Matthew R. Pritchard  
614.719.2842—Direct Dial  
mpritchard@mwncmh.com

December 7, 2016

Bryce McKenney

Gregory Price

Attorney Examiners

Legal Department

Public Utilities Commission of Ohio

180 East Broad Street, 12th Floor

Columbus OH 43215

**RE: In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, PUCO Case Nos. 16-395-EL-SSO, *et al.***

Dear Attorney Examiners Price and McKenney,

As you are aware, Industrial Energy Users-Ohio (“IEU-Ohio”) has a pending Motion to Compel in The Dayton Power and Light Company’s (“DP&L”) pending electric security plan (“ESP”) (Case Nos. 16-395-EL-SSO, *et al.*). IEU-Ohio’s Motion to Compel sought the production of DP&L’s impairment analyses. IEU-Ohio and DP&L have worked extensively to resolve the parties’ respective issues and DP&L has produced its internal documents related to the impairment analyses. The only issue that remains with respect to IEU-Ohio’s Motion to Compel involves the impairment analyses-related documents created by its outside consultant, Deloitte.

Based on representations from DP&L’s counsel, DP&L has waived all of its objections to the disclosure of the Deloitte documents except confidentiality. DP&L’s counsel has represented that DP&L is willing to produce these documents to IEU-Ohio but is currently under a contractual obligation with Deloitte to not disclose the documents. Deloitte has provided IEU-Ohio, through counsel for DP&L, with two letters that propose terms and conditions upon which Deloitte would allow DP&L to release the documents to IEU-Ohio (the letters contain the same terms and conditions). Among other issues with Deloitte’s proposal is that it would prohibit IEU-Ohio from disclosing the documents or the information in the documents to anyone but DP&L and Deloitte. Thus, under Deloitte’s proposed conditions of release, IEU-Ohio would be prohibited from using these documents or the information contained therein at the hearing in this matter.

IEU-Ohio twice conveyed its disagreement with the terms proposed by Deloitte, but to date has not satisfactorily resolved the issue with DP&L and Deloitte. IEU-Ohio has proposed to treat the Deloitte-related documents as confidential (if so designated by DP&L) pursuant to the protective agreement that IEU-Ohio and DP&L have entered into in this proceeding. IEU-Ohio is unaware of any uniqueness as to the Deloitte-related documents that would render the existing protective agreement unsatisfactory to protect the confidential nature of the documents. The protective agreement between DP&L and IEU-Ohio (Attachment C) is attached to this letter as are the two letters from Deloitte (see Attachments A and B).

As briefed in IEU-Ohio’s Motion to Compel and IEU-Ohio’s Reply in Support of the Motion to Compel, the Commission has the authority to order DP&L to produce the documents to IEU-Ohio irrespective of any private contractual obligation DP&L might have with Deloitte (Motion to Compel at 9-12, Reply at 4-5). Any issue with the confidentiality of these documents can be addressed within the framework of the protective agreement that IEU-Ohio and DP&L have entered into in this proceeding.

This discovery dispute that is the subject of IEU-Ohio’s Motion to Compel dates back to IEU-Ohio’s fourth set of discovery in this matter, which was served upon DP&L on May 31, 2016. In the six months that have passed, IEU-Ohio has expended considerable efforts to try to resolve the discovery issues both before and after IEU-Ohio filed its Motion to Compel, but IEU-Ohio’s efforts have been unsuccessful in completely resolving the matter.

At the October 4, 2016 prehearing conference before Attorney Examiner McKenney, counsel for IEU-Ohio indicated that it would inform you if the issues underlying the Motion to Compel could not be resolved. Accordingly, IEU-Ohio is hereby informing you of the unresolved issue underlying the Motion to Compel and therefore requests that you take up consideration of IEU-Ohio’s Motion to Compel and grant the Motion. Given that the only issue that remains is the disclosure restriction between DP&L and Deloitte, IEU-Ohio believes that the Commission can grant the Motion to Compel without the need for a prehearing conference on the Motion.

Sincerely,

*/s/ Matthew R. Pritchard*

Matthew R. Pritchard

Counsel for IEU-Ohio

MRP:dr

Attachments

cc: Parties of Record (w/Attachments)

**ATTACHMENTS A – C**

**ARE ATTACHED TO PDF VERSION OF DOCUMENT**