

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
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**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN
OPPOSITION TO MOTION OF INDUSTRIAL ENERGY USERS-OHIO TO COMPEL
DISCOVERY RESPONSES FROM THE DAYTON POWER AND LIGHT COMPANY**

I. INTRODUCTION AND SUMMARY

Industrial Energy Users-Ohio ("IEU") begins its memorandum (p. 3) with the claim that "DP&L's repeated failures" to respond to discovery requests have "forced [IEU] to file its third Motion to Compel in this proceeding." IEU neglects to mention that its first two Motions to Compel were denied in almost all respects.¹ The truth is that IEU has engaged in a pattern of making overreaching discovery requests, and then filing wholly meritless motions to compel before the Commission.

IEU's third motion to compel is another such motion. IEU asks the Commission to order DP&L to produce DPL Inc. and DPL Energy Resources ("DPLER") documents; the Attorney Examiners have already ruled that such documents are not subject to discovery. IEU also asks the Commission to compel DP&L to produce analysis that DP&L has performed of potential distribution and transmission rate cases; that work is plainly privileged and work product.

As with IEU's first and second motions to compel, the Commission should deny IEU's third motion to compel.

II. DP&L COST-SAVING ANALYSIS

IEU asks the Commission to order DP&L to respond to INT 10-10 through INT 10-15 and INT 11-1(1), related to cost savings measures. Consistent with the Attorney Examiners' ruling during the February 15, 2013 deposition of Craig Jackson, DP&L has supplemented its responses to those requests.

¹ At the Discovery Hearing, the Attorney Examiners ordered DP&L to produce its Cost Allocation Manual and board minutes to IEU. January 30, 2013 Transcript, p. 142. However, the Attorney Examiners denied the remainder of IEU's requests. *Id.* at 141-42 (stating that IEU's first motion to compel would be "den[ie]d in total" and that IEU's motion to compel "regarding Interrogatories 3-1, 3-2, and 3-3, those are also denied").

III. DPL AND DPLER DOCUMENTS ARE NOT SUBJECT TO DISCOVERY

IEU also asks the Commission to compel DP&L to respond to IEU INT 12-2 through INT 12-6, INT 12-10, INT 12-13, INT 12-15, INT 12-17, INT 12-20 through INT 12-22, and INT 12-24. Each of those documents is a DPL Inc. or DPL Energy Resources ("DPLER") board presentation.

Those requests are improper; it is well settled that affiliates of a utility are not subject to discovery in a proceeding before the Commission. In the Matter of Duke Energy Ohio, Inc., No. 10-2586-EL-SSO, 2010 Ohio PUC LEXIS 1336, at *8-9 (Pub. Utils. Comm'n Dec. 13, 2010) (granting IEU's motion to compel but limiting IEU's original request for "any studies or analysis conducted or commissioned by Duke or its affiliates regarding any revenues Duke's affiliated companies will receive if Duke remains a member of MISO or transitions to PJM . . . to require Duke to produce only information and documents within the possession of Duke Energy Ohio, not its affiliates") (emphasis added); In the Matter of Manchester Group, LLC, No. 08-360-GA-CSS, 2009 Ohio PUC LEXIS 988, at *1-3 (Pub. Utils. Comm'n Nov. 13, 2009) (denying complainant's motion to compel Columbia Gas to produce "all documents and correspondence of Columbia and Columbia's affiliates, subsidiaries, and parent companies that relate to the sale of Columbia Service Partners (CSP) to the CSP Acquisition Company" as to the "documents not in possession of Columbia" because such request is overbroad, but granting the motion to compel as to the documents in the possession of Columbia) (emphasis added).

Indeed, at the Discovery Hearing, the Attorney Examiners ruled that DPL Inc. and DPLER documents were not subject to discovery in this proceeding. January 30, 2013

Transcript, p. 145 (stating that OCC's motion as to certain documents "will be denied based upon they are seeking discovery from documents in the possession of DP&L's affiliates").

IEU nevertheless asserts (pp. 11-13) that DP&L must produce the DPL and DPLER board presentations because DP&L has "access" to the DPL and DPLER board presentations. As background, until November 28, 2011, all of the members of DP&L's board and all of the members of the DPL board have been the same persons, and DPL and DP&L thus conducted joint board sessions. Declaration of Timothy G. Rice ("Rice Dec."), ¶ 3. Starting in November 28, 2011, DP&L and DPL have continued to have substantially common board members, and have continued to conduct combined board meetings. Id. The members of the board vote separately on DP&L and DPL Inc. resolutions. Id. IEU claims (pp. 27-30) that DP&L should be compelled to produce those DPL or DPLER presentations at the joint board sessions because members of DP&L's board saw the presentations. The Commission should reject IEU's argument for the following separate and independent reasons.

First, there is no rule prohibiting DP&L and DPL from sharing board members and having joint board sessions. While there are rules that restrict the flow of certain information between DP&L and its affiliates, there has been no claim by IEU (or anybody else) that any of those rules have been violated. Further, the Commission's Staff periodically inspects DP&L's Cost Allocation Manual (including the Board minutes), and the Commission's Staff has never claimed that corporate separation or other rules were violated by the combined board sessions. Id., ¶ 4.

Indeed, DP&L's existing Corporate Separation Plan expressly provides that "the DP&L affiliated group may have certain officers and directors in common." Oct. 1, 2008

Second Amended Corporate Separation Plan, p. 7. The Stipulation and Recommendation in that case – which IEU signed – provided that DP&L's Application in these matters, including all supporting schedules, workpapers and testimony, is approved. IEU thus consented to the fact that DP&L and DPL Inc. share directors.

Second, even assuming for the sake of argument that DP&L violated corporate separation rules by conducting joint board sessions, the appropriate remedy would be to order DP&L to stop conducting such sessions. IEU does not claim to have suffered any form of injury from the fact that DP&L and DPL conducted joint board sessions. Even assuming that the joint sessions were a violation, it would not follow that IEU would be entitled to copies of all of the DPL and DPLER documents that DP&L board members saw. Instead, if there was a corporate separation violation, then the appropriate remedy would be for the Commission to order DP&L to cease conducting joint board meetings.

Third, as demonstrated above, DP&L is required to produce only those documents to which it has access. DP&L does not have access to the DPL or DPLER presentations made to the Board. Rice Dec., ¶ 5. Specifically, DP&L employees are not authorized to have access to or receive copies of those DPL or DPLER presentations. Id. For those employees who perform services for both DP&L and DPL/DPLER, the time they spend working on DP&L projects is billed via the CAM to DP&L, and the time they spend working on DPL/DPLER projects is billed via the CAM to DPLER. Id. Therefore, DP&L does not currently have access to the DPL or DPLER presentations that were made at those joint board sessions. Id.

Finally, IEU accuses (p. 28) DP&L of failing to comply with the Attorney Examiners' order that DP&L prepare a privilege log associated with its board minutes. That

claim is blatantly false. At the Discovery Hearing, the Attorney Examiners ordered DP&L to produce copies of its Board minutes, but stated "the Company is directed to redact information in the board minutes that it finds to be privileged and then to submit to IEU a privilege log with that cost allocation manual." January 30, 2013 Transcript, p. 142. DP&L made limited redactions to its Board minutes and produced to IEU copies of the as-redacted minutes and a privilege log as to the redactions. Declaration of Jeffrey S. Sharkey, ¶¶ 2-3, Ex. A. DP&L thus complied with the Attorney Examiners' order. (Not only is IEU's claim false, but also, the first time that counsel for DP&L learned that IEU claimed that DP&L had violated the Attorney Examiners' order was when DP&L read IEU's motion to compel. IEU could have and should have raised that issue with DP&L before making that accusation in a publicly-filed motion.)

IEU also argues (pp. 27-30) that the board presentations are not privileged. That argument misses the point. As DP&L stated in its responses to IEU's discovery requests, the reason that DP&L withheld those documents was that they were DPL or DPLER documents. DP&L did not withhold those documents on privilege grounds.

IV. DP&L'S ANALYSIS OF POTENTIAL DISTRIBUTION AND GENERATION RATE CASES IS PRIVILEGED AND WORK PRODUCT

IEU asks that DP&L be compelled to respond to INT 10-16 through INT 10-18 and INT 11-1(2). Those requests seek any analysis DP&L has performed of a potential distribution rate case (INT 10-16 through INT 10-18) and any analysis DP&L has conducted as to the total dollar amount that DP&L could enhance its generation, transmission and distribution revenue for each year of the proposed ESP (INT 11-1(2)).

DP&L has considered filing a distribution or transmission rate case in the future, and has prepared certain analysis of the rates that it would request if it made such filings.

Declaration of Dona Seger-Lawson, ¶ 2. That analysis was prepared at the request of DP&L's counsel, and was provided to that counsel for purposes of seeking legal advice regarding whether DP&L should make such a filing. Id., ¶ 3. That information is thus privileged and work product, and the Commission should therefore deny IEU's motion that DP&L be compelled to produce that information.

IEU argues (p. 27) that "good cause exists" to compel DP&L to produce the information. The Commission should reject that argument for two separate and independent reasons. First, as demonstrated above, the information is privileged. There is no "good cause" exception if information is privileged.

Second, IEU cannot establish the "good cause" exception to the work product doctrine. Specifically, The American Bar Association's committees on Professional Conduct, Business Corporate Litigation, and Cyberspace Law discussed the work product doctrine in their publication, The Attorney-Client Privilege and Work Product in the Post-Enron Era:

"There are two categories or types of attorney work product: 'fact' or 'ordinary' work product, but better described as 'tangible' work product; and 'opinion' or 'core' work product, sometimes termed 'intangible' work product. . . .

Work product protection is not absolute. A party may discover its adversary's tangible work product if it demonstrates substantial need of the materials to prepare its case and it is unable without undue hardship to obtain the substantial equivalent of the materials by other means. The discovering party must specifically explain its need for the materials sought. . . .

Opinion work product, on the other hand, receives almost absolute protection against discovery. To discover an adversary's opinion work product a party must demonstrate something far greater than the substantial need and undue hardship necessary to obtain tangible work product. Discovery of opinion work product may be permitted only where the attorneys' conclusions, mental

impressions or opinions are at issue in the case and there is a compelling need for their discovery."

Douglas R. Richmond and William Freivogel, The Attorney-Client Privilege and Work Product in the Post-Enron Era, ABA Section of Business Law, at 5 (2004) (emphasis added), available at <http://apps.americanbar.org/buslaw/newsletter/0027/materials/11.pdf>.

The Supreme Court of Ohio's decision in Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp. is illustrative. In that case, SS&D's client had a general counsel, and that general counsel terminated SS&D with respect to a case that SS&D was handling for the client. 127 Ohio St. 3d 161, 162, 937 N.E.2d 533, 535 (2010). SS&D sued its former client to recover amounts owed to SS&D for services performed, and the client claimed that it was not obligated to pay SS&D because the client's general counsel had concluded that SS&D had performed inadequately in the underlying litigation. Id. at 163, 937 N.E.2d at 535-36.

SS&D sought discovery (documents and depositions) from the general counsel of SS&D's former client, and the former client refused to provide that information, claiming that the information was protected by the work product doctrine. Id. at 163, 937 N.E.2d at 536. SS&D moved to compel the production of the information and documents at issue, and the Court described the work product doctrine:

"[A]ttorney work product, including but not limited to mental impressions, theories, and legal conclusions, may be discovered upon a showing of good cause if it is directly at issue in the case, the need for the information is compelling, and the evidence cannot be obtained elsewhere"

Id. at 175-76, 937 N.E.2d at 546 (emphasis added).

The Court held that the mental impression of the former client's general counsel satisfied the "directly at issue in the case" criterion because the basis of the former client's defense was that its general counsel had concluded that SS&D had performed inadequately and overcharged for its services. Id. at 176, 937 N.E.2d at 546. The Court thus compelled the former client's general counsel to testify and the client to provide documents relating to the value and quality of the legal services performed by SS&D. Id.

Here, DP&L's analysis of potential distribution or transmission rate cases are plainly opinion work product (in that they contain DP&L's analysis of the underlying cost documents). Under Squire Sanders & Dempsey, the "good cause" exception would apply only if DP&L's mental impressions are "directly at issue in the case." DP&L's mental impressions are not at issue at all. The issues in this case relate to DP&L's costs and revenues, and the amounts DP&L needs to maintain its financial integrity. What DP&L thinks of those amounts is not "directly at issue," and IEU thus cannot establish good cause.

V. DOCUMENTS DP&L HAS ALREADY PRODUCED OR COULD NOT LOCATE

IEU also asks that DP&L be compelled to produce documents in response to INT 12-16 and INT 12-19; DP&L has already produced such documents to IEU. IEU also asks the Commission to compel DP&L to produce documents in response to IEU INT 12-11 and INT 12-23; after a good-faith search, DP&L has been unable to locate those documents.

Respectfully submitted,

s/ Judi L. Sobecki

Judi L. Sobecki (0067186)
THE DAYTON POWER AND
LIGHT COMPANY
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7171
Telecopier: (937) 259-7178
Email: judi.sobecki@dplinc.com

s/ Charles J. Faruki

Charles J. Faruki (0010417)
(Counsel of Record)
Jeffrey S. Sharkey (0067892)
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
Telephone: (937) 227-3705
Telecopier: (937) 227-3717
Email: cfaruki@ficlaw.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to the Motion of Industrial Energy Users-Ohio to Compel Discovery Responses from The Dayton Power and Light Company has been served via electronic mail upon the following counsel of record, this 1st day of March, 2013:

Samuel C. Randazzo, Esq.
Frank P. Darr, Esq.
Matthew R. Pritchard, Esq.
Joseph E. Olikier, Esq.
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
joliker@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

Philip B. Sineneng, Esq.
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, OH 43215
Philip.Sineneng@ThompsonHine.com

Amy B. Spiller, Esq.
Deputy General Counsel
Jeanne W. Kingery, Esq.
Associate General Counsel
DUKE ENERGY RETAIL SALES, LLC and
DUKE ENERGY COMMERCIAL ASSET
MANAGEMENT, INC.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Amy.Spiller@duke-energy.com
Jeanne.Kingery@duke-energy.com

Attorneys for Duke Energy Retail Sales, LLC and
Duke Energy Commercial Asset Management, Inc.

Mark A. Hayden, Esq.
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

James F. Lang, Esq.
Laura C. McBride, Esq.
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com

N. Trevor Alexander, Esq.
CALFEE, HALTER & GRISWOLD LLP
1100 Fifth Third Center
21 E. State St.
Columbus, OH 43215-4243
talexander@calfee.com

David A. Kutik, Esq.
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Allison E. Haedt, Esq.
JONES DAY
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-2673
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

Robert A. McMahon, Esq.
EBERLY MCMAHON LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
bmcmahon@emh-law.com

Rocco O. D'Ascenzo, Esq.
Associate General Counsel
Elizabeth Watts, Esq.
Associate General Counsel
DUKE ENERGY OHIO, INC.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Elizabeth.Watts@duke-energy.com
Rocco.D'Ascenzo@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street Suite 1510
Cincinnati, OH 45202-4454
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com

Attorneys for Ohio Energy Group

Gregory J. Poulos, Esq.
EnerNOC, Inc.
471 East Broad Street
Columbus, OH 43215
Telephone: (614) 507-7377
Email: gpoulos@enernoc.com

Attorney for EnerNOC, Inc.

Colleen L. Mooney, Esq.
OHIO PARTNERS FOR AFFORDABLE
ENERGY
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Attorney for Ohio Partners for Affordable Energy

Jay E. Jadwin, Esq.
AMERICAN ELECTRIC POWER
SERVICE CORPORATION
155 W. Nationwide Blvd., Suite 500
Columbus, OH 43215
jejadwin@aep.com

Attorney for AEP Retail Energy Partners LLC

M. Anthony Long, Esq.
Senior Assistant Counsel
Asim Z. Haque, Esq.
HONDA OF AMERICA MFG., INC.
24000 Honda Parkway
Marysville, OH 43040
tony_long@ham.honda.com
Asim Z. Haque, Esq.

Attorney for Honda of America Mfg., Inc.

Richard L. Sites, Esq.
General Counsel and Senior Director of
Health Policy
OHIO HOSPITAL ASSOCIATION
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Thomas J. O'Brien, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

Attorneys for Ohio Hospital Association

Thomas W. McNamee, Esq.
Assistant Attorney General
Devin D. Parram, Esq.
Assistant Attorneys General
180 East Broad Street
Columbus, OH 43215
Thomas.mcnamee@puc.state.oh.us
devin.parram@puc.state.oh.us

Attorneys for the Staff of the Public Utilities
Commission of Ohio

Mark S. Yurick, Esq.
(Counsel of Record)
Zachary D. Kravitz, Esq.
TAFT STETTINIUS & HOLLISTER LLP
65 East State Street, Suite 1000
Columbus, OH 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

Attorneys for The Kroger Company

Mark A. Whitt, Esq. (Counsel of Record)
Andrew J. Campbell, Esq.
WHITT STURTEVANT LLP
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, OH 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

Vincent Parisi, Esq.
Matthew White, Esq.
INTERSTATE GAS SUPPLY, INC.
6100 Emerald Parkway
Dublin, OH 43016
vparisi@igsenergy.com
mswhite@igsenergy.com

Attorneys for Interstate Gas Supply, Inc.

Steven M. Sherman, Esq. Counsel of Record
Joshua D. Hague, Esq. (admitted *pro hac vice*)

KRIEG DEVAULT LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204-2079
ssherman@kdlegal.com
jhague@kdlegal.com

Attorneys for Wal-Mart Stores East, LP
and Sam's East, Inc.

Melissa R. Yost, Esq., (Counsel of Record)
Maureen R. Grady, Esq.
Assistant Consumers' Counsel
Office of The Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
yost@occ.state.oh.us
grady@occ.state.oh.us

Attorneys for Office of the Ohio Consumers'
Counsel

Christopher L. Miller, Esq.
(Counsel of Record)
Gregory H. Dunn, Esq.
Christopher W. Michael, Esq.
ICE MILLER LLP
250 West Street
Columbus, OH 43215
Christopher.Miller@icemiller.com
Gregory.Dunn@icemiller.com
Christopher.Michael@icemiller.com

Attorneys for the City of Dayton, Ohio

M. Howard Petricoff, Esq.
Stephen M. Howard, Esq.
VORYS, SATER, SEYMOUR AND
PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Attorneys for the Retail Energy Supply
Association

Trent A. Dougherty, Esq. Counsel of Record
Cathryn N. Loucas, Esq.
OHIO ENVIRONMENTAL COUNCIL
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
trent@theoec.org
cathy@theoec.org

Attorneys for the Ohio Environmental
Council

Joseph M. Clark, Esq., Counsel of Record
21 East State Street, Suite 1900
Columbus, OH 43215
joseph.clark@directenergy.com

Christopher L. Miller, Esq.
Gregory J. Dunn, Esq.
Alan G. Starkoff, Esq.
ICE MILLER LLP
2540 West Street
Columbus, OH 43215
Christopher.Miller@icemiller.com
Gregory.Dunn@icemiller.com

Attorneys for Direct Energy Services, LLC
and Direct Energy Business, LLC

M. Howard Petricoff, Esq.
VORYS, SATER, SEYMOUR AND PEASE
LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpeticoff@vorys.com
smhoward@vorys.com

Attorneys for Exelon Generation Company, LLC,
Exelon Energy Company, Inc., Constellation
Energy Commodities Group, Inc., and
Constellation NewEnergy, Inc.

Matthew J. Satterwhite, Esq.
Steven T. Nourse, Esq.
AMERICAN ELECTRIC POWER SERVICE
CORPORATION
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com

Attorneys for Ohio Power Company

Ellis Jacobs, Esq.
Advocates for Basic Legal Equality, Inc.
333 West First Street, Suite 500B
Dayton, OH 45402
ejacobs@ablelaw.org

Attorney for Edgemont Neighborhood
Coalition

Stephanie M. Chmiel, Esq.
Michael L. Dillard, Jr., Esq.
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, OH 43215
Stephanie.Chmiel@ThompsonHine.com
Michael.Dillard@ThompsonHine.com

Attorneys for Border Energy Electric
Services, Inc.

Matthew W. Warnock, Esq.
J. Thomas Siwo, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
mwarnock@bricker.com
tsiwo@bricker.com

Attorneys for The Ohio Manufacturers'
Association Energy Group

Kimberly W. Bojko, Esq.
Joel E. Sechler, Esq.
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
Bojko@carpenterlipps.com
Sechler@carpenterlipps.com

Attorneys for SolarVision, LLC

Matthew R. Cox, Esq.
MATTHEW COX LAW, LTD.
4145 St. Theresa Blvd.
Avon, OH 44011
matt@matthewcoxlaw.com

Attorney for the Council of Smaller Enterprises

Cynthia Fonner Brady, Esq.
Assistant General Counsel
EXELON BUSINESS SERVICES COMPANY
4300 Winfield Road
Warrenville, IL 60555
Cynthia.Brady@constellation.com

Attorney for Constellation
an Exelon Company

Edmund J. Berger, Esq. (admitted *pro hac vice*)
Office of The Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
berger@occ.state.oh.us

Attorneys for Office of the Ohio Consumers'
Counsel

Mary W. Christensen, Esq.
Christensen Law Office LLC
8760 Orion Place, Suite 300
Columbus, OH 43240-2109
mchristensen@columbuslaw.org

Attorneys for People Working Cooperatively, Inc.

Scott C. Solberg, Esq. (admitted *pro hac vice*)
Eimer Stahl LLP
224 South Michigan Avenue, Suite 1100
Chicago, OH 60604
ssolberg@eimerstahl.com

Attorney for Exelon Generation
Company, LLC

Stephen Bennett, Manager
State Government Affairs
300 Exelon Way
Kenneth Square, PA 19348
stephen.bennett@exeloncorp.com

Bill C. Wells, Esq.
AFMCLO/CL
Industrial Facilities Division
Bldg 266, Area A
Wright Patterson AFB, OH 45433
bill.wells@wpafb.af.mil

Christopher C. Thompson, Esq.
Staff Attorney (pending *pro hac vice*)
USAF Utility Law Field Support Center
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319

Attorneys for Federal Executive Agencies

/s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

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DECLARATION OF TIMOTHY G. RICE

I, Timothy G. Rice, declare as follows:

1. My name is Timothy G. Rice, and I am the Vice President, Assistant General Counsel and Corporate Secretary of DPL Inc.
2. DPL Inc. is DP&L's parent corporation, and DPL Inc. has other subsidiaries in addition to DP&L (e.g., DPL Energy Resources, Inc.; DPL Energy LLC; etc.). DPL Inc. has its own board of directors, and maintains its own books and records.

3. Until November 28, 2011, all of the members of DP&L's board and all of the members of the DPL board have been the same persons, and DPL and DP&L thus conducted combined board sessions. Starting November 28, 2011, DP&L and DPL have continued to have substantially common board members, and have continued to conduct combined board meetings. The members of the boards vote separately on DP&L or on DPL Inc. resolutions.

4. The Commission's Staff has inspected DP&L's Cost Allocation Manual (including the Board minutes), and the Commission's Staff has never claimed that corporate separation or other rules were violated by the combined board sessions.

5. DP&L employees are not authorized to have access to or receive copies of those DPL or DPLER presentations. For those employees who perform services for both DP&L and DPL/DPLER, the time they spend working on DP&L projects is billed via the CAM to DP&L, and the time they spend working on DPL/DPLER projects is billed via the CAM to DPL/DPLER. Therefore, DP&L does not currently have access to the DPL or DPLER presentations that were made at those combined board sessions.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated February 28, 2013.


Timothy G. Rice

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	:	
In the Matter of the Application of	:	Case No. 12-429-EL-WVR
The Dayton Power and Light Company for	:	
the Waiver of Certain Commission Rules	:	
	:	
In the Matter of the Application of	:	Case No. 12-672-EL-RDR
The Dayton Power and Light Company	:	
to Establish Tariff Riders	:	

DECLARATION OF JEFFREY S. SHARKEY

I, Jeffrey S. Sharkey, declare as follows:

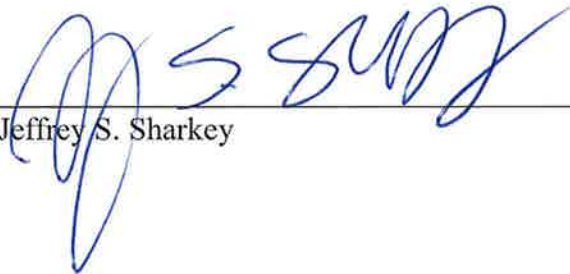
1. My name is Jeffrey S. Sharkey, and I am a partner at Faruki Ireland & Cox P.L.L. I am one of the attorneys representing Applicant The Dayton Power and Light Company ("DP&L") in this matter.

2. At the Discovery Hearing, the Attorney Examiners ordered DP&L to produce copies of its Board minutes, but stated "the Company is directed to redact information in the board minutes that it finds to be privileged and then to submit to IEU a privilege log with that cost allocation manual." January 30, 2013 Transcript, p. 142. DP&L made limited redactions to its board minutes, and on February 4, 2013, produced to IEU copies of the as-redacted minutes and a privilege log.

3. A copy of the February 4, 2013 email from Adam Sadlowski to IEU's counsel transmitting the privilege log and board of directors minutes is attached; the board minutes are not attached due to their volume and since there is no issue as to the board minutes.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated February 27, 2013.



Jeffrey S. Sharkey

697270.1

Seabold, Teri

From: Sadlowski, Adam V.
Sent: Monday, February 04, 2013 2:48 PM
To: 'Matt Pritchard'; 'Joe Olier'
Cc: 'Sam Randazzo'; 'Frank Darr'; Judi L Sobecki; Faruki, Charles J.; Sharkey, Jeffrey S.
Subject: DP&L/ESP Case: CAM Documents and Board of Directors Meeting Minutes [IWOV-DMS.FID83439]
Attachments: DP&L Privilege Log.pdf; BOD Meeting Minutes, Part 1 of 3.pdf; BOD Meeting Minutes, Part 2 of 3.pdf; BOD Meeting Minutes, Part 3 of 3.pdf

Matt and Joe,

As we discussed last Wednesday following the discovery hearing, attached are DP&L's Board of Directors Meeting Minutes. Certain portions of the Minutes have been redacted to protect against the disclosure of Attorney-Client Privilege and Work Product. The attached privilege log outlines the information that DP&L has redacted. Due their volume and size, I will be sending you a second email that contains the CAM documents. Pursuant to the parties' Stipulated Protective Agreement, the Minutes and CAM documents have been designated as "Highly Confidential-Outside Counsel's Eyes Only."

I also will be sending you hard copies of these documents via FedEx (delivery tomorrow).

Regards,

Adam

Adam V. Sadlowski, Esq. | Faruki Ireland & Cox P.L.L. | Email: asadlowski@ficlaw.com
Tel: 937.227.3702 | Fax: 937.227.3717
500 Courthouse Plaza, S.W. | Dayton, OH 45402
201 East Fifth St., Ste. 1420 | Cincinnati, OH 45202
Trusted Wisdom | Extraordinary Results | Web: www.ficlaw.com

EXHIBIT A

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, et al.
Case No. 12-426-EL-SSO, et al.
Before the Public Utilities Commission of Ohio

Category 9

Log of Privileged Documents Relating to DP&L's Cost Allocation Manual (FES RPD 8-13)

	Document Description	Date Document Prepared	Author(s)	Recipient(s)	Subject Matter of Redacted Information or Withheld Document	Number of Pages	Objection
4.	Minutes of Board of Directors' Meetings	2/24/2010	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding pension, settlement discussions with EPA and in a case before PUCO	18	Attorney-Client Privilege and Work Product
7.	Minutes of Board of Directors' Meetings	4/12/2010	T. Rice, Esq.	Members of DP&L's Board of Directors	Review of status of certain strategic initiatives and corporate development	2	Attorney-Client Privilege and Work Product
13.	Minutes of Board of Directors' Meetings	4/27-28/2010	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding regulatory issues, strategic activities, and fiduciary duty	11	Attorney-Client Privilege
14.	Minutes of Board of Directors' Meetings	4/29/2010	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding negotiations for strategic acquisition	3	Attorney-Client Privilege

	Document Description	Date Document Prepared	Author(s)	Recipient(s)	Subject Matter of Redacted Information or Withheld Document	Number of Pages	Objection
16.	Minutes of Board of Directors' Meetings	6/9/2010 to 6/10/2010	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding regulatory compliance and corporate development opportunities	7	Attorney-Client Privilege and Work Product
17.	Minutes of Board of Directors' Meetings	7/28/2010	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding PUCO SEET order	6	Attorney-Client Privilege
18.	Minutes of Board of Directors' Meetings	9/15/2010	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding filing Form 8-K with SEC	5	Attorney-Client Privilege
20.	Minutes of Board of Directors' Meetings	10/26-27/2010	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding customer retention and acquisition, and safety	13	Attorney-Client Privilege
21.	Minutes of Board of Directors' Meetings	12/8/2010	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding potential AEP settlement of SEET and mortgage releases	11	Attorney-Client Privilege and Work Product
25.	Minutes of Board of Directors' Meetings	2/23/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding speaking with PUCO	12	Attorney-Client Privilege
27.	Minutes of Board of Directors' Meetings	3/11/2011	Dennis J. Block, Esq.	Members of DP&L's Board of Directors	Legal advice regarding potential acquisition/merger with AES and due diligence	3	Attorney-Client Privilege

	Document Description	Date Document Prepared	Author(s)	Recipient(s)	Subject Matter of Redacted Information or Withheld Document	Number of Pages	Objection
28.	Minutes of Board of Directors' Meetings	3/18/2011	Dennis J. Block, Esq.	Members of DP&L's Board of Directors	Legal advice regarding potential acquisition/merger with AES, and due diligence and fiduciary duties relating to potential merger	4	Attorney-Client Privilege
29.	Minutes of Board of Directors' Meetings	3/23/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding potential acquisition/merger with AES and fiduciary duties relating to same	4	Attorney-Client Privilege
30.	Minutes of Board of Directors' Meetings	4/3/2011	Dennis J. Block, Esq.	Members of DP&L's Board of Directors	Legal advice regarding potential acquisition/merger with AES	3	Attorney-Client Privilege and Work Product
31.	Minutes of Board of Directors' Meetings	4/5/2011	Dennis J. Block, Esq.	Members of DP&L's Board of Directors	Legal advice regarding new regulatory regime	4	Attorney-Client Privilege
32.	Minutes of Board of Directors' Meetings	4/19/2011	Dennis J. Block, Esq.	Members of DP&L's Board of Directors	Legal advice regarding potential acquisition/merger with AES	12	Attorney-Client Privilege
33.	Minutes of Board of Directors' Meetings	4/26-27/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding potential acquisition/merger with AES	9	Attorney-Client Privilege
34.	Minutes of Board of Directors' Meetings	5/25/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding litigation relating to merger with AES and draft proxy statement	3	Attorney-Client Privilege; Work Product

	Document Description	Date Document Prepared	Author(s)	Recipient(s)	Subject Matter of Redacted Information or Withheld Document	Number of Pages	Objection
35.	Minutes of Board of Directors' Meetings	6/10/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding potential acquisition/merger with AES and proxy statement	8	Attorney-Client Privilege; Work Product
36.	Minutes of Board of Directors' Meetings	7/26/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding merger with AES, proxy statement, and shareholder litigation	8	Attorney-Client Privilege; Work Product
37.	Minutes of Board of Directors' Meetings	9/09/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding merger with AES, regulatory approval and review of draft potential settlement/memorandum of understanding in shareholder litigation	21	Attorney-Client Privilege; Work Product
38.	Minutes of Board of Directors' Meetings	9/23/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding merger with AES, status of shareholder litigation and regulatory approval, and stock unit agreements	4	Attorney-Client Privilege; Work Product
39.	Minutes of Board of Directors' Meetings	10/26/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding regulatory approval of merger with AES, shareholder litigation, and trading of DPL stock	6	Attorney-Client Privilege; Work Product
41.	Litigation and Claims Pending Charts	11/10/2011	DP&L Legal Department		Charts tracking litigation and claims pending in Third and Fourth Quarters of 2010 (withheld from production)	8	Attorney-Client Privilege

	Document Description	Date Document Prepared	Author(s)	Recipient(s)	Subject Matter of Redacted Information or Withheld Document	Number of Pages	Objection
42.	Litigation and Claims Pending Charts	11/11/2011	DP&L Legal Department		Charts tracking litigation and claims pending in First and Second Quarters of 2011 (withheld from production)	9	Attorney-Client Privilege
43	Minutes of Board of Directors' Meetings	11/22/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding shareholder litigation relating to merger with AES, and dividends	8	Attorney-Client Privilege; Work Product
44.	Minutes of Board of Directors' Meetings	11/27/2011	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding success fees relating to AES merger	5	Attorney-Client Privilege
53.	Minutes of Board of Directors' Meetings	1/09/2012	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding success fees for merger with AES	6	Attorney-Client Privilege
58.	Minutes of Board of Directors' Meetings	3/23/2012	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice in anticipation of pending mediation and proposed regulatory filing with PUCO	8	Attorney-Client Privilege; Work Product
59.	Minutes of Board of Directors' Meetings	4/30/2012	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding status of regulatory filing with PUCO	7	Attorney-Client Privilege
61.	Minutes of Board of Directors' Meetings	7/30/2012	T. Rice, Esq.	Members of DP&L's Board of Directors	Legal advice regarding release of mortgages	6	Attorney-Client Privilege

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
	:	

DECLARATION OF DONA R. SEGER-LAWSON

I, Dona R. Seger-Lawson, declare as follows:

1. My name is Dona R. Seger-Lawson, and I am the Director, Regulatory Operations of The Dayton Power and Light Company ("DP&L").
2. DP&L has considered filing a distribution or transmission rate case in the future, and has prepared certain analyses of the rates that it may request if it made such filings.

3. That analysis was prepared at the request of DP&L's counsel, and was provided to that counsel for purposes of seeking legal advice regarding whether DP&L should make such a filing.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated March 1, 2013.


Dona R. Seger-Lawson

697334.1

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/1/2013 4:54:12 PM

in

Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

Summary: Memorandum The Dayton Power and Light Company's Memorandum in Opposition to Motion of Industrial Energy Users-Ohio to Compel Discovery Responses From The Dayton Power and Light Company electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company