton*, 2011-Ohio-841 at ¶ 16 (quoting *Upjohn v. U.S.*, 449 U.S. 383, 389 (1981)).

⁴¹ *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2006-Ohio-1508, ¶ 21 (quoting *Reed v. Baxter*, 134 F.3d 351, 355-56 (6th Cir. 1998)).

⁴² *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Authority*, 121 Ohio St.3d 537, 2009-Ohio-1767, ¶ 27 (quoting *In re Allen*, 106 F.3d 582, 602 (4th Cir. 1997)).

⁴³ *Toledo Blade*, 2009-Ohio-1767 at ¶ 28 (emphasis in original).

⁴⁴ *U.S. v. ISS Marine Services, Inc.*, 84 Fed. R. Serv. 3d 384, 2012 WL 5873682 at *5 (D.D.C. 2012) (quoting *In re Grand Jury*, 475 F.3d 1299, 1304 (D.C.Cir.2007)).

that legal advice was sought.”⁴⁵ The *ISS Marine* Court noted the broader interpretation given by the Eighth Circuit Court of Appeals in *Simon v. G.D. Searle & Co.*, 816 F.2d 397, 401-402 (8th Cir. 1987) (a litigation reserve case relied upon by DP&L), but held that the “but-for” formulation was:

most faithful to this Circuit’s guidance that “the ‘attorney-client privilege must be strictly confined within the narrowest possible limits consistent with the logic of its principle.” See *In re Lindsey*, 158 F.3d at 1272 (internal quotation marks omitted) (quoting *In re Sealed Case*, 676 F.2d 793, 807 n. 44 (D.C.Cir.1982)); accord *Fisher v. United States*, 425 U.S. 391, 403, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976) (“[S]ince the privilege has the effect of withholding relevant information from the fact-finder, it applies only when necessary to achieve its purpose. Accordingly it protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege.”).⁴⁶

In summary, neither Ohio courts nor the federal courts (including cases cited by DP&L) apply the attorney-client privilege in the manner requested by DP&L. DP&L states that its expense reductions are privileged because “courts have repeatedly held that documents were protected by the attorney-client privilege, even though the document at issue was not a direct communication between an attorney and a client, when the document in question would reveal the advice of the attorney.”⁴⁷ Ohio law only holds that an investigative report can be protected under the attorney-client

⁴⁵ *Id.* (citing *First Chi. Int’l v. United Exch. Co.*, 125 F.R.D. 55, 57 (S.D.N.Y.1989)).

⁴⁶ *ISS Marine Services*, 2012 WL 5873682 at *5.

the company must clearly structure the investigation as one seeking legal advice and must ensure that attorneys themselves conduct or supervise the inquiries and, at the very least, the company must make clear to the communicating employees that the information they provide will be transmitted to attorneys for the purpose of obtaining legal advice. Only then do the candor-promoting purposes of the privilege outweigh the public’s and the adversary system’s longstanding and important interest in scrutinizing “every man’s evidence.”

Id. at *7 (quoting *United States v. Bryan*, 339 U.S. 323, 331, (1950)).

⁴⁷ DP&L’s Memorandum in Opposition to IEU’s Motion to Compel Discovery Responses at 3 (Jan. 11, 2013).

privilege if the “investigation was ‘related to the rendition of legal services’”⁴⁸ and requires “the client for whom the investigation was conducted [to] show that other legal advice or assistance was sought and that the investigation conducted was integral to that assistance.”⁴⁹ As discussed below, the expense reductions are not integral to any legal advice and are used in the ordinary course of the business.

2. Work-Product Doctrine

The work product doctrine also offers a qualified protection against the discovery of documents prepared in preparation of litigation.⁵⁰ Civ. R. 26(B)(3) sets forth the work product doctrine as it applies in civil cases: “a party may obtain discovery of documents, electronically stored information or tangible things prepared in anticipation of litigation of or for trial by or for another party or by or for that other party's representative ... only upon a showing of good cause therefor.” “Through work-product jurisprudence ... two distinct categories of work product have been identified: ordinary fact work product and opinion work product.”⁵¹

Ordinary fact or unprivileged fact work product, such as witness statements and underlying facts, receives lesser protection. Written or oral information transmitted to the attorney and recorded as conveyed may be compelled upon a showing of good cause by the subpoenaing party. Good cause, as set forth in Civ.R. 26(B)(3), requires a showing of substantial need, that the information is important in the preparation of the party's case, and that there is an inability or difficulty in obtaining the information without undue hardship.

⁴⁸ *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Authority*, 121 Ohio St.3d 537, 2009-Ohio-1767, ¶ 27 (quoting *In re Allen*, 106 F.3d 582, 602 (4th Cir. 1997)).

⁴⁹ *Toledo Blade*, 2009-Ohio-1767 at ¶ 28 (emphasis added, original emphasis omitted).

⁵⁰ *Squire Sanders & Dempsey v. Givaudan Flavors Corp.*, 127 Ohio St.3d 161, 2010-Ohio-4469, ¶ 55; 23 Am. Jur. 2d § 45.

⁵¹ *Estate of Hohler v. Hohler*, 197 Ohio App.3d 237, 2011-Ohio-5469, 967 N.E.2d 219, ¶ 28 (7th Dist.).

The other type of work product is opinion work product, which reflects the attorney's mental impressions, opinions, conclusions, judgments, or legal theories.⁵²

The Commission has also distinguished between discovery seeking a lawyer's legal advice and discovery requests seeking the underlying facts at issue in the litigation. The Commission has held that conversations between counsel and a utility's employees and the associated "notes, correspondence, and email created in anticipation of litigation ... would ordinarily be protected ... under attorney-client privilege and attorney work product doctrines."⁵³ The Commission, however, distinguished these types of communications from those not protected under either attorney-client privilege or under the work-product doctrine.⁵⁴ The latter unprotected category includes documents related to the litigation produced by utility employees to, among other things, verify the accuracy of events alleged in the lawsuit.⁵⁵

For DP&L's expense reduction information to be protected by the work-product doctrine, Ohio law requires it to be produced in anticipation of litigation. In *Roggelin v. Auto-Owners Insurance*, 2002-Ohio-7310 (Ohio App.3d), an insured brought action against his insurance provider and through the discovery process sought access to the insured's investigative reports regarding an automobile that collided with the insured's business. The insurance company unsuccessfully argued that its file on the insured, including insurance reserves and investigative reports it obtained from independent experts regarding the cause of property damage, was protected under the work-product

⁵² *Hohler*, 2011-Ohio-5469, ¶¶ 29-30.

⁵³ *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of the East Ohio Gas Company d.b.a Dominion East Ohio and Related Matters*, Case No. 05-219-GA-GCR, Entry at 7 (July 28, 2006).

⁵⁴ *Id.*

⁵⁵ *Id.*

doctrine.⁵⁶ In upholding the trial court's order compelling the insurance company to produce the file, the *Auto-Owners* Court noted that "an insurance company has a routine duty to investigate accidents and, thus, such materials generated are not prepared in anticipation of litigation but prepared in the ordinary course of business."⁵⁷

In *Simon v. G.D. Searle & Co.*, 816 F.2d 397, 401-402 (8th Cir. 1987), the Eighth Circuit Court of Appeals held that case reserve information could be protected under the work-product doctrine if the reserves were either prepared in anticipation of litigation or if it revealed an attorney's mental impression. The *Simon* Court upheld the trial court's determination that the case reserve information was not prepared in anticipation of litigation and then reviewed whether the case reserve information would reveal an attorney's mental impression.⁵⁸ The *Simon* Court held that individual case reserve information could be protected under the work-product doctrine; however, the court held that the aggregate case reserve information was not protected because it did not reveal any mental impression of an attorney.⁵⁹

The individual figures lose their identity when combined to create the aggregate information. Furthermore, the aggregates are not even direct compilations of the individual figures; the aggregate information is the

⁵⁶ *Roggelin v. Auto-Owners Ins.*, 2002-Ohio-7310, ¶¶ 3, 5 (Ohio App.3d). The insurance company's assignment of error on appeal read:

"THE RULING OF THE TRIAL COURT TO PRODUCE ADJUSTOR ACTIVITY LOGS AND INTERNAL MEMORANDUM ADDRESSING EVALUATION OF CLAIMS MADE, SETTING OF INSURANCE RESERVES, CONVERSATIONS WITH EXPERTS AND DEFENSES WITHOUT A SHOWING OF GOOD CAUSE IN RESPONSE TO A BLANKET REQUEST FOR PRODUCTION OF ENTIRE CLAIMS FILE BEFORE TRIAL VIOLATES CIVIL RULE 26(B)(3) AND CONSTITUTES AN ABUSE OF DISCRETION IN AN ACTION FOR BREACH OF AN INSURANCE CONTRACT WITH NO CLAIM OF BAD FAITH ASSERTED."

Id. at ¶ 5 (emphasis in original).

⁵⁷ *Id.* at ¶ 15 (citing *Taylor v. Travelers Ins. Co.*, 183 F.R.D. 67, 70-71 (N.D.N.Y.1998)).

⁵⁸ *Simon v. G.D. Searle & Co.*, 816 F.2d 397, 401 (8th Cir. 1987).

⁵⁹ *Id.* at 402

product of a formula that factors in variables such as inflation, further diluting the individual reserve figures. Certainly it would be impossible to trace back and uncover the reserve for any individual case, and it would be a dubious undertaking to attempt to derive meaningful averages from the aggregates, given the possibility of large variations in case estimates for everything from frivolous suits to those with the most serious injuries. The purpose of the work product doctrine—that of preventing discovery of a lawyer's mental impressions—is not violated by allowing discovery of documents that incorporate a lawyer's thoughts in, at best, such an indirect and diluted manner.⁶⁰

The *ISS Marine* Court also analyzed whether the sought after material in that case was covered by the work-product doctrine and held that to:

determine whether a particular document was prepared in anticipation of litigation, this Circuit applies “the ‘because of test, asking ‘whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation.’” *United States v. Deloitte LLP*, 610 F.3d 129, 137 (D.C.Cir.2010) (quoting *In re Sealed Case*, 146 F.3d 881, 884 (D.C.Cir.1998)).⁶¹

...

Additionally, although the doctrine is known as the *attorney* work-product doctrine, work product created by non-attorneys can also be protected if it is “so intertwined with the legal analysis as to warrant protection.”⁶²

The *ISS Marine* Court concluded that the internal audit report at issue was not work-product because it had an obvious business purpose (*i.e.* to investigate alleged

⁶⁰ *Id.* (emphasis added).

⁶¹ *ISS Marine Services*, 2012 WL 5873682 at *10.

⁶² *Id.* (quoting *United States v. Deloitte LLP*, 610 F.3d 129, 139 (D.C.Cir.2010)).

Once again, although materials prepared by non-attorneys supervised by attorneys are capable of enjoying work-product protection, the degree to which counsel is involved in creating the document bears directly on whether the document was prepared in anticipation of litigation. This relationship can be thought of as a sliding scale, whereby a party's burden to demonstrate a document's litigious purpose increases—all other things being equal—as attorney involvement in creating the document decreases. This simple principle recognizes the reality that attorneys are the ones who actually litigate cases, and whether or not a company involves attorneys in creating a document is a telling indication about whether the document was prepared in anticipation of litigation.

Id.

corporate fraud waste and abuse) and the company's lawyers were minimally involved in conducting the audit.⁶³

In *Certain Underwriters at Lloyd's, London v. The Fidelity and Casualty Insurance Co. of New York*, 1998 WL 142409 (N.D. Ill 1998) (a reserve case cited by DP&L) the District Court for the Northern District of Illinois noted that "[t]he jurisprudence surrounding whether reserve information is privileged under the work product doctrine is by no means settled." After reviewing *Auto-Owners* (an Ohio case) and *Simon* (a case out of the Eighth Circuit Court of Appeals) referenced above, the *Certain Underwriters* Court adopted a two-part analysis to determine whether reserve margins could be protected under the work-product doctrine: (1) does the reserve margin reveal an attorney's mental impression, and (2) if so, was the reserve margin prepared in the ordinary course of business, *i.e.* "the primary motivating purpose behind the creation of a document or investigative report must be to aid in possible future litigation."⁶⁴

In summary, Ohio law holds that an investigative report can be protected under the work-product doctrine if the investigation was not something that is ordinarily done in the course of business.⁶⁵ Federal courts have reached a similar result. The Eighth Circuit Court of Appeals in *Simon*, the District Court for the District of Columbia in *ISS Marine*, and the District Court for the Northern District of Illinois in *Certain Underwriters*, all have held that information is protected under the work-product doctrine (*e.g.*, case reserve information or DP&L's expense reductions) only if the information was not compiled in the ordinary course of business.

⁶³ *Id.* at *13.

⁶⁴ *Certain Underwriters at Lloyd's, London v. The Fidelity and Casualty Ins. Co.*, 1998 WL 142409 at *2 (N.D. Ill 1998).

⁶⁵ *Roggelin v. Auto-Owners Ins.*, 2002-Ohio-7310, ¶¶ 3, 5 (Ohio App.3d).

The Eighth Circuit Court of Appeals in *Simon* also added one extra layer of protection under the work-product doctrine, and protected information compiled in the ordinary course of business that would reveal an attorney's mental impression. However, *Simon* is in conflict with how Ohio courts have applied the work-product doctrine (see *Auto-Owners*), but in any event IEU-Ohio has requested aggregate expense reduction information, which *Simon* held was outside the scope of the work product doctrine.

3. Waiver of the attorney-client privilege and work product doctrine

Although certain information sought in discovery might be properly within the scope of the attorney-client privilege or the work-product doctrine, a discovery request is still proper where the attorney-client privilege doctrine or the work-product doctrine has been waived by voluntary disclosure. "A client's voluntary disclosure of confidential communications is inconsistent with an assertion of the privilege," and therefore "voluntary disclosure of privileged communications to a third party waives a claim of privilege with regard to communications on the same subject matter."⁶⁶ This rule "applies to disclosure of materials covered by an attorney-client privilege and to disclosure of materials which are protected by the work product doctrine."⁶⁷ As discussed further below, in the event that the Commission determines that DP&L has not waived its claim of privilege, good cause exists to compel DP&L to answer interrogatories which seek information that is relevant and otherwise unavailable.

⁶⁶ *MA Equipment*, 2012-Ohio-4668, ¶ 20; *Mid-American Natl. Bank and Trust Co. v. Cincinnati Ins. Co.*, 74 Ohio App.3d 481, 599 N.E.2d 699, 704 (6th Dist. 1991) (citing *Hercules Inc. v. Exxon Corp.*, 434 F.Supp 136, 156 (D. Del. 1977)).

⁶⁷ *Mid-American*, 599 N.E.2d at 704 (citing *Hercules Inc. v. Exxon Corp.*, 434 F.Supp 136, 156 (D. Del. 1977)).

4. Good cause exception to the work product doctrine

Discovery of work product is also proper upon a showing of good cause. As explained by the Ohio Supreme Court, “a showing of good cause under Civ.R. 26(B)(3) requires demonstration of need for the materials— *i.e.*, a showing that the materials, or the information they contain, are relevant and otherwise unavailable.”⁶⁸ The party seeking discovery bears the burden to demonstrate good cause for discovery of work-product.⁶⁹ DP&L has objected to every request that is the subject of this Motion to Compel on grounds that the information sought is covered by the attorney-client privilege or work-product doctrine. As discussed below, good cause for the information exists.

5. DP&L’s expense reductions

Interrogatories 10-10, 10-11, 10-12, 10-13, 10-14, 10-15, and 11-1 seek the underlying factual information regarding DP&L’s ability to reduce its expenses over the coming years. DP&L objects that this information is privileged and cites to the Attorney Examiners’ decision from the January 30, 2013 prehearing conference where the Attorney Examiners held that a certain study created by DP&L’s employees was subject to the work-product doctrine.⁷⁰

Although the Attorney Examiner allowed IEU-Ohio to cross-examine DP&L witness Craig Jackson regarding expense reductions during his deposition on February 21, 2013, Mr. Jackson stated that he did not, at that time, know the exact breakdown (between distribution, generation, and transmission) of the expense reductions. The

⁶⁸ *Squire Sanders*, 2010-Ohio-4469, ¶ 57.

⁶⁹ *Id.*

⁷⁰ Attachment A at 17.

breakdown of expense reductions was requested in IEU-Ohio's Interrogatories 10-10 through 10-15 and 11-1. Accordingly, IEU-Ohio has not yet been provided this information. Additionally, DP&L indicated that it had not made a final determination regarding whether it would voluntarily supplement its responses to these Interrogatories.⁷¹ For the reasons that follow, the Commission should direct DP&L to supplement its response to these Interrogatories.

The cornerstone of the attorney-client privilege is that legal advice has been sought by a client. At issue in Interrogatories 10-10, 10-11, 10-12, 10-13, 10-14, 10-15, and 11-1, is DP&L's ability to reduce its expenses over the coming years. The ability to reduce expenses in the future is something that is reviewed in the ordinary course of business. Furthermore, the ability to reduce future expenses is not tied to any legal requirement (*i.e.* it is not an integral part to any legal advice⁷²) and therefore it is not clear how any discussions related to reducing future expenses falls within the purview of the attorney-client privilege.

The information sought in Interrogatories 10-10, 10-11, 10-12, 10-13, 10-14, 10-15, and 11-1 is also not subject to the work-product doctrine. The work-product doctrine applies to material prepared in anticipation of litigation so that "lawyers can analyze and prepare their client's case free from scrutiny or interference by an adversary."⁷³ As indicated by DP&L in its January 14, 2013 Memorandum Contra IEU-Ohio's Second Motion to Compel:

Based upon her analysis of the case, Ms. Sobecki advised other DP&L employees regarding both the likely results of the case and the range of

⁷¹ Attachment F.

⁷² *Toledo Blade*, 2009-Ohio-1767 at ¶ 28.

⁷³ *Squire Sanders*, 2010-Ohio-4469, ¶ 55.

possible results. DP&L used Ms. Sobecki's advice to conduct analysis of cost savings measures.

...

The goal of that analysis was to attempt to identify sufficient cost cuts to allow DP&L to earn a return on equity in the 7% to 11% range, which range the Commission held to be reasonable in its AEP ESP decision, and which range DP&L has publicly stated is its target range.

As described by DP&L, the underlying facts that IEU-Ohio seeks in Interrogatories 10-10, 10-11, 10-12, 10-13, 10-14, 10-15, and 11-1 are related to DP&L's ability to reduce expenses in the event that DP&L does not succeed in obtaining its requested rate increase, which DP&L states will allow DP&L to earn between 7% and 11%. While the expense reduction study might have used Ms. Sobecki's mental impressions as a factual foundation for determining the possible expenses that DP&L might need to reduce in order to meet a 7% to 11% return on equity, the results from that study are not work-product because an expense reduction study is something that is ordinarily done in the course of DP&L's business and therefore it cannot qualify as work-product. As further evidence that the information is being used in the ordinary course of business, counsel for DP&L has argued in this proceeding that [REDACTED]

[REDACTED]. Additionally, IEU-Ohio has sought the aggregate amount of expense reductions and neither Ohio law nor the *Simon* case cited by DP&L allow DP&L to withhold the aggregate list of possible expense reductions.

Furthermore, even if the expense reduction information was subject to the attorney-client privilege or work-product doctrine, DP&L has waived any such claim because it has voluntarily put those facts at issue in this case. The Supreme Court has

held that the attorney-client privilege and work-product doctrine are waived by a client voluntarily testifying on the same subject matter.⁷⁴ Thus, because DP&L has filed testimony regarding its projections of future revenues and expenses, it has made relevant the issue regarding whether it can reduce its expenses over the term of its proposed ESP and therefore waived any claim that projected expense reductions is privileged.

Finally, even if the work-product claim applied, and it does not, and DP&L has not waived a work-product claim, which it has, good cause exists to compel DP&L to produce the information. Although counsel for DP&L has insinuated during the prehearing conferences that IEU-Ohio and other intervenors could conduct their own analysis as to ways DP&L could reduce its expenses that is simply not the case. DP&L is the only entity that has access to all of the information necessary to conduct an analysis regarding reducing future expenses. During the deposition of Mr. Jackson on February 21, 2013, the Attorney Examiner recognized that DP&L's ESP Application put its operation and expense forecast at issue and that it would be an insurmountable task for an intervenor to calculate potential expense reductions; thus, the Attorney Examiner found that good cause existed to allow IEU-Ohio to cross examine Mr. Jackson regarding expense reductions because the information was otherwise unavailable to

⁷⁴ *Jackson v. Greger*, 110 Ohio St.3d 488, 2006-Ohio-4968, ¶ 12 (attorney-client privilege may only be waived by those methods enumerated in Section 2317.02, Revised Code, which includes express consent and voluntary testimony); cf *Grace v. Mastruserio*, 182 Ohio App.3d 243, 2007-Ohio-3942, ¶¶ 21-27 (attorney-client privilege and work-product claims are waived through affirmative acts such as filing suit, where through the affirmative act the asserting party has placed the protected information at issue by making it relevant to the case, and application of the privilege would deny the opponent access to information vital to its defense). The *Grace* Court also noted that the Supreme Court in *Jackson* actually "limited its holding to the case that was under consideration," which the *Grace* Court interpreted to mean that *Jackson* only applies to situations where Section 2317.02, Revised Code, was applicable. *Grace*, 2007-Ohio-3942, ¶ 22.

intervenors. Accordingly, good cause exists to require DP&L to respond to IEU-Ohio's expense reduction discovery requests that are the subject of this Motion to Compel.

6. DP&L's ability to increase its distribution revenue

Interrogatories 10-16, 10-17, and 10-18 seek information regarding DP&L's ability to increase its distribution revenue by filing an application to increase base distribution rates. For the reasons discussed above regarding expense reductions, this information is not covered by the attorney-client privilege or work-product doctrine. Just as discovery in a distribution rate case proceeding is allowed after a utility files its application (*i.e.* there cannot be a valid work-product claim) discovery regarding DP&L's distribution revenue is appropriate in this case because DP&L has voluntarily placed its distribution revenue at issue by claiming that it needs additional revenue (on a total company basis) in order to satisfy what DP&L claims is financial integrity. Finally, good cause exists to require DP&L to respond to these discovery requests: the information is relevant to DP&L's financial integrity claim and the information is otherwise unavailable to intervenors. Thus, discovery regarding DP&L's ability to increase its distribution revenue is appropriate because DP&L has waived any protection from the attorney-client privilege and work-product doctrine if they ever existed (which they did not).

7. Financial-related presentations, reports, and analyses, given to DP&L's board of directors

IEU-Ohio's Interrogatories 12-2, 12-3, 12-4, 12-5, 12-6, 12-10, 12-11, and 12-12, and RPDs 12-1, 12-2, 12-3, 12-4, 12-5, 12-6, 12-7, 12-8, 12-9, 12-10, 12-11, 12-12, 12-13, 12-15, 12-16, 12-17, 12-18, 12-19, 12-20, 12-21, 12-22, 12-23, and 12-24 seek information regarding presentations, reports and analyses given to DP&L's board of directors and referenced in DP&L's board of directors' minutes. The Attorney

Examiners have already denied DP&L's blanket assertion that all of the minutes are covered by the attorney-client privilege and/or work-product doctrine. In response DP&L was directed to assemble a privilege log containing an itemized list of what it was claiming was privileged. DP&L then redacted that information and provided IEU-Ohio with a redacted copy of the board of directors' minutes. DP&L did not claim a privilege existed (either attorney-client or work-product) with regard to all of the information IEU-Ohio now seeks in its Twelfth Set. DP&L's discovery responses to IEU-Ohio's Twelfth Set are a belated argument that everything in the board of directors' minutes is privileged. In fact, DP&L objected to each and every discovery request in IEU-Ohio's Twelfth Set (all related to the board of directors' minutes) on grounds that the information was privileged. Because DP&L failed to indicate that any of this information was privileged as part of the privilege log, the Attorney Examiners should require DP&L to produce all of the sought after information.

Beyond the fact that DP&L failed to comply with the Attorney Examiners instructions regarding a privilege log, it is not readily apparent how the information is privileged, and DP&L has not offered any reason why it believes any of the information or documents are privileged. Furthermore, at many of the board meetings third parties were present. At the June 9-10, 2010 meeting (INT 12-2, RPDs 12-11, 12-12, and 12-13) a representative from [REDACTED] [REDACTED]⁷⁵ was present as well as [REDACTED]

⁷⁵ Attachment D at 2 (Bates stamped page 53990); [REDACTED]

a representative from [REDACTED]

[REDACTED]⁷⁶

At the September 15, 2010 board meeting (RPD 12-17) representatives from [REDACTED]⁷⁷ were present. At the October 26-27, 2010 board meeting (RPDs 12-18, 12-19, 12-20) [REDACTED] [REDACTED] were present.⁷⁸ At the April 3, 2011 board meeting (Int. 12-12) representatives from [REDACTED] were present.⁷⁹ At the April 19, 2011 board meeting (RPDs 12-6, 12-7) representatives from [REDACTED] were again present.⁸⁰

Finally, and as discussed above, because DP&L has voluntarily filed testimony regarding its financial integrity, all internal factual information relating to DP&L's finances is properly discoverable in accordance with the Ohio Supreme Court's precedent.⁸¹ On February 20, 2013 DP&L provided supplemental responses to IEU-

⁷⁶ Attachment D at 2 (Bates stamped page 53990); [REDACTED]

⁷⁷ Attachment D at 4 (Bates stamped page 54003); [REDACTED]

⁷⁸ Attachment D at 6 (Bates stamped page 54017); [REDACTED]

⁷⁹ Attachment D at 8 (Bates stamped page 54077).

⁸⁰ Attachment D at 9 (Bates stamped page 54083).

⁸¹ *Jackson v. Greger*, 110 Ohio St.3d 488, 2006-Ohio-4968, ¶ 12.

Ohio's Twelfth Set, specifically RPD 12-14. The entire presentation included in the supplemental response was clearly not covered by the attorney-client privilege or work-product doctrine and included such items as [REDACTED]

[REDACTED]

As of Friday, February 15, 2013, DP&L indicated that the presentation was entirely privileged. If DP&L's lack of thorough review in regards to this presentation is indicative of the time it spent reviewing the contents of the other presentations/reports, DP&L's assertions that every other request in IEU-Ohio's Twelfth Set seeks privileged information simply cannot be believed.

E. There is no undue burden for DP&L to produce the requested information

DP&L objected to each of IEU-Ohio's discovery requests that are the subject of this Motion to Compel, except 10-16, on grounds that responding would be unduly burdensome. Such an assertion is without merit. For instance, IEU-Ohio limited its requests for potential expense reductions to only those that would significantly reduce expenses, and defined significant to mean in excess of \$500,000.⁸⁴ In requesting specific information, presentations, and reports referenced in the board of directors' minutes, IEU-Ohio provided DP&L with references to the presenters name, the subject matter, and the Bates stamped page that the information/report was referenced in the board of directors' minutes.⁸⁵ IEU-Ohio's discovery requests will simply not impose any undue burden upon DP&L.

⁸² Attachment G at 6

⁸³ *Id.* at 13-16.

⁸⁴ Attachment A at 17-20.

⁸⁵ Attachment C at 6-25.

F. IEU-Ohio's discovery requests are clear and understandable and therefore DP&L's vague objections are without merit.

DP&L objected to Interrogatories 10-10 through 10-16 on grounds of vagueness.

DP&L's objections are without merit. There is nothing vague about these requests; for instance Interrogatory 10-10 reads:

What cost saving measures has DP&L considered for significantly reducing distribution-related expenses? For purposes of this Interrogatory, significantly reduce means that each cost saving measure could reduce DP&L's distribution related expense by \$500,000 through 2017.

Interrogatories 10-11, and 10-13 follow this same format but requested transmission and generation, and total-company related information. Interrogatory 10-14 reads:

Since the merger of AES and DPL, has DP&L considered any methods to reduce its administrative and general expenses?

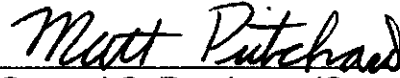
- A. If the answer is in the affirmative, please list the administrative and general expenses that DP&L has considered reducing, and a description of the cost saving measure(s) that would be undertaken to achieve the reductions.
- B. List the estimated amount of annual savings for each item listed in response to INT 9-14(A).
- C. For each item listed in response to INT 9-14(A), what effect would that reduction have on a total company basis?
- D. For each item listed in response to INT 9-14(A), what effect would that reduction have on the distribution, generation, and transmission business units?

Finally, Interrogatory 10-15 requests DP&L to "[i]dentify any documents that contain any analysis of ways DP&L could reduce its administrative and general expenses?" These discovery requests are straightforward and clear. Accordingly, the Commission should reject DP&L's vagueness objections.

IV. CONCLUSION

For the reasons discussed above, the Commission should grant this Motion to Compel and require DP&L to provide complete responses to IEU-Ohio's Interrogatories Nos. 10-10 through 10-18, 11-1, 12-2 through 12-6, and 12-10 through 12-12 and RPDs 10-1, 12-1 through 12-13, and 12-15 through 12-24.

Respectfully submitted,



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CERTIFICATE OF SERVICE

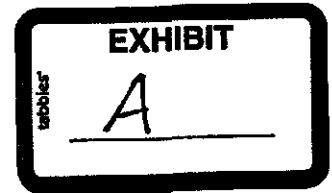
I hereby certify that a copy of the foregoing *Motion of Industrial Energy Users-Ohio to Compel Discovery Responses from the Dayton Power and Light Company and Memorandum in Support Public Version* was served upon the following parties of record this 22nd day of February 2013, via hand delivery, electronic transmission, or first class mail, U.S. postage prepaid.


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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	: : : : :	Case No. 12-426-EL-SSO
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

**OBJECTIONS AND RESPONSES OF THE DAYTON POWER AND LIGHT
COMPANY TO INDUSTRIAL ENERGY USERS-OHIO'S INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS UPON THE DAYTON POWER
AND LIGHT COMPANY - ESP, TENTH SET, FEBRUARY 1, 2013**

PUBLIC VERSION

The Dayton Power and Light Company ("DP&L") objects and responds to
Industrial Energy Users-Ohio's ("IEU-Ohio") Interrogatories and Requests for Production of
Documents Upon Dayton Power and Light Company ESP Tenth Set, February 1, 2013 to DP&L
as follows.

GENERAL OBJECTIONS

1. DP&L objects to and declines to respond to each and every discovery request to the extent that it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Ohio Admin. Code § 4901-1-16(B).

2. DP&L objects to and declines to respond to each and every discovery request to the extent that it is harassing, unduly burdensome, oppressive or overbroad. Ohio Admin. Code §§ 4901-1-16(B) and 4901-1-24(A).

3. DP&L objects to each and every discovery request to the extent that it seeks information that is privileged by statute or common law, including privileged communications between attorney and client or attorney work product. Ohio Admin. Code § 4901-1-16(B). Such material or information shall not be provided, and any inadvertent disclosure of material or information protected by the attorney-client privilege, the attorney work product doctrine or any other privilege or protection from discovery is not intended and should not be construed to constitute a waiver, either generally or specifically, with respect to such information or material or the subject matter thereof.

4. DP&L objects to each and every discovery request to the extent that it seeks information that is proprietary, competitively sensitive or valuable, or constitutes trade secrets. Ohio Admin. Code § 4901-1-24(A).

5. To the extent that interrogatories seek relevant information that may be derived from the business records of DP&L or from an examination or inspection of such records and the burden of deriving the answer is the same for IEU-Ohio as it is for DP&L, DP&L may specify

the records from which the answer may be derived or ascertained and afford IEU-Ohio the opportunity to examine or inspect such records. Ohio Admin. Code § 4901-1-19(D).

6. DP&L objects to each and every interrogatory that can be answered more efficiently by the production of documents or by the taking of depositions. Under the comparable Ohio Civil Rules, "[a]n interrogatory seeks an admission or it seeks information of major significance in the trial or in the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by rules for depositions." Penn Cent. Transp. Co. v. Armco Steel Corp., 27 Ohio Misc. 76, 77, 272 N.E.2d 877, 878 (Montgomery Cty. 1971). As Penn further noted, interrogatories that ask one to "describe in detail," "state in detail," or "describe in particulars" are "open end invitation[s] without limit on its comprehensive nature with no guide for the court to determine if the voluminous response is what the party sought in the first place." Id., 272 N.E.2d at 878.

7. DP&L objects to each and every discovery request to the extent that it calls for information that is not in DP&L's current possession, custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code §§ 4901-1-19(C) and 4901-1-20(D). DP&L also objects to each and every discovery request that seeks information that is already on file with the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission. To the extent that each and every discovery request seeks information available in pre-filed testimony, pre-hearing data submissions and other documents that DP&L has filed with the Commission in the pending or previous proceedings, DP&L objects to it. Ohio Admin. Code § 4901-1-16(G).

8. DP&L reserves its right to redact confidential or irrelevant information from documents produced in discovery. All documents that have been redacted will be stamped as such.

9. DP&L objects to each and every discovery request to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.

10. DP&L objects to any discovery request to the extent that it calls for information not in its possession, but in the possession of DP&L's unregulated affiliates.

RESPONSES TO INTERROGATORIES

ESP INT 10-1: Per the reporting in the DP&L 2011 FERC Form 1 for Account 411.1 – "Provision for Deferred Income Taxes-Cr.", there was zero credited to this account in 2011.

A. Does DP&L utilize account 411.1?

RESPONSE: General Objections Nos. 1 (relevance) and 9 (vague or undefined).

Subject to all general objections, DP&L states that it does not currently utilize account 411.1.

B. If the answer to INT 9-1(A) is in the negative, does DP&L record deferred income tax expense and the related amortization of deferred tax liabilities, net, in Account 410.1 - Provision for Deferred Income Taxes?

RESPONSE: General Objections Nos. 1 (relevance). Subject to all general objections, DP&L states that it does currently record deferred income tax expense and the related amortization of deferred tax liabilities net in Account 410.1.

C. If the answer to INT 9-1(B) is in the negative, in what account does DP&L record the amortization of deferred tax liabilities?

RESPONSE: General Objections Nos. 1 (relevance). Subject to all general objections, DP&L states that it uses Account 410.1.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-2: Per the DP&L 2011 FERC Form 1 reporting for revenues on page 300, revenue from sales to ultimate consumers was \$1,043,322,876. On a separated basis, what are the amount of revenues included in this figure for the transmission business unit, the distribution business unit, and the generation business unit?

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), and 4 (proprietary). DP&L further object because its transmission, distribution and generation services are not "business units" as that term is used in DP&L's Corporate Separation Plan. Subject to all general objections, DP&L states that it does not have the FERC Form 1 separated by unit. DP&L does have a high level study that divides total operating revenues between generation, and transmission and distribution which is based off of SEC filing requirements. DP&L total revenues of \$1,677.7 (in millions) were split \$1,337.7 for generation and \$340.0 for transmission and distribution. To reconcile the total FERC operating revenues of \$1,741.9 (shown on page 300 of the FERC Form 1) to the SEC total shown above, include \$53.7 in excise taxes, \$8.8 in sales of coal, \$2.2 in heating oil and \$(0.5) in power derivatives. The SEC and FERC basis of reporting are different.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-3: Per the DP&L 2011 FERC Form 1 reporting for revenues on page 300, total other operating revenue was \$91,745,613. On a separated basis, what are the amounts of revenues included in this figure for the transmission business unit, the distribution business unit, and the generation business unit?

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), and 4 (proprietary). DP&L further object because its transmission, distribution and generation services are not "business units" as that term is used in DP&L's Corporate Separation Plan. Subject to all general objections, DP&L states that it does not have the FERC Form 1 separated by unit. The high level study discussed in ESP INT 9-2 has the other operating revenue embedded in the total revenues.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-4: DP&L's current and proposed corporate separation plans include the following accounting provision: "(C) Accounting Records. As required by Section 4928.17(A)(1), Revised Code and Rule 4901:1-37-04(B), O.A.C., DP&L's business units and each affiliate will maintain, in accordance with generally acceptable accounting principles, and applicable uniform system of accounts, books, records and accounts that are separate from the books, records and accounts of each other affiliated or business unit."

- A. Provide Exhibit 2, Exhibit 3 and Exhibit 4 included in Craig Jackson's Second Revised Testimony by DP&L's business units. The financial information should be in the same format as Mr. Jackson's Exhibits. Business units should, at a minimum, include the distribution unit and the transmission unit (Unit 2) and the generation unit (Unit 6).

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 4 (proprietary). DP&L further objects because it would be unduly burdensome for it to create Exhibits for IEU, and DP&L has no obligation to do so in discovery. Subject to all general objections, DP&L states that the reference to "business units" in its Corporate Separation Plan ("CSP") is not a reference to the distribution, transmission and generation services that DP&L provides. Specifically, DP&L's CSP from its 1999 Electric Transmission Plan case (Case No. 99-1687-EL-ETP) made no reference to maintaining its records by business unit. In DP&L's 2008 ESP case (Case No. 08-1094-EL-SSO), DP&L proposed in Tim Rice's testimony that DP&L would begin to perform certain "behind the meter" services (e.g., customer equipment maintenance) through a separate DP&L business unit; DP&L thus proposed to amend its CSP to provide that it would maintain separate books for its proposed "behind the meter" business unit; however, paragraph 7 in the Stipulation in that case provided that DP&L would withdraw its application to provide "behind the meter" services, and DP&L has never filed a new application to provide such services; DP&L thus has never maintained separate books for such services. DP&L further answers that it does not have responsive information sufficient to allow it to create the requested exhibits.

B. Provide WJC-1, WJC-2, WJC-3, WJC-4 and WJC-5 (Including supporting schedules A-D) from the Second Revised Testimony of William J. Chambers by DP&L's business units. The financial information should be in the same format as Mr. Chambers' exhibits. Business units should, at a minimum, include the distribution unit and the transmission unit (Unit 2) and the generation unit (Unit 6).

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 4 (proprietary). Subject to all general objections, DP&L states: See response to INT 10-4(A).

WITNESS RESPONSIBLE: Timothy Rice.

ESP INT 10-5: DP&L's 2011 FERC Form 1, at page 110 reports total accumulated provisions for depreciation, amortization, and depletion of \$2,680,278,087. At the document Bates stamped 0050786, DP&L reports a figure of [REDACTED] for the transmission and distribution business units, and on the document stamped 0050847, DP&L reports a figure of [REDACTED] for the generation business unit. The sum of the latter two figures is [REDACTED]. Please reconcile the difference between the figure of [REDACTED] and the figure of \$2,680,278,087 on the FERC Form 1.

RESPONSE: General Objection 2 (unduly burdensome). DP&L further objects because DP&L's generation, transmission and distribution services are not "business units" as the term is used in its CSP. Subject to all general objections, DP&L states that the amounts noted above do not appear within the referenced document Bates stamped 0050786 nor the document stamped 0050847. Please note, however, that there are differences between SEC and FERC Form 1 reporting classification requirements.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-6: DP&L's 2011 FERC Form 1, reports year ending balances for deferred income taxes recorded in Accounts 190, 282, and 283, of \$64,136,124, (\$645,427,779), and (\$54,923,541); respectively, for a total of (\$636,215,196). At the document Bates stamped 0050781, 0050833, 0050835, and 0050836, the total of these deferred tax accounts is [REDACTED] for the transmission and distribution business units, and at the document Bates stamped 0050872 and 0050873, the total of these deferred tax accounts is [REDACTED] for the generation business unit. The sum of the latter two figures is [REDACTED]. Please reconcile the difference between the figure of [REDACTED] and the figure of (\$636,215,196) on the FERC Form 1.

RESPONSE: General Objection 2 (unduly burdensome). DP&L further objects because DP&L's generation, transmission and distribution services are not "business units" as the term is used in its CSP. Subject to all general objections, DP&L states that in their analysis, PUCO did not include the document Bates stamped 0050834 which totals an additional [REDACTED] of deferred tax asset related to transmission and distribution. Also, PUCO has reversed the signs in regard to the 190 Accounts on document Bates stamped 0050781. Similarly, the [REDACTED] from Bates stamped documents 0050872 and 0050873 net to a deferred tax asset, which would reduce the net total of deferred tax liability as opposed to increasing it.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-7: At the document Bates stamped 0050902:

A. Explain the nature of the item described as [REDACTED]
[REDACTED]

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), and 6 (calls for narrative answer). Subject to all general objections, DP&L states that [REDACTED]
[REDACTED]
[REDACTED]

B. What FERC account is this item being charged to?

RESPONSE: General Objections No. 1 (relevance). Subject to all general objections, DP&L states that this item is being charged to FERC account 410.1.

C. Explain why this item shows up in the 02 (transmission and distribution) income statement.

RESPONSE: General Objections Nos. 1 (relevance) and 6 (calls for narrative answer). Subject to all general objections, DP&L states that this amount represents the deferred tax expense related to the transmission and distribution unit 02.

D. Please explain the nature of the item described as [REDACTED]
[REDACTED]

RESPONSE: General Objections Nos. 1 (relevance) and 6 (calls for narrative answer).

Subject to all general objections, DP&L states that [REDACTED]
[REDACTED]
[REDACTED]

E. What FERC account is this item being charged to?

RESPONSE: General Objections No. 1 (relevance). Subject to all general objections, DP&L states that this item is charged to FERC account 411.4.

F. Explain why this item shows up in the 02 (transmission and distribution) income statement.

RESPONSE: General Objections Nos. 1 (relevance) and 6 (calls for narrative answer). Subject to all general objections, DP&L states that this item shows up in the 02 income statement as it relates to prior year investment tax credit claimed on transmission and distribution assets that is being flowed into income over the life of the assets.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-8: At the document Bates stamped 0050755:

A. Explain the nature of the item described as [REDACTED]
[REDACTED]

RESPONSE: General Objections Nos. 1 (relevance) and 6 (calls for narrative answer).

Subject to all general objections, DP&L states that [REDACTED]
[REDACTED]

B. What FERC account is this item being charged to?

RESPONSE: General Objections No. 1 (relevance). Subject to all general objections, DP&L states that this item is being charged to FERC account 410.1.

C. Explain why this item shows up in the 06 (generation) income statement.

RESPONSE: General Objections Nos. 1 (relevance) and 6 (calls for narrative answer). Subject to all general objections, DP&L states that this amount represents the deferred tax expense related to generation unit 06.

D. Please explain the nature of the item described as [REDACTED]
[REDACTED]

RESPONSE: General Objections Nos. 1 (relevance) and 6 (calls for narrative answer). Subject to all general objections, DP&L states that [REDACTED]
[REDACTED]
[REDACTED]

E. What FERC account is this item being charged to?

RESPONSE: General Objections No. 1 (relevance). Subject to all general objections, DP&L states that this item is charged to FERC account 411.4.

F. Explain why this item shows up in the 06 (generation) income statement.

RESPONSE: General Objections Nos. 1 (relevance) and 6 (calls for narrative answer). Subject to all general objections, DP&L states that this item shows up in the 06 income statement as it relates to prior year investment tax credit claimed on generation assets that is being flowed into income over the life of the assets.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-9: Other than the study identified as privileged in response to IEU-Ohio INT 3-1, has DP&L performed (or had any third party perform on its behalf) any analysis, study, and/or made any recommendations of potential expense reductions for DP&L?

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). DP&L further objects because this interrogatory has no time limitation. Subject to all general objections, DP&L states that separate from the cost saving analysis effort that DP&L objected to providing in response to INT 3-1 and which the Attorney Examiners found to be privileged after an in camera inspection, DP&L does regularly considers ways that it can save costs. DP&L does not have additional analysis related to potential expense reductions.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-10: What cost saving measures has DP&L considered for significantly reducing distribution-related expenses? For purposes of this Interrogatory, significantly reduce means that each cost saving measure could reduce DP&L's distribution related expense by \$500,000 through 2017.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). Subject to all general objections, DP&L states that separate from the cost saving analysis effort that DP&L objected to providing in response to INT 3-1 and which the Attorney Examiners found to be privileged after an in camera inspection, DP&L has not identified any such measures.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-11: What cost saving measures has DP&L considered for significantly reducing generation-related expenses? For purposes of this Interrogatory, significantly reduce means that each cost saving measure could reduce DP&L's generation-related expense by \$500,000 through 2017.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). Subject to all general objections, DP&L states that separate from the cost saving analysis effort that DP&L objected to providing in response to INT 3-1 and which the Attorney Examiners found to be privileged after an in camera inspection, DP&L has not identified any such measures.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-12: What cost saving measures has DP&L considered for significantly reducing transmission-related expenses? For purposes of this Interrogatory, significantly reduce means that each cost saving measure could reduce DP&L's transmission-related expense by \$500,000 through 2017.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). Subject to all general objections, DP&L states that separate from the cost saving analysis effort that DP&L objected to providing in response to INT 3-1 and which the Attorney Examiners found to be privileged after an in camera inspection, DP&L has not identified any such measures.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-13: What cost saving measures has DP&L considered for significantly reducing total company expenses? For purposes of this Interrogatory, significantly reduce means that each cost saving measure could reduce DP&L's total-company related expense by \$500,000 through 2017.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). Subject to all general objections, DP&L states that separate from the cost saving analysis effort that DP&L objected to providing in response to INT 3-1 and which the Attorney Examiners found to be privileged after an in camera inspection, DP&L has not identified any such measures.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-14: Since the merger of AES and DPL, has DP&L considered any methods to reduce its administrative and general expenses?

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). Subject to all general objections, DP&L states that separate from the cost saving analysis effort that DP&L objected to providing in response to INT 3-1 and which the Attorney Examiners found to be privileged after an in camera inspection, DP&L states that it has considered methods to reduce such expenses subject to the merger stipulations approved by the PUCO.

- A. If the answer is in the affirmative, please list the administrative and general expenses that DP&L has considered reducing, and a description of the cost saving measure(s) that would be undertaken to achieve the reductions.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). DP&L further objects because separate from the cost saving analysis effort that DP&L objected to providing in response to INT 3-1 and which the Attorney Examiners found to be privileged after an in camera inspection, DP&L has not identified any such material expenses it could reduce.

- B. List the estimated amount of annual savings for each item listed in response to INT 9-14(A).

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). See Objections to INT 9-14(A).

- C. For each item listed in response to INT 9-14(A), what effect would that reduction have on a total company basis?

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). See Objections to INT 9-14(A).

DP&L further objects because the request is unduly burdensome and the requested calculation can be performed by IEU.

D. For each item listed in response to INT 9-14(A), what effect would that reduction have on the distribution, generation, and transmission business units?

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). See Objections to INT 9-14(A). DP&L further objects because its transmission, distribution and generation services are not "business units" as that term is used in DP&L's CSP. DP&L further objects because the request is unduly burdensome and the requested calculation can be performed by IEU.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 10-15: Identify any documents that contain any analysis of ways DP&L could reduce its administrative and general expenses?

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 9 (vague or undefined). DP&L further objects because it would be unduly burdensome for it to identify every document in which any DP&L employee has considered methods for reducing any administrative and general expenses. DP&L further objects because separate from the cost saving analysis effort that DP&L objected to providing in response to INT 3-1 and which the Attorney Examiners found to be privileged after an in camera inspection, DP&L has not identified or created any additional analysis related to potential reductions in administrative and general expenses.

WITNESS RESPONSIBLE: None.

ESP INT 10-16: Has DP&L performed any analysis as to whether it could increase its distribution revenue by filing an application to increase distribution rates?

RESPONSE: General Objections Nos. 1 (relevance), 3 (privileged and work product), 4 (proprietary), and 9 (vague or undefined). Subject to all general objections, DP&L states that the request seeks information that is privileged and work product.

WITNESS RESPONSIBLE: None.

ESP INT 10-17: If DP&L's response to INT 9-15 [sic] is in the affirmative, how much does DP&L expect its distribution revenue to increase if it were to file an application to increase distribution rates?

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 4 (proprietary). Subject to all general objections, DP&L states that the request seeks information that is privileged and work product.

WITNESS RESPONSIBLE: None.

ESP INT 10-18: Identify any studies or analysis related to DP&L's ability to increase its distribution revenue by filing an application to increase base distribution rates.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), and 9 (vague or undefined). Subject to all general objections, DP&L states that the request seeks information that is privileged and work product.

WITNESS RESPONSIBLE: None.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

ESP RPD 10-1: Provide any documents identified in response to the Interrogatories above.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), and 4 (proprietary). Subject to all general objections, DP&L states that it does not possess responsive documents.

Respectfully submitted,

s/ Judi L. Sobecki

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Objections and Responses of The Dayton Power and Light Company to Industrial Energy Users-Ohio's Industrial Energy Users-Ohio's Interrogatories and Requests for Production of Documents Upon Dayton Power and Light Company, ESP Tenth Set, February 1, 2013, has been served via electronic mail upon the following counsel of record, this 11th day of February, 2013:

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	:	Case No. 12-426-EL-SSO
	:	
	:	
	:	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 12-427-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	:	Case No. 12-428-EL-AAM
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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
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In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders	:	Case No. 12-672-EL-RDR
	:	

**OBJECTIONS AND RESPONSES OF THE DAYTON POWER AND
LIGHT COMPANY TO INDUSTRIAL ENERGY USERS-OHIO'S
INTERROGATORIES UPON THE DAYTON POWER AND LIGHT
COMPANY - ESP, ELEVENTH SET, FEBRUARY 4, 2013**

The Dayton Power and Light Company ("DP&L") objects and responds to Industrial Energy Users-Ohio's ("IEU-Ohio") Interrogatories Upon Dayton Power and Light Company ESP Eleventh Set, February 4, 2013 to DP&L as follows.

GENERAL OBJECTIONS

1. DP&L objects to and declines to respond to each and every discovery request to the extent that it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Ohio Admin. Code § 4901-1-16(B).

2. DP&L objects to and declines to respond to each and every discovery request to the extent that it is harassing, unduly burdensome, oppressive or overbroad. Ohio Admin. Code §§ 4901-1-16(B) and 4901-1-24(A).

3. DP&L objects to each and every discovery request to the extent that it seeks information that is privileged by statute or common law, including privileged communications between attorney and client or attorney work product. Ohio Admin. Code § 4901-1-16(B). Such material or information shall not be provided, and any inadvertent disclosure of material or information protected by the attorney-client privilege, the attorney work product doctrine or any other privilege or protection from discovery is not intended and should not be construed to constitute a waiver, either generally or specifically, with respect to such information or material or the subject matter thereof.

4. DP&L objects to each and every discovery request to the extent that it seeks information that is proprietary, competitively sensitive or valuable, or constitutes trade secrets. Ohio Admin. Code § 4901-1-24(A).

5. To the extent that interrogatories seek relevant information that may be derived from the business records of DP&L or from an examination or inspection of such records and the burden of deriving the answer is the same for IEU-Ohio as it is for DP&L, DP&L may specify the records from which the answer may be derived or ascertained and afford IEU-Ohio the opportunity to examine or inspect such records. Ohio Admin. Code § 4901-1-19(D).

6. DP&L objects to each and every interrogatory that can be answered more efficiently by the production of documents or by the taking of depositions. Under the comparable Ohio Civil Rules, "[a]n interrogatory seeks an admission or it seeks information of

major significance in the trial or in the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by rules for depositions." Penn Cent. Transp. Co. v. Armco Steel Corp., 27 Ohio Misc. 76, 77, 272 N.E.2d 877, 878 (Montgomery Cty. 1971). As Penn further noted, interrogatories that ask one to "describe in detail," "state in detail," or "describe in particulars" are "open end invitation[s] without limit on its comprehensive nature with no guide for the court to determine if the voluminous response is what the party sought in the first place." Id., 272 N.E.2d at 878.

7. DP&L objects to each and every discovery request to the extent that it calls for information that is not in DP&L's current possession, custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code §§ 4901-1-19(C) and 4901-1-20(D). DP&L also objects to each and every discovery request that seeks information that is already on file with the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission. To the extent that each and every discovery request seeks information available in pre-filed testimony, pre-hearing data submissions and other documents that DP&L has filed with the Commission in the pending or previous proceedings, DP&L objects to it. Ohio Admin. Code § 4901-1-16(G).

8. DP&L reserves its right to redact confidential or irrelevant information from documents produced in discovery. All documents that have been redacted will be stamped as such.

9. DP&L objects to each and every discovery request to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.

10. DP&L objects to any discovery request to the extent that it calls for information not in its possession, but in the possession of DP&L's unregulated affiliates.

RESPONSES TO INTERROGATORIES

ESP INT 11-1: In response to IEU-Ohio Interrogatory ESP INT 3-1, DP&L identified that it had performed an analysis of potential cost/expense reductions as well as revenue enhancements. Regarding this analysis, identify the following:

1. For each business segment (generation, transmission, and distribution), the total dollar amount that DP&L could reduce its costs/expenses for each year of the proposed ESP.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product). DP&L further objects because its analysis of potential expense reductions is privileged and constitutes protected work product, because that analysis depends upon DP&L's analysis of and expectations regarding the likely results of this proceeding; DP&L thus objects to providing the results of the analysis that it has performed regarding potential expense reductions.

2. For each business segment (generation, transmission, and distribution), the total dollar amount that DP&L could enhance its revenue for each year of the proposed ESP.

RESPONSE: General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product). DP&L further objects because the revenue enhancements that it has done associated with charges at issues in this case is privileged and constitutes protected work product. DP&L further objects because the request for any analysis that DP&L has performed to enhance its revenue is overly broad and unduly burdensome. Subject to all general objections, DP&L states that it is constantly making efforts to increase its revenue, but that it has not identified any opportunities for it to increase its revenue beyond the projections that it has provided in this case.

WITNESS RESPONSIBLE: Craig Jackson.

Respectfully submitted,

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I certify that a copy of the foregoing Objections and Responses of The Dayton Power and Light Company to Industrial Energy Users-Ohio's Industrial Energy Users-Ohio's Interrogatories Upon Dayton Power and Light Company, ESP Eleventh Set, February 4, 2013, has been served via electronic mail upon the following counsel of record, this 14th day of February, 2013:

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s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	:	Case No. 12-426-EL-SSO
	:	
	:	
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
	:	

**OBJECTIONS AND RESPONSES OF THE DAYTON POWER AND LIGHT
COMPANY TO INDUSTRIAL ENERGY USERS-OHIO'S INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS UPON THE DAYTON POWER
AND LIGHT COMPANY - ESP, TWELFTH SET, FEBRUARY 5, 2013**

PUBLIC VERSION

The Dayton Power and Light Company ("DP&L") objects and responds to
Industrial Energy Users-Ohio's ("IEU-Ohio") Interrogatories and Requests for Production of
Documents Upon Dayton Power and Light Company ESP Twelfth Set, February 5, 2013 to
DP&L as follows.

GENERAL OBJECTIONS

1. DP&L objects to and declines to respond to each and every discovery request to the extent that it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Ohio Admin. Code § 4901-1-16(B).
2. DP&L objects to and declines to respond to each and every discovery request to the extent that it is harassing, unduly burdensome, oppressive or overbroad. Ohio Admin. Code §§ 4901-1-16(B) and 4901-1-24(A).
3. DP&L objects to each and every discovery request to the extent that it seeks information that is privileged by statute or common law, including privileged communications between attorney and client or attorney work product. Ohio Admin. Code § 4901-1-16(B). Such material or information shall not be provided, and any inadvertent disclosure of material or information protected by the attorney-client privilege, the attorney work product doctrine or any other privilege or protection from discovery is not intended and should not be construed to constitute a waiver, either generally or specifically, with respect to such information or material or the subject matter thereof.
4. DP&L objects to each and every discovery request to the extent that it seeks information that is proprietary, competitively sensitive or valuable, or constitutes trade secrets. Ohio Admin. Code § 4901-1-24(A).
5. To the extent that interrogatories seek relevant information that may be derived from the business records of DP&L or from an examination or inspection of such records and the burden of deriving the answer is the same for IEU-Ohio as it is for DP&L, DP&L may specify

the records from which the answer may be derived or ascertained and afford IEU-Ohio the opportunity to examine or inspect such records. Ohio Admin. Code § 4901-1-19(D).

6. DP&L objects to each and every interrogatory that can be answered more efficiently by the production of documents or by the taking of depositions. Under the comparable Ohio Civil Rules, "[a]n interrogatory seeks an admission or it seeks information of major significance in the trial or in the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by rules for depositions." Penn Cent. Transp. Co. v. Armco Steel Corp., 27 Ohio Misc. 76, 77, 272 N.E.2d 877, 878 (Montgomery Cty. 1971). As Penn further noted, interrogatories that ask one to "describe in detail," "state in detail," or "describe in particulars" are "open end invitation[s] without limit on its comprehensive nature with no guide for the court to determine if the voluminous response is what the party sought in the first place." Id., 272 N.E.2d at 878.

7. DP&L objects to each and every discovery request to the extent that it calls for information that is not in DP&L's current possession, custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code §§ 4901-1-19(C) and 4901-1-20(D). DP&L also objects to each and every discovery request that seeks information that is already on file with the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission. To the extent that each and every discovery request seeks information available in pre-filed testimony, pre-hearing data submissions and other documents that DP&L has filed with the Commission in the pending or previous proceedings, DP&L objects to it. Ohio Admin. Code § 4901-1-16(G).

8. DP&L reserves its right to redact confidential or irrelevant information from documents produced in discovery. All documents that have been redacted will be stamped as such.

9. DP&L objects to each and every discovery request to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.

10. DP&L objects to any discovery request to the extent that it calls for information not in its possession, but in the possession of DP&L's unregulated affiliates.

RESPONSES TO INTERROGATORIES

ESP INT 12-1: Regarding the DPL Inc. and DP&L Boards of Directors meeting minutes from June 9-10, 2010, Bates stamped as 0053992, does DP&L possess any documents that discuss [REDACTED] [REDACTED]?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery. Subject to all general objections, DP&L states: [REDACTED]

[REDACTED]

WITNESS RESPONSIBLE: None.

ESP INT 12-2: What is the definition of [REDACTED] as that term is used in the DPL Inc. and DP&L Boards of Directors meeting minutes from June 9-10, 2010, Bates stamped as 0053992?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery. DP&L states that it will supplement its response to this request.

WITNESS RESPONSIBLE:

ESP INT 12-3: Is the summary of how [REDACTED] that is identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from April 27-28, 2011, Bates stamped as 0053977, still applicable to the [REDACTED] ?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources and DPL Inc. are not parties to this proceeding, and are not subject to discovery. DP&L states that it will supplement its response to this request.

WITNESS RESPONSIBLE:

ESP INT 12-4: If the response to Interrogatory 12-3 is negative, identify any changes to the [REDACTED] identified in Interrogatory 12-3.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources and DPL Inc. are not parties to this proceeding, and are not subject to discovery. DP&L states that it will supplement its response to this request.

WITNESS RESPONSIBLE:

ESP INT 12-5: Was the [REDACTED] that is identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from April 27-28, 2011, Bates stamped as 0053977, adopted or implemented by DP&L?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery.

WITNESS RESPONSIBLE: None.

ESP INT 12-6: Does DP&L possess any documents that discuss [REDACTED]
[REDACTED] If so, identify those documents.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources and DPL Inc. are not parties to this proceeding, and are not subject to discovery.

WITNESS RESPONSIBLE: None.

ESP INT 12-7: Does DP&L possess a copy of the [REDACTED] that is identified in the DPL Inc. and DPL Boards of Directors meeting minutes from September 9, 2011, Bates stamped as 0054141?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery. Subject to all general objections, DP&L states: No.

WITNESS RESPONSIBLE: Craig Jackson.

ESP INT 12-8: Did DP&L provide [REDACTED]
[REDACTED] identified in the DPL Inc.
and DP&L Boards of Directors meeting minutes from September 9, 2011,
Bates stamped as 0054141?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3
(privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated
affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not
subject to discovery. Subject to all general objections, DP&L states: No.

WITNESS RESPONSIBLE: Craig Jackson.

ESP-INT 12-9: If the answer to Interrogatory 12-8 is affirmative, does DP&L possess any documents that [REDACTED] ? If so, identify those documents.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery. Subject to all objections, DP&L states: inapplicable.

WITNESS RESPONSIBLE: None.

ESP-INT 12-10: Referencing the [REDACTED] that was presented at the June Board meeting and discussed and identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from July 28, 2010, Bates stamped as 0054001:

A. What methods were discussed regarding [REDACTED]?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery.

B. Has DP&L implemented any of the methods identified in response to INT 12-10(A)?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery.

WITNESS RESPONSIBLE: None.

ESP-INT 12-11: Referencing the [REDACTED] that was discussed and identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from September 15, 2010, Bates stamped as 0054006:

A. What methods were discussed regarding [REDACTED]?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery. DP&L states that it will supplement its response to this request.

B. Has DP&L implemented any of the methods identified in response to INT 12-11(A)?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery. DP&L states that it will supplement its response to this request.

WITNESS RESPONSIBLE:

ESP-INT 12-12: Referencing the DPL Inc. and DP&L Boards of Directors meeting minutes from April 3, 2011, Bates stamped as 0054077, regarding [REDACTED]:

A. What were the embedded assumptions regarding [REDACTED]
[REDACTED]?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. and AES are not parties to this proceeding, and are not subject to discovery.

B. What were the embedded assumptions regarding [REDACTED]
[REDACTED]?

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. and AES are not parties to this proceeding, and are not subject to discovery.

WITNESS RESPONSIBLE: None.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

ESP RPD 12-1: Provide copies of any documents identified in response to the Interrogatories above.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). See DP&L's objections and responses to the above interrogatories.

ESP RPD 12-2: Provide a copy of the presentation summarizing [REDACTED] to the DPL Inc. and DP&L Boards of Directors identified in the Boards of Directors meeting minutes, Bates stamped as 0053992.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources is not a party to this case and documents relating to it are irrelevant and not subject to discovery.

ESP RPD 12-3: Provide a copy of the presentation given by [REDACTED] to the DPL Inc. and DP&L Boards of Directors identified in the Board of Directors meeting minutes, Bates stamped as 0053992.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources is not a party to this case and documents relating to it are irrelevant and not subject to discovery.

ESP RPD 12-4: Provide a copy of the presentation given by [REDACTED] to the DPL Inc. and DP&L Boards of Directors identified in the Boards of Directors meeting minutes, Bates stamped as 0053977.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources is not a party to this case and documents relating to it are irrelevant and not subject to discovery.

ESP RPD 12-5: Provide a copy of the document that summarizes how [REDACTED] that is identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from April 27-28, 2010, Bates stamped as 0053977.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources is not a party to this proceeding, and is not subject to discovery.

ESP RPD 12-6: Provide a copy of the [REDACTED] that is identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from April 19, 2011, Bates stamped as 0054084.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this case, it is not subject to discovery, and documents relating to the AES merger are irrelevant.

ESP RPD 12-7: Provide a copy of the [REDACTED] that is identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from April 19, 2011, Bates stamped as 0054084.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this case, it is not subject to discovery, and documents relating to the AES merger are irrelevant.

ESP RPD 12-8: Provide a copy of the presentation given by [REDACTED] that is identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from October 26, 2011, Bates stamped as 0054152.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. and DPLER are not parties to this proceeding, and are not subject to discovery. Subject to all general objections, DP&L states that it is unable to locate any responsive documents.

ESP RPD 12-9: Provide a copy of the [REDACTED] referenced by [REDACTED] that is identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from February 4, 2010, Bates stamped as 0053947.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. and DPLER are not parties to this proceeding,

and are not subject to discovery. Subject to all general objections, DP&L states that it is unable to locate any responsive documents.

ESP RPD 12-10: Provide a copy of the [REDACTED] that is identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from February 4, 2010, Bates stamped as 0053947.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources is not a party to this case and documents relating to it are irrelevant and not subject to discovery.

ESP RPD 12-11: Provide a copy of the [REDACTED] in the DPL Inc. and DP&L Boards of Directors meeting minutes from June 9-10, 2010, Bates stamped as 0053991.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. and DPLER are not parties to this proceeding, and are not subject to discovery. Subject to all general objections, DP&L states that it is unable to locate any responsive documents.

ESP RPD 12-12: Provide a copy of the presentation given by [REDACTED]

[REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from June 9-10, 2010, Bates stamped as 0053991.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). Subject to all general objections, DP&L states that it will produce responsive unprivileged documents.

ESP RPD 12-13: Provide a copy of the presentation given by [REDACTED]
[REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from June 9-10, 2010, Bates stamped as 0053993.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this case, and is not subject to discovery.

ESP RPD 12-14: Provide a copy of the presentation given by [REDACTED]
[REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from June 9-10, 2010, Bates stamped as 0053993.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because its retail strategy is confidential and should not be provided to any party that is or who represents a competitor of DP&L.

ESP RPD 12-15: Provide a copy of the presentation given by [REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from July 28, 2010, Bates stamped as 0054000.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources is not a party to this case and documents relating to it are irrelevant and not subject to discovery.

ESP RPD 12-16: Provide a copy of the [REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from July 28, 2010, Bates stamped as 0054001.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). Subject to all general objections, DP&L states that it will produce responsive unprivileged documents.

ESP RPD 12-17: Provide a copy of [REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from September 15, 2010, Bates stamped as 0054006.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this case, and is not subject to discovery.

ESP RPD 12-18: Provide a copy of the presentation given by [REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from October 27, 2010, Bates stamped as 0054025.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because its retail strategy is confidential and should not be provided to any party that is or who represents a competitor of DP&L.

ESP RPD 12-19: Provide a copy of the presentation given by [REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from October 27, 2010, Bates stamped as 0054026.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated

affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery. Subject to all general objections, DP&L states that it will produce responsive unprivileged documents.

ESP RPD 12-20: Provide a copy of the presentation regarding [REDACTED] in the DPL Inc. and DP&L Boards of Directors meeting minutes from October 27, 2010, Bates stamped as 0054028.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery.

ESP RPD 12-21: Provide a copy of the presentation given by [REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from December 8, 2010, Bates stamped as 0054035.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this proceeding, and is not subject to discovery.

ESP RPD 12-22: Provide a copy of the presentation given by [REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from July 26, 2011, Bates stamped as 0054121.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Energy Resources is not a party to this case and documents relating to it are irrelevant and not subject to discovery.

ESP RPD 12-23: Provide a copy of the presentation given by [REDACTED] that was identified in the DPL Inc. and DP&L Boards of Directors meeting minutes from October 26, 2011, Bates stamped as 0054152.

RESPONSE: General Objections Nos. 3 (privileged and work product), 4 (proprietary). Subject to all general objections, DP&L states that it is unable to locate any responsive documents.

ESP RPD 12-24: Provide a copy of the [REDACTED] that is identified in the DPL Inc. and DPL Boards of Directors meeting minutes from September 9, 2011, Bates stamped as 0054141.

RESPONSE: General Objections Nos. 2 (unduly burdensome and overbroad), 3 (privileged and work product), 4 (proprietary), and 10 (possession of DP&L's unregulated affiliate). DP&L further objects because DPL Inc. is not a party to this case, it is not subject to discovery, and documents relating to the AES merger are irrelevant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Objections and Responses of The Dayton Power and Light Company to Industrial Energy Users-Ohio's Industrial Energy Users-Ohio's Interrogatories and Requests for Production of Documents Upon Dayton Power and Light Company, ESP Twelfth Set, February 5, 2013, has been served via electronic mail upon the following counsel of record, this 15th day of February, 2013:

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s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

Attachment D

Confidential

Attachment E

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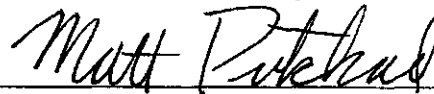
AFFIDAVIT OF MATTHEW R. PRITCHARD

State of Ohio : S.S.

County of Franklin :

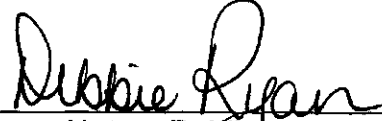
I, Matthew R. Pritchard, counsel for the Industrial Energy Users-Ohio ("IEU-Ohio"), being first duly sworn, depose and say:

1. In attempts to resolve The Dayton Power and Light Company's ("DP&L") incomplete responses to IEU-Ohio's Tenth, Eleventh, and Twelfth Sets of discovery I contacted counsel for DP&L on February 17, 2013. In my email I indicated that DP&L's responses to these three sets of discovery were incomplete, stated IEU-Ohio's opposition to DP&L's objections, and notified DP&L that IEU-Ohio would be filing a motion to compel if DP&L did not provide IEU-Ohio with complete responses.
2. On February 20, 2013, DP&L provided a supplemental response to one of its incomplete discovery responses regarding IEU-Ohio's Twelfth Set.
3. After the Attorney Examiners ruling on February 21, 2013, during the deposition of Craig Jackson, I contacted counsel for DP&L in an attempt to resolve discovery disputes regarding expense reductions.
4. On February 22, 2013, counsel for DP&L indicated that DP&L had not yet made a final determination regarding whether it would supplement its response to IEU-Ohio's discovery requests regarding expense reductions.
5. The procedural deadlines are quickly approaching, with intervenor testimony due on March 1, 2013, and an evidentiary hearing scheduled to begin on March 11, 2013.
6. It is my belief that without intervention from the Public Utilities Commission of Ohio, DP&L will not provide responses to the discovery requests that are the subject of this motion to compel.



Matthew R. Pritchard

Sworn before me and subscribed in my presence this 22nd day of February 2013.



Notary Public
State of Ohio

DEBBIE SUE RYAN
NOTARY PUBLIC • STATE OF OHIO
Recorded in Knox County
My commission expires Nov. 14, 2015

Attachment G

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