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. 16-0395-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 16-0396-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13	:	Case No. 16-0397-EL-AAM

THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN OPPOSITION TO INDUSTRIAL ENERGY USERS-OHIO'S MOTION TO DISMISS, IN PART, THE ELECTRIC SECURITY PLAN APPLICATION FILED BY THE DAYTON POWER AND LIGHT COMPANY WITH RESPECT TO THE REGULATORY COMPLIANCE RIDER, UNCOLLECTIBLE RIDER, STORM COST RECOVERY RIDER, RECONCILIATION RIDER, AND TRANSMISSION COST RECOVERY RIDER-NONBYPASSABLE

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I. INTRODUCTION AND SUMMARY

As the parties diligently prepare for next month's evidentiary hearing, Industrial Energy Users-Ohio ("IEU") demands that the Commission decide – before it hears any evidence – whether five riders proposed by The Dayton Power and Light Company ("DP&L") are reasonable and lawful: the Regulatory Compliance Rider ("RCR"), the Uncollectible Rider ("UEX"), the Storm Cost Recovery Rider ("Storm Rider"), the Reconciliation Rider ("RR"), and the Transmission Cost Recovery Rider-Nonbypassable ("TCRR-N").[1] The Commission should deny IEU's Motion as procedurally improper or, alternatively, on the merits.

The Motion is procedurally improper because it asks the Commission (pp. 5-6) to deny the DMR pursuant to Civ.R. 12(B)(6), i.e., for an alleged "failure to state a claim upon which relief can be granted." First, such threshold motions are not permitted in Standard Service Offer ("SSO") proceedings by statute, regulation, or caselaw.[2] Second, such motions are not permitted by Ohio courts after discovery and shortly before trial. Finally, the Commission is required to hold a hearing in all SSO cases. Ohio Rev. Code § 4928.141(B) ("The Commission shall set the time for hearing of a filing under section . . . 4928.143 of the Revised Code . . . .") (emphasis added). The Commission also is able to modify an application after the hearing, subject to the utility's right to withdraw it. Ohio Rev. Code § 4928.143(C). Dismissing any

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[1] Nov. 21, 2016 Industrial Energy Users-Ohio's Motion to Dismiss, in Part, the Electric Security Plan Application Filed by The Dayton Power and Light Company with Respect to the Regulatory Compliance Rider, Uncollectible Rider, Storm Cost Recovery Rider, Reconciliation Rider, and Transmission Cost Recovery Rider-Nonbypassable and Memorandum in Support ("Motion"). Concurrent with this filing of this Memorandum, DP&L has filed a Memorandum in Opposition to IEU's separate Motion to Dismiss the Distribution Modernization Rider.

[2] July 22, 2015 Entry, p. 7, In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO ("FirstEnergy ESP IV") ("the Commission, as an administrative agency, is not bound by the Ohio Rules of Civil Procedure").

portion of the Amended Application at this stage would violate DP&L's right to have its application heard.

Alternatively, the Commission should deny the Motion on the merits. DP&L supports the five riders with sufficient facts in the Amended Application, which incorporates by reference factual support for the RCR, UEX, and Storm Rider from publicly-available testimony in DP&L's pending distribution rate case, Case No. 15-1830-EL-AIR. Amended Application, p. 7. In addition, the RR is designed to recover deferred Ohio Valley Electric Corporation ("OVEC") costs, which – contrary to IEU's assertion otherwise (Motion, p. 9) – are not transition costs or their equivalent under recent Commission precedent. Nov. 3, 2016 Second Entry on Rehearing, p. 100, In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, Case No. 14-1693-EL-RDR ("AEP PPA Case"). Finally, the Commission should reject IEU's arguments concerning the TCRR-N because (1) IEU is barred from relitigating the merits of the TCRR-N, (2) IEU's preemption arguments are a matter for the judiciary, and (3) IEU's request is impracticable.

II. THE COMMISSION SHOULD DENY THE MOTION TO DISMISS AS PROCEDURALLY IMPROPER

Before considering the merits of the Motion, the Commission should deny the Motion because a Rule 12(B)(6) motion to dismiss is not permitted in SSO proceedings. They are not authorized by the Ohio Revised Code, the Ohio Administrative Code, or caselaw of the Supreme Court of Ohio or the Commission. They also are in conflict with the hearing requirement of Ohio Rev. Code § 4928.141(B), and the right of the Commission to modify SSO applications under Ohio Rev. Code § 4928.143(C).

IEU concedes (p. 5) that the Commission is not subject to the Ohio Rules of Civil Procedure. However, IEU erroneously argues that Ohio Rev. Code § 4903.082 "directs the Commission to rely on those rules 'wherever practicable,'" including Rule 12. Id. (emphasis added). A closer look reveals that § 4903.082 is merely a discovery statute – not a pleading statute – and that IEU has cherry-picked language to distort its meaning. The statute reads, in full:

> "All parties and intervenors shall be granted ample rights of discovery. The present rules of the public utilities commission should be reviewed regularly by the commission to aid full and reasonable discovery by all parties. Without limiting the commission's discretion the Rules of Civil Procedure should be used wherever practicable."

Ohio Rev. Code § 4903.082 (emphasis added).

IEU's twisted interpretation of § 4903.082 violates well-established rules of statutory construction. For instance, Ohio Rev. Code § 1.42 states that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." Ohio Rev. Code § 1.42 (emphasis added). Accord: Smith v. Landfair, 135 Ohio St.3d 89, 2012-Ohio-5692, 984 N.E.2d 1016 , ¶ 26 ("Words in a statute must be read in context . . . .") (emphasis added). In addition, the Supreme Court of Ohio follows the maxim of noscitur a sociis, i.e. "it is known from its associates." Sunoco, Inc. v. Toledo Edison Co., 129 Ohio St.3d 397, 2011-Ohio-2720, 953 N.E.2d 285, ¶ 43 ("Under the doctrine of noscitur a sociis, the meaning of an unclear word may be derived from the meaning of accompanying words."). Here, the context and surrounding words in § 4903.082 show that the statute deals only with discovery matters.

The only other authority that IEU cites to support the use of Rule 12(B)(6) is a case in which the Commission expressly declined to rule on a motion to dismiss and, instead,

conducted a full evidentiary hearing, Feb. 13, 2014 Opinion and Order, In the Matter of the Application of Duke Energy Ohio, Inc. for the Establishment of a Charge Pursuant to Section 4909.18, Revised Code, et al., Case Nos. 12-2400-EL-UNC, et al, where the Commission held that it "is not strictly bound by the rules of civil procedure," and that it was proper to "follow a thorough evidentiary process, in order to give all interested parties an opportunity to be heard on the issues pertaining to [the] application." Id. at 15-16. It did not authorize the use of Rule 12 motions – much less, shortly before trial, after discovery.

Allowing tardy Rule 12(B)(6) motions in SSO proceedings would be contrary to the statutory framework adopted in Am. Sub. SB 221. Specifically, Ohio Rev. Code § 4928.141(B) provides that "[t]he commission shall set the time for hearing of a filing under section 4928.142 or 4928.143 of the Revised Code." (Emphasis added.) Thus, dismissing any portion of the Amended Application would violate DP&L's right to have its proposal heard. Additionally, the Commission has the right to modify DP&L's application, subject to DP&L's right to withdraw it. Ohio Rev. Code § 4928.143(C). Dismissal would undermine that process.

III. TO PREVAIL ON THE MERITS OF ITS MOTION, IEU MUST SHOW BEYOND DOUBT THAT NO SET OF FACTS SUPPORTS THE RCR, UEX, STORM RIDER, RR, AND TCRR-N

If the Commission considers the merits of the Motion, then it must follow the same standard of review for Rule 12(B)(6) motions that is applied by Ohio's courts. "In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted (Civ. R. 12(B)(6)), it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." O'Brien v. Univ. Community Tenants Union, Inc., 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus (emphasis added) (citing Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957)). Accord: Mitchell v. Lawson Milk Co., 40 Ohio St.3d

190, 192, 532 N.E.2d 753 (1988). Such dismissals are "unusual and should be granted with caution." State ex rel. Lindenschmidt v. Bd. of Comm'rs, 72 Ohio St.3d 464, 467, 650 N.E.2d 1343 (1995).

Consideration of a Rule 12(B)(6) motion, "must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." Mitchell, 40 Ohio St.3d at 192, 532 N.E.2d 753. The Supreme Court of Ohio has cautioned further that "as long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." York v. Ohio State Hwy. Patrol, 60 Ohio St.3d 143, 145, 573 N.E.2d 1063 (1991) (emphasis added).

IV. DP&L SUPPORTS THE RCR, UEX, AND STORM RIDER WITH SUFFICIENT FACTS IN THE AMENDED APPLICATION AND SUPPORTING TESTIMONY, WHICH EXPRESSLY ADOPT FACTS IDENTIFIED IN DP&L'S PENDING DISTRIBUTION RATE CASE

IEU first complains (p. 6) that there are insufficient facts in the Amended Application and supporting testimony to support the RCR, UEX, and Storm Rider. As IEU concedes, however, the Amended Application expressly provides:

> "The riders that DP&L proposes in this case are structured assuming that the riders that DP&L proposed in Case No. 15-1830-EL-AIR case are approved. Modifications to the riders in this case will be necessary for uncollectible dollars (bad debt) if the Uncollectible Rider is not approved in that case. Additionally, if the Commission concludes that the riders proposed in Case No. 15-1830-EL-AIR case should be included in this case, then DP&L requests approval of the Regulatory Compliance Rider, Uncollectible Rider, and Storm Cost Recovery Rider that were proposed and fully supported in Case No. 15-1830-EL-AIR."

Amended Application, p. 7 (emphasis added). In addition, the direct testimony of Nathan Parke provides:

> "There are three proposed riders in the Distribution Rate case, Case No. 15-1830-EL-AIR. The rates and riders in this case assume the Uncollectible Rider will be approved in that case. In the event that it is not, DP&L will need to make adjustments in this case to address uncollectible costs in each proposed rate/rider. Additionally, to the extent the Commission determines that this case is a more appropriate forum, DP&L requests approval of the Storm Cost Recovery Rider, Uncollectible Rider, and Regulatory Compliance Rider that are fully supported in Case No. 15- 1830-EL-AIR."

Oct. 11, 2016 Direct Testimony of Nathan C. Parke, p. 6 (emphasis added).

In Case No. 15-1830-EL-AIR, DP&L provides testimony to support these three riders. The RCR is supported by Nathan Parke and Tyler Teuscher, who explain that the rider includes six separate deferral balances, namely, costs relating to Consumer Education Campaign, the Retail Settlement System, the Green Pricing Program, Generation Separation, and Bill Format Redesign. Nov. 30, 2015 Direct Testimony of Nathan C. Parke, p. 5. Each balance is described in detail in Mr. Parke's testimony (pp. 6-8).

The UEX is supported by Mr. Teuscher. That rider is designed to recover the actual amount of uncollectible expense, including:

> "(1) A reconciliation of the previous period's actual uncollectible expense net of the actual recovery through the Uncollectible Rider, plus the forecasted uncollectible expense for the upcoming year.
>
> (2) The actual Percentage of Income Payment Plan ('PIPP') uncollectible expense related to non-payment of PIPP installment amounts from November 1, 2010 to September 30, 2015 net of the actual recovery through the Uncollectible Rider, plus the PIPP uncollectible expense incurred by the Company from October 1, 2015 up to the effective date of this Uncollectible Rider.

(3) Carrying charges set at the Company's cost of debt will be included in this rider at the onset of recovery."

Nov. 30, 2015 Direct Testimony of Tyler A. Teuscher, p. 3.

Finally, the Storm Rider is supported by Claire Hale. She testifies that DP&L "proposes to implement a non-bypassable ongoing rider that will recover on an annual basis the costs of all major storms. Major storm costs are unpredictable, and they can vary widely based on the level and type of damage to DP&L's distribution system," and further provides details about how the rider would recover such costs. Nov. 30, 2015 Direct Testimony of Claire E. Hale, pp. 2-6.

That testimony, which is expressly incorporated by Mr. Parke's testimony in this case, supports the RCR, UEX, and Storm Rider. The testimony is public and, in fact, has been served on IEU, as an intervenor in Case No. 15-1830-EL-AIR. The testimony also has already provided an adequate basis for IEU and other intervenors to challenge those riders on their merits in this case. Nov. 21, 2016 Direct Testimony of Joseph G. Bowser on Behalf of Industrial Energy Users-Ohio, pp. 8-14 (providing an extensive opinion on the RCR); Nov. 21, 2016 Direct Testimony of Daniel Bremer on Behalf of Honda of America Mfg. Inc., p. 8 (opposing the RCR and the Storm Rider); Nov. 21, 2016 Direct Testimony of James D. Williams on Behalf of The Office of the Ohio Consumers' Counsel, pp. 23-25 (opposing the RCR, UEX, and Storm Rider).

IEU cites only one case to support its contention that the RCR, UEX, and Storm Rider are not adequately supported: Feb. 25, 2015 Opinion and Order, pp. 60-62, In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan, et al., Case Nos. 13-2385-EL-SSO, et al. In that case, however, the applicant did not expressly incorporate testimony from

another pending case. Instead, the Commission simply found that a rider was premature since it was unclear whether the applicant would incur the costs that it sought to recover. Id. at 62. Thus, it does not support IEU's position.

By preparing the riders in both cases, DP&L has afforded the Commission the flexibility to consider the RCR, UEX, and Storm Rider either in this case or in Case No. 15-1830-EL-AIR. The Commission should, therefore, reject IEU's argument that the riders are not supported, and consider them in whichever case the Commission deems more appropriate.

V. THE RR DOES NOT RECOVER TRANSITION COSTS OR THEIR EQUIVALENT

IEU also complains (p. 9) that the RR collects unlawful transition costs and their equivalent by recovering deferred OVEC costs. However, as with its failure to address the Commission's recent approval of FirstEnergy's DMR in its Motion to Dismiss DP&L's DMR, IEU fails to mention the recent decision of the Commission that resolves the transition-cost issue in DP&L's favor.

In the AEP PPA Case, the Commission explained why the recovery of costs relating to OVEC does not constitute transition revenue:

> "[W]e note that the purpose of transition revenue was to allow electric distribution utilities to recover the costs of generation assets used to provide generation service to customers prior to the unbundling of rates in S.B. 3 if such costs could not be recovered through the market. R.C. 4928.39. However, the OVEC contract was used to provide generation service to the U.S. Department of Energy and its predecessors prior to January 1, 2001. Therefore, the OVEC contract, which was a wholesale transaction, was not 'directly assignable or allocable to retail electric generation service provided to electric consumers in this state.' R.C. 4928.39(B). At the time of the enactment of S.B. 3 and at the time of the transition to a competitive market on January 1, 2001, OVEC's generation assets were used to serve OVEC's customer. . . . Therefore, AEP

> Ohio was not 'entitled an opportunity to recover the costs,' within the meaning of the statute. R.C. 4928.39(D). Accordingly, we find that the OVEC contract does not meet the criteria for transition costs under R.C 4928.39(B) or (D)."

Nov. 3, 2016 Second Entry on Rehearing, pp. 99-100, AEP PPA Case (emphasis added).

In his concurrence, Chairman Haque stressed that "OVEC is different than the rest." Id. at 5 (Haque, concurring). He cited the corporation's unique history, its federal dynamics, and the fact that OVEC's interests are still owned by AEP's distribution utilities. Id. Unsurprisingly, IEU does not address or even mention the AEP PPA Case. Here, since the RR collects deferred OVEC costs, it does not unlawfully collect transition costs or their equivalent under Ohio Rev. Code §§ 4928.38 and 4928.141(A). Moreover, to the extent that the RR is authorized pursuant to § 4928.143(B)(2)(d), those transition cost provisions are inapplicable to the RR given the "[n]otwithstanding" clause of § 4928.143(B) and the fact § 4928.143 was enacted after § 4928.38, for the reasons stated in DP&L's concurrently-filed Memorandum in Opposition to Industrial Energy Users-Ohio's Motion to Dismiss the Distribution Modernization Rider (pp. 14-15), which are incorporated by reference here.

VI. THE COMMISSION SHOULD REJECT IEU'S ARGUMENTS RELATING TO THE TCRR-N

DP&L's tariff in this case seeks approval of the TCRR-N to recover transmission-related costs imposed on or charged to DP&L by FERC or PJM. DP&L Tariff Sheet No. T8 (PUCO No. 18). In DP&L's Amended Application, DP&L sought a waiver of the requirement in Ohio Adm. Code 4901:1-36-04(B) that all transmission costs be recoverable on a bypassable basis, since those particular transmission costs were billed to DP&L by PJM regardless of whether a particular customer received generation service from DP&L. Amended Application, ¶ 56.

The Commission should reject IEU-Ohio's argument regarding DP&L's request for a TCRR-N for the following separate and independent reasons:

1. <u>IEU should be barred from relitigating this issue</u>: In DP&L's prior ESP case, DP&L sought approval of the TCRR-N and a waiver of Ohio Adm. Code 4901:1-36-04(B). Dec. 12, 2012 Second Revised Application, ¶¶ 20-22, 56 (Case No. 12-426-EL-SSO). The Commission approved DP&L's requests. Sept. 4, 2013 Opinion and Order, p. 36 (Case No. 12-426-EL-SSO).

In Case No. 15-0361, DP&L filed an application to implement the TCRR-N. Mar. 16, 2015 Application of DP&L (Case No. 15-0361). IEU opposed DP&L's Application, arguing that DP&L's Application was preempted by FERC. April 27, 2015 Comments of IEU-Ohio, pp. 10-15 (Case No. 15-0361-EL-RDR). IEU's comments in that matter were substantially identical to its motion in this matter. <u>Compare</u> April 27, 2015 Comments of IEU-Ohio, pp. 10-15 (Case No. 15-0361) <u>with</u> Motion of IEU, pp. 12-29 (Case No. 16-395).

In that prior matter, the Commission's Staff reviewed DP&L's Application, and recommended that it be approved. May 8, 2015 Staff's Review and Recommendations, pp. 1-2 (Case No. 15-361). In its Order, the Commission described IEU's preemption argument, and approved DP&L's TCRR-N despite that argument. May 20, 2015 Finding and Order, pp. 2-4 (Case No. 15-361).

IEU did not raise its FERC preemption argument in Case No. 12-426, and did not seek rehearing on that issue in either Case No. 12-426 or Case No. 15-361. The Commission should thus conclude that IEU is barred from continuing to litigate this issue. Ohio Rev. Code § 4903.10. The doctrine of collateral estoppel also bars IEU from continuing to litigate this

issue. Aug. 24, 2005 Entry, pp. 3-4 (Case No. 05-886-EL-CSS) ("The Ohio Supreme Court has confirmed that 'where an administrative proceeding is of a judicial nature and where the parties have had an ample opportunity to litigate the issues involved in the proceeding, the doctrine of collateral estoppel may be used to bar litigation of issues in a second administrative proceeding.'") (quoting Superior's Brand Meats, Inc. v. Lindley, 62 Ohio St.2d 133, 403 N.Ed.2d 996 (1980), syllabus); Feb. 13, 2014 Opinion and Order, p. 36 (Case No. 12-2400-EL-UNC) ("There is no dispute that the doctrine of res judicata, through the form of collateral estoppel, precludes the relitigation in a second action of an issue that has been actually and necessarily determined in a prior action. In addition, it is undisputed that collateral estoppel applies to administrative proceedings before the Commission."); Dec. 2, 2015 Entry, p. 3 (Case No. 15-796-TR-CVF) ("The Commission finds that Quality Carriers is precluded from raising the same issues in this proceeding that were previously decided in Quality Carriers 1 under the doctrines of res judicata and collateral estoppel."). The Supreme Court applies the doctrine of res judicata to issues that were not, but could have been raised in a prior action. Standard Oil Co. v. Zangerle, 141 Ohio St. 505, 510, 49 N.E.2d 406 (1943) ("The general rule as to res judicata is well established and prevents a relitigation of any issue that was or could have been litigated in the prior action.") (emphasis added); State v. Were, 120 Ohio St.3d 85, 2008-Ohio-5277, 896 N.E.2d 699, ¶7 ("Res judicata may be applied to bar further litigation of issues that were raised previously or could have been raised previously in an appeal.") (emphasis added).

2. The issue is for the judiciary: Even if IEU were entitled to re-litigate this issue, it is a judicial issue that the Commission should not decide. Specifically, in a recent AEP case, the Commission approved a transmission rider that was substantially identical to what DP&L seeks here. IEU argued in that case that the transmission rider sought by AEP was

preempted. May 28, 2015 Second Entry on Rehearing, p. 30 (Case No. 13-2385-EL-SSO). The Commission approved AEP's request for a transmission rider, despite IEU's preemption argument, stating "The Commission likewise declines to address IEU-Ohio's preemption argument with respect to the [transmission rider], as constitutional issues are best reserved for judicial determination." Id. at 31. The Commission has approved similar transmission riders for other Ohio utilities.[3]

Consistent with its precedent for every other Ohio utility, the Commission should approve DP&L's request for a waiver of Ohio Adm. Code 4901:1-36-04(B) and should approve DP&L's request for a TCRR-N.

3. IEU's request is impractical: The authorization of a rider such as the TCRR-N is not simple. In order to implement the rider, DP&L notified CRES providers and auction supplier winners long in advance that non-market-based transmission-related services should not be included in their market-based products. DP&L then had to work with every CRES supplier to ensure that PJM charges/credits for the appropriate non-market-based services would be transferred from supplier accounts to DP&L's account. Multiple auctions were held to supply SSO load for future fixed terms, where the competitively bid prices did not reflect any non-market-based costs.

All of this work cannot simply be undone easily. Indeed, if the Commission ruled as IEU argues, that decision would effectively reverse the same decision in every utility territory in the state, which would have significant impacts upon the competitive market in Ohio.

[3] Aug. 25, 2010 Opinion and Order, pp. 12, 47 (Case No. 10-388-EL-SSO) (FirstEnergy); May 25, 2011 Opinion and Order, pp. 4, 17 (Case No. 11-2641-EL-RDR) (Duke); Feb. 25, 2015 Opinion and Order, pp. 65-68 (Case No. 13-2385-EL-SSO) (AEP).

VII. CONCLUSION

For these reasons, the Commission should deny Industrial Energy Users-Ohio's Motion to Dismiss, in Part, the Electric Security Plan Application Filed by The Dayton Power and Light Company with Respect to the Regulatory Compliance Rider, Uncollectible Rider, Storm Cost Recovery Rider, Reconciliation Rider, and Transmission Cost Recovery Rider-Nonbypassable as procedurally improper or, alternatively, on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to Industrial Energy Users-Ohio's Motion to Dismiss, in Part, The Electric Security Plan Application Filed by The Dayton Power and Light Company with Respect to the Regulatory Compliance Rider, Uncollectible Rider, Storm Cost Recovery Rider, Reconciliation Rider, and Transmission Cost Recovery Rider-Nonbypassable has been served via electronic mail upon the following counsel of record, this 6th day of December, 2016:

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Summary: Memorandum The Dayton Power and Light Company's Memorandum in Opposition to Industrial Energy Users-Ohio's Motion to Dismiss, in Part, The Electric Security Plan Application Filed by The Dayton Power and Light Company With Respect to The Regulatory Compliance Rider, Uncollectible Rider, Storm Cost Recovery Rider, Reconciliation Rider, and Transmission Cost Recovery Rider-Nonbypassable electronically filed by Mr. Charles J. Faruki on behalf of The Dayton Power and Light Company