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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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


In the Matter of the Application of : Case No. 08-1096-EL-AAM  
The Dayton Power and Light Company for :  
Approval of Certain Accounting Authority :  
Pursuant to Ohio Rev. Code §4905.13. :

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

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

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

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

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In the Matter of the Application of	:	
The Dayton Power and Light Company for	:	Case No. 12-429-EL-WVR
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	::	

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**MEMORANDUM OF THE DAYTON POWER AND LIGHT COMPANY  
IN OPPOSITION TO JOINT MOTION SEEKING ENFORCEMENT  
OF APPROVED SETTLEMENT AGREEMENTS AND ORDERS  
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**I. INTRODUCTION AND SUMMARY**

The Joint Motion Seeking Enforcement of Approved Settlement Agreements and Orders Issued by The Public Utilities Commission of Ohio and Memorandum in Support ("Joint Motion") addresses the rates that The Dayton Power and Light Company ("DP&L") would charge if the Commission is unable to resolve DP&L's Electric Security Plan ("ESP II") this year. The Joint Motion asks the Commission to engage in single issue ratemaking by selecting one part of DP&L's existing rates -- the Rate Stabilization Charge ("RSC") -- and eliminating it, without considering whether the resulting rates would be just and reasonable, and without considering whether DP&L could maintain its financial integrity if the RSC was eliminated. The Commission should deny the Joint Motion for several reasons.

As an initial matter, the Commission should set a procedural schedule that allows DP&L's ESP II case to be resolved this year. Such a schedule would render the Joint Motion moot.

Assuming for the sake of argument that the Commission sets a schedule that results in DP&L's ESP II being decided in 2013, then the Commission should deny the request

in the Joint Motion that the RSC be eliminated for the following separate and independent reasons:

1. Ohio Law: The Ohio Revised Code requires that the terms of DP&L's existing ESP ("ESP I") continue until a new standard service offer ("SSO") is approved. Ohio Rev. Code §§ 4928.141(A); 4928.143(C)(2)(b). Indeed, the Joint Motion concedes (p. 4) that point: "Ohio law specifies that ESP I shall continue until such time as the Commission lawfully approves a successor SSO." The Joint Motion thus concedes that the relief that it seeks is contrary to Ohio law.
2. ESP I: The Joint Motion misstates the terms of the ESP I Stipulation. The ESP I Stipulation states in paragraph 1 that "the parties agree to extend DP&L's current rate plan through December 31, 2012" and in paragraph 3 that "[t]he current [RSC] charge shall continue as a nonbypassable charge through December 31, 2012."<sup>1</sup> The two clauses are practically identical, but the Joint Movants claim that they have opposite meanings. Specifically, the Joint Movants assert (p. 4) that DP&L's current rate plan should be extended into 2013, but they assert (p. 5) that DP&L's RSC should expire on December 31, 2012. The ESP I Stipulation says that both current rates and the RSC shall continue "through December 31, 2012," and the Joint Movants do not explain why the rest of DP&L's current rates should continue in 2013, but the

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<sup>1</sup> February 24, 2009 Stipulation and Recommendation, ¶¶ 1, 3 (Case No. 08-1094-EL-SSO).

RSC should expire on December 31, 2012. The reason that the Joint Movants do not (and cannot) explain that inconsistency is that their interpretation of the ESP I Stipulation is plainly flawed. The ESP I Stipulation does not say anything about what DP&L's rates will be in 2013 and after; it does not establish any particular rate or prohibit any particular rate; instead, the ESP I Stipulation merely establishes that all rates (including the RSC) are set "through December 31, 2012"; the Commission thus must decide what new rates would be in place in 2013. Contrary to the claims of the Joint Movants, there is nothing in the ESP I Stipulation that bars the Commission from continuing DP&L's current rates (including the RSC) into 2013.

3. Financial Integrity/A Taking: As demonstrated in the attached Declaration of William J. Chambers ("Chambers Dec."), DP&L would earn a return on equity of approximately █████ in 2013 if its current rates were continued without the RSC. Such a result would make it impossible for DP&L to maintain its financial integrity, constitute a taking, and be inconsistent with the Commission's recent ruling in the AEP case that a reasonable return on equity was between 7% - 11%.
4. A Hearing Is Required: The Commission cannot grant the relief requested in the Joint Motion without conducting a hearing. The Supreme Court of Ohio has held that "[t]he language of [Ohio Rev. Code § 4905.26] obviously requires the PUCO to give notice and conduct a hearing before ordering a change in utility rates." MCI Telecomms.

Corp. v. Pub. Utils. Comm'n of Ohio, 38 Ohio St. 3d 266, 269, 527 N.E.2d 777, 780 (1988) (emphasis added). Although the Commission should deny the Joint Motion for the reasons stated above, if the Commission rejects DP&L's arguments and intends to consider the Joint Motion on the merits, then DP&L asks the Commission to conduct an evidentiary hearing (preceded by discovery) on the Joint Motion.

The Joint Motion also refers to a number of irrelevant points, including: a letter the Porter Wright law firm sent in DP&L's merger case; claims that "DP&L is . . . frustrating the purpose" of the ESP I Stipulation; and capacity costs. Those points have nothing to do with the relief sought in the Joint Motion. DP&L responds to those points (briefly, given their irrelevance) at the end of this memorandum.

## **II. PROCEDURAL HISTORY**

On February 24, 2009, DP&L, the Commission's Staff, and various intervenors signed a Stipulation and Recommendation implementing an ESP for DP&L, in Case No. 08-1094-EL-SSO ("ESP I"). Among other points, paragraph 1 of that Stipulation stated "the parties agree to extend DP&L's current rate plan through December 31, 2012," and paragraph 3 stated that "[t]he current [RSC] charge will continue as a nonbypassable charge through December 31, 2012." The Commission approved that Stipulation.<sup>2</sup>

On March 30, 2012, DP&L filed an Application for approval of an MRO. While that Application was pending, there were lengthy settlement negotiations among the

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<sup>2</sup> June 24, 2009 Opinion and Order, p. 13 (Case No. 08-1094-EL-SSO).

parties (which were at times delayed due to the pending AEP hearings), but no settlement was reached.

DP&L filed a Notice of Withdrawal of Market Rate Offer Application on September 7, 2012. DP&L withdrew its MRO Application because the facts had changed since the time that it had filed that Application. Specifically, market prices declined significantly and switching in DP&L's service territory increased significantly after DP&L filed its MRO Application; DP&L thus reached the conclusion that it would not be able to maintain its financial integrity under the MRO Application that it had filed. Further, the Commission's Staff and many parties to the MRO proceeding (including many of the Joint Movants) had encouraged DP&L to withdraw its MRO Application and to file an ESP Application. After the Commission issued its Opinion and Order in AEP's ESP proceeding, DP&L concluded that the best path forward for its customers and for DP&L was for DP&L to file an ESP Application.

On September 7, 2012, shortly before DP&L filed its ESP Application, DP&L filed a Motion to set a procedural schedule for its ESP Application, in which DP&L asked the Commission to set an accelerated schedule that was designed to resolve DP&L's ESP Application this year. (Many of the parties to the Joint Motion were also parties to a September 17, 2012 memorandum in opposition to DP&L's motion to set a procedural schedule. In that memorandum, the parties asserted that the procedural schedule proposed by DP&L was too aggressive, and asked the Commission to set a schedule that would take as long as 270 days to resolve DP&L's ESP proceeding. Ironically, those same parties now criticize DP&L in the Joint Motion for conduct that they claim has resulted in delays in the proceeding.) The Commission denied DP&L's motion on September 27, 2012, stating that it would set a schedule after DP&L's ESP Application was filed.

DP&L filed an ESP Application pursuant to Ohio Rev. Code § 4928.143 in this docket on October 5, 2012 ("ESP II"). That ESP provides for the blending of DP&L's current SSO rates with rates set through a competitive bidding process. The blending schedule proposed by DP&L provides for competitive bidding under a more rapid schedule than permitted under the MRO statute, Ohio Rev. Code § 4928.142.

As part of DP&L's ESP filing, DP&L seeks to implement a nonbypassable Service Stability Rider ("SSR") of \$120 million per year. The prefiled testimony of William Chambers demonstrates DP&L's need for the SSR. With the SSR, DP&L's ROE is projected to range from [REDACTED] between 2013 and 2017; without the SSR, DP&L's ROE is projected to range from [REDACTED] between 2013 and 2017. Direct Testimony of William J. Chambers, pp. 37, 43. DP&L thus needs the SSR to maintain its financial integrity. *Id.*

**III. THE COMMISSION SHOULD RESOLVE THIS CASE THIS YEAR**

DP&L urges the Commission to set a schedule that would resolve this case this year. The Commission should set such a schedule for at least two reasons:

First, DP&L's financial integrity would be threatened if there were a delay in approval of DP&L's ESP II Application. DP&L would earn the following approximate ROEs depending upon when the Commission approves DP&L's ESP II Application:

	<u>ROE</u>	<u>Source</u>
DP&L ROE in 2013 if ESP II Application approved effective January 1, 2013	[REDACTED]	Chambers Test., Attachment WJC-2
DP&L ROE during any period in 2013 that its current rates are in effect (expected switching; assumes that all of DP&L's current rates, including RSC, continue until the ESP II Application is approved)	[REDACTED]	Chambers Dec., Attachment WJC-I

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This Commission should thus establish an expedited schedule in this case so that DP&L's ESP II can go into effect on January 1, 2013.

Second, the intervenors would not be prejudiced if the Commission decided DP&L's ESP II Application on an accelerated basis since the ESP II Application is very similar to DP&L's MRO Application (which was filed on March 30, 2012). The similarities between the two applications include:

1. Both seek to blend DP&L's current rates with rates set through a CBP pursuant to a blending schedule;
2. Both have substantially identical plans for a CBP;
3. Both seek to have a nonbypassable stability charge;
4. Both seek to implement substantially the same rate structure and riders;
5. Both have testimony from the following witnesses on substantially the same subjects: Claire Hale, Aldyn Hoekstra, Craig Jackson, Teresa Marrinan, Nathan Parke, Emily Rabb, Dona Seger-Lawson, and Judi Sobecki.

The intervenors thus would not be prejudiced by an accelerated schedule, as the two Applications are substantially similar.

**IV. IF THE COMMISSION CANNOT RESOLVE THIS CASE THIS YEAR, THEN THE COMMISSION SHOULD DENY THE JOINT MOTION**

Assuming for the sake of argument that the Commission cannot resolve this case this year, then it should continue DP&L's current rates (including the RSC) for a short period of



time during 2013 until the Commission can decide this case. The Commission should deny the request in the Joint Motion that it eliminate DP&L's RSC in 2013 for the following separate and independent reasons.

1. Ohio Law: As an initial matter, the request in the Joint Motion that the RSC be eliminated from DP&L's current rates is prohibited by Ohio law. Specifically, Ohio Rev. Code § 4928.141(A) states:

"Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code, and, as applicable, pursuant to division (D) of section 4928.143 of the Revised Code, any rate plan that extends beyond December 31, 2008, shall continue to be in effect for the subject electric distribution utility for the duration of the plan's term."  
(Emphasis added.)

Further, Ohio Rev. Code § 4928.143(C)(2)(b) is instructive:

"If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively." (Emphasis added.)

The Ohio Revised Code thus shows that ESP I -- including the RSC -- shall continue until a new ESP is approved. Indeed, the Joint Movants concede (p. 4) that the relief

that they seek is barred by Ohio law: "Ohio law specifies that ESP I shall continue until such time as the Commission lawfully approves a successor SSO." The Commission should therefore deny the Joint Motion since the relief that it seeks is barred by Ohio law.

2. ESP I Stipulation: In addition, the Joint Movants misstate the terms of the ESP I Stipulation. The ESP I Stipulation has two paragraphs that relate to the relief requested in the Joint Motion:

"1. . . . the parties agree to extend DP&L's current rate plan through December 31, 2012 . . . .

\* \* \*

3. The current [RSC] charge will continue as a nonbypassable charge through December 31, 2012."

February 24, 2009 Stipulation and Recommendation, ¶¶ 1, 3 (Case No. 08-1094-EL-SSO).

The ESP I Stipulation thus establishes that both DP&L's current rates and the RSC continue "through December 31, 2012." The Joint Movants, however, assert that DP&L's current rates should continue in 2013 (p. 4), but that the RSC should expire in 2013 (p. 5). The Joint Movants do not explain why identical language should lead to opposite results. The inconsistency in their argument demonstrates that their interpretation of the ESP I Stipulation is badly flawed and self-serving. The ESP I Stipulation is silent as to what rates will be in 2013. The ESP I Stipulation does not mandate that any particular rate be charged in 2013; nor does the ESP I Stipulation prohibit any rate from being charged in 2013. Therefore, contrary to the argument in the Joint Motion, the Commission is free to extend DP&L's existing rates (including the RSC), a result supported by Ohio law. Rev. Code § 4928.141(A) and § 4928.143(C)(2)(b).

Finally, even if the ESP I Stipulation were to be interpreted as Joint Movants assert, they still would not be entitled to the relief that they seek. Specifically, it is well settled that the Commission can alter the terms of a Stipulation provided that it "justifies any changes." Ohio Consumers' Counsel v. Pub. Utils. Comm'n of Ohio, 114 Ohio St. 3d 340, 342, 343, 872 N.E.2d 269, 273 (2007). As demonstrated below, the Commission should not issue an order eliminating the RSC, since such an order would result in financial distress to DP&L.

3. Financial Integrity/A Taking: The Commission must establish rates that are "just and reasonable." Ohio Rev. Code § 4905.22. The Supreme Court of Ohio has stated:

"In determining whether a rate order is just and reasonable (and thus constitutionally permissible), the [United States Supreme Court in Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 64 S. Ct. 281 (1944)] required a balancing of investor and consumer interests. With respect to the investors' interest, the court stated:

' . . . From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock.'"

Ohio Edison Co. v. Pub. Utils. Comm'n of Ohio, 63 Ohio St. 3d 555, 562-63, 589 N.E.2d 1292, 1298 (1992) (per curiam) (emphasis added) (quoting Hope Natural Gas Co., 320 U.S. at 603, 64 S. Ct. at 288).

The Commission has recently concluded in AEP's ESP proceeding that an ROE somewhere between 7%-11% was a "reasonable revenue target." Opinion and Order, p. 33 (Case No. 11-346).

The attached Declaration of William Chambers shows the ROE that DP&L would earn in 2013 if the Commission were to grant the Joint Motion. His analysis shows that if the PUCO were to grant the Joint Motion (i.e., eliminate the RSC) and were later to approve the ESP II sometime during 2013, then DP&L would earn an ROE of only █████ during any period in 2013 before the ESP II was approved. Chambers Dec., ¶ 10.

An order granting the Joint Motion and eliminating the RSC would thus result in DP&L earning an ROE of approximately █████ during 2013. That ROE is not reasonable, would not preserve DP&L's financial integrity, and would constitute a taking. The Commission should therefore deny the Joint Motion.

4. A Hearing Is Required: The Supreme Court of Ohio has held that the Commission must conduct a hearing before it can lower a utility's rates. Ohio Bell Tel. Co. v. Pub. Utils. Comm'n of Ohio, 64 Ohio St. 3d 145, 147, 593 N.E.2d 286, 287 (1992) ("The commission conceded at oral argument that the order of May 8, 1991 effected a utility rate change. As a prerequisite to such action, the commission was obliged to give notice and conduct a hearing in accordance with R.C. 4905.26."); MCI Telecomms. Corp. v. Pub. Utils. Comm'n of Ohio, 38 Ohio St. 3d 266, 269, 527 N.E.2d 777, 780 (1988) ("The language of [Ohio Rev. Code § 4905.26] obviously requires the PUCO to give notice and conduct a hearing before ordering a change in utility rates.").

The Commission should deny the Joint Motion for the reasons discussed above, and a hearing is not necessary for the Commission to do so. However, if the Commission wishes to consider the Joint Motion on the merits, then DP&L asks the Commission to conduct

a hearing, preceded by discovery. At that hearing, DP&L would present evidence regarding (among other points) the damage that the Joint Motion would do to DP&L's financial integrity.

**V. THE JOINT MOTION MAKES A NUMBER OF MISCELLANEOUS, IRRELEVANT POINTS**

The Joint Motion makes a number of miscellaneous points that are irrelevant to the relief sought. DP&L will address those points briefly.

1. The Same Docket: As the Commission knows, DP&L withdrew its MRO Application and filed its ESP II Application in the same docket. The Joint Motion states (p. 4 n.5) that "Section 4928.141, Revised Code, permits an electric distribution utility ('EDU') to simultaneously submit applications for an MRO and an ESP. It does not provide for an EDU to file an MRO application, withdraw the MRO application and then file an ESP application in the MRO proceeding." As an initial matter, DP&L filed its ESP II Application in the same docket as its now-withdrawn MRO had been filed for the convenience of the intervenors. The intervenors now will not have to file new motions to intervene, will not need new protective agreements (portions of the filing were under seal; DP&L served those portions on all intervenors that had a pre-existing protective agreement with DP&L), and since the pending ESP is substantially similar to the withdrawn MRO, many of DP&L's prior discovery responses are still pertinent; discovery will not have to start over. In any event, the Commission has substantial discretion to control its docket, and the Joint Movants do not claim that DP&L was prohibited from filing its ESP in the existing docket; they claim only that § 4928.141 "does not provide for" that procedure. Since DP&L was not prohibited from filing its ESP in the existing docket, the Commission should disregard the statements made on this point in the Joint Motion.

2. Frustration of Purpose: The Joint Movants concede (p. 10) that DP&L timely filed its MRO Application, but claim (p. 11) that DP&L's filing of an ESP "is effectively frustrating the purpose of the March 31, 2012 filing deadline contained in the ESP I Settlement." The Joint Motion neglects to mention that the Commission's Staff filed comments regarding DP&L's MRO Application, and stated that "Staff believes that the Applicant should consider submitting an electric security plan pursuant to R.C. 4928.143. Although either an electric security plan or a market rate option would fulfill the obligation under R.C. 4928.141, the electric security plan can offer significant advantages for the Applicant, the ratepayers of the Applicant and the public at large."<sup>3</sup> DP&L's decision to withdraw its MRO Application and to file an ESP Application is consistent with the Staff's comments.

3. DP&L's Preferences: The Joint Motion (p. 11) states that "[l]eaving the issue raised by the foregoing Joint Motion unresolved (as DP&L would, based on its actions, seem to prefer) is unreasonable and contrary to the public interest." The reference to what DP&L would "prefer" is surprising, since none of the Joint Movants bothered to ask DP&L what its preferences were; a telephone call to DP&L would have revealed the answer. DP&L's plan is and has been to file a motion asking the Commission to continue DP&L's current rates in 2013 in the event that this case is not resolved in 2012. Such a motion will be filed shortly.

4. Merger Letter: The Joint Motion (p. 12 and App. A) makes a puzzling reference to an attorney letter sent to counsel for Industrial Energy Users-Ohio in connection with the DP&L merger case. That letter "acknowledges that [IEU-Ohio] raised [an] argument"

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<sup>3</sup> April 27, 2012 Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio, p. 26 (Case No. 12-426-EL-SSO).

that the RSC "terminates no later than December 31, 2012." Joint Motion, App. A. There were a number of Stipulations filed in the merger case; IEU-Ohio did not sign any of them, and none of them addressed whether the RSC would continue after 2012. The fact that IEU-Ohio "raised [an] argument" in 2011 has no bearing on whether the Joint Movants are entitled to their requested relief.

5. DPL Inc.'s Annual Report: The Joint Movants quote (p. 12 n.12) the Annual Report that DPL Inc. filed with the SEC, which stated: "DP&L's current rate structure provides for a nonbypassable charge to compensate DP&L for this POLR obligation. The PUCO may decrease or discontinue this rate charge at some time in the future." As the Commission knows, the purpose of an SEC filing is to provide disclosures to investors. The statements in DPL Inc.'s Annual Report merely serve to disclose to investors that DP&L does not know what the Commission will do in the future, and that disclosure has no bearing on whether the Commission can lawfully eliminate the RSC; as demonstrated above, the Commission cannot eliminate that charge.

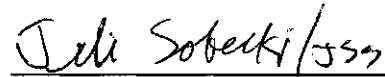
6. Capacity Costs: The Joint Motion (p. 13) also discusses capacity costs. There are no capacity cost issues in this case.

## VI. CONCLUSION

The Commission should deny the Joint Motion for the following separate and independent reasons: (1) the relief that it seeks -- elimination of the RSC -- is prohibited by Ohio law; (2) the ESP I Stipulation does not bar DP&L from continuing the RSC in 2013; (3) elimination of the RSC would result in rates that are not just and reasonable, would not

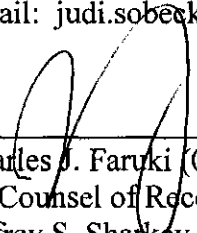
preserve DP&L's financial integrity, and would constitute a taking; and (4) DP&L is entitled to a hearing before the Commission lowers DP&L's rates.

Respectfully submitted,



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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



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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

Attorneys for The Dayton Power and  
Light Company



## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum of The Dayton Power and Light Company in Opposition to Joint Motion Seeking Enforcement of Approved Settlement Agreements and Orders Issued by The Public Utilities Commission of Ohio has been served via electronic mail upon the following counsel of record, this 11th day of October, 2012.

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.  
N. Trevor Alexander, Esq.  
CALFEE, HALTER & GRISWOLD LLP  
1400 KeyBank Center  
800 Superior Avenue  
Cleveland, OH 44114  
jlang@calfee.com  
lmcbride@calfee.com  
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@BKLLawfirm.com](mailto:dboehm@BKLLawfirm.com)  
[mkurtz@BKLLawfirm.com](mailto:mkurtz@BKLLawfirm.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](mailto: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](mailto: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](mailto:jejadwin@aep.com)

Attorney for AEP Retail Energy Partners LLC

M. Anthony Long, Esq.  
Senior Assistant Counsel  
HONDA OF AMERICA MFG., INC.  
24000 Honda Parkway  
Marysville, OH 43040  
[tony\\_long@ham.honda.com](mailto:tony_long@ham.honda.com)

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](mailto:ricks@ohanet.org)

Thomas J. O'Brien, Esq.  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tobrien@bricker.com](mailto: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](mailto:Thomas.mcnamee@puc.state.oh.us)  
[devin.parram@puc.state.oh.us](mailto: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](mailto:myurick@taftlaw.com)  
[zkravitz@taftlaw.com](mailto:zkravitz@taftlaw.com)

Attorneys for The Kroger Company

Mark A. Whitt, Esq. (Counsel of Record)  
Andrew J. Campbell, Esq.  
WHITT STURTEVANT LLP  
PNC Plaza, Suite 2020  
155 East Broad Street  
Columbus, OH 43215  
[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[campbell@whitt-sturtevant.com](mailto:campbell@whitt-sturtevant.com)

Vincent Parisi, Esq.  
Matthew White, Esq.  
INTERSTATE GAS SUPPLY, INC.  
6100 Emerald Parkway  
Dublin, OH 43016  
[vparisi@igsenergy.com](mailto:vparisi@igsenergy.com)  
[mswhite@igsenergy.com](mailto:mswhite@igsenergy.com)

Attorneys for Interstate Gas Supply, Inc.

Steven M. Sherman, Esq. Counsel of Record  
Joshua D. Hague, Esq.  
Grant E. Chapman, Esq.  
KRIEG DEVAULT LLP  
One Indiana Square, Suite 2800  
Indianapolis, IN 46204-2079  
[ssherman@kdlegal.com](mailto:ssherman@kdlegal.com)  
[jhague@kdlegal.com](mailto:jhague@kdlegal.com)  
[gchapman@kdlegal.com](mailto:gchapman@kdlegal.com)

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

Joseph P. Serio, Esq. (Counsel of Record)  
Melissa R. Yost, Esq.  
Assistant Consumers' Counsel  
Office of The Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)  
[yost@occ.state.oh.us](mailto:yost@occ.state.oh.us)

Attorneys for Office of the Ohio Consumers'  
Counsel

Christopher L. Miller, Esq.  
(Counsel of Record)  
Gregory H. Dunn, Esq.  
Asim Z. Haque, Esq.  
ICE MILLER LLP  
250 West Street  
Columbus, OH 43215  
[Christopher.Miller@icemiller.com](mailto:Christopher.Miller@icemiller.com)  
[Gregory.Dunn@icemiller.com](mailto:Gregory.Dunn@icemiller.com)  
[Asim.Haque@icemiller.com](mailto:Asim.Haque@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](mailto:mhpetricoff@vorys.com)  
[smhoward@vorys.com](mailto: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](mailto:trent@theoec.org)  
[cathy@theoec.org](mailto:cathy@theoec.org)

Attorneys for the Ohio Environmental  
Council

Joseph M. Clark, Esq., Counsel of Record  
6641 North High Street, Suite 200  
Worthington, OH 43085  
joseph.clark@directenergy.com

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

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

Henry Eckhart, Esq.  
50 West Broad Street, Suite 2117  
Columbus, OH 43215-3301  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

Robert Ukeiley, Esq.  
LAW OFFICE OF ROBERT UKEILEY  
435R Chestnut Street, Suite 1  
Berea, KY 40403

Attorneys for Sierra Club Ohio Chapter

Larry Gearhardt, Esq.  
Chief Legal Counsel  
OHIO FARM BUREAU FEDERATION  
280 North High Street  
P.O. Box 182383  
Columbus, OH 43218-2383  
[lgearhardt@ofbf.org](mailto:lgearhardt@ofbf.org)

Attorney for The Ohio Farm Bureau Federation

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

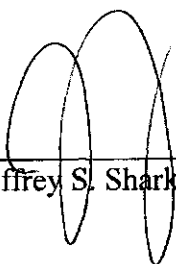
Attorney for Exelon Generation  
Company, LLC

Barth E. Royer, Esq.  
BELL & ROYER CO., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927

Gary A. Jeffries, Esq.  
Dominion Resources Services, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817

Attorneys for Dominion Retail, Inc.

Ned Ford  
539 Plattner Trail  
Beavercreek, OH 45430



Jeffrey S. Sharkey

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The AES Corporation, Dolphin Sub, Inc., DPL Inc. and The Dayton Power and Light Company for Consent and Approval for a Change of Control of The Dayton Power and Light Company.	:	Case No. 11-3002-EL-MER
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan.	:	Case No. 08-1094-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	:	Case No. 08-1095-EL-SSO
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. 08-1096-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.	:	Case No. 08-1097-EL-UNC
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Market Rate Offer	:	Case No. 12-426-EL-SSO
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



("RSC") – then DP&L would earn an annualized return on equity ("ROE") of [REDACTED] with no additional shopping and [REDACTED] with expected additional shopping during any period in 2013 that those rates were in effect. These ROEs are well below the level required by investors and would have an adverse effect on DP&L's financial integrity.

**II. GRANTING THE JOINT MOTION WOULD THREATEN DP&L'S FINANCIAL INTEGRITY**

4. This Declaration examines the ROE that DP&L would earn if the Commission were to continue DP&L's current rates through 2013, under two different assumptions about the extension of the current rates:

- i. Continuation of the full 2012 rate structure, and
- ii. Continuation of the 2012 rate structure with the exception of the RSC, which would be removed.

I have conducted this analysis using the approach presented in my Direct Testimony (filed on October 5, 2012) regarding the proposed ESP, which I incorporate herein by reference. Among the elements of that analysis is a pro forma capital structure adjustment that imputes some debt held on DPL Inc.'s balance sheet to DP&L.

5. To analyze the effect on ROE of removing the RSC from DP&L's rate structure for 2013, I project the income statement and balance sheet. To project the income statement, I make two modifications to the income statement used in my testimony in support of the proposed ESP (see Exhibit WJC-II). First, I replace the proposed \$120 million service stability rider ("SSR") with the applicable RSC (either continuation of the \$73 million or \$0 as requested in the Joint Motion). Second, I replace the retail revenue from the proposed ESP ([REDACTED]) with the retail revenue that DP&L would earn under continuation of the existing



rate plan during 2013. As shown in Exhibit WJC-IV, I estimate that retail revenues in 2013 if the existing rate structure was continued would be [REDACTED].<sup>1</sup>

6. To project the balance sheet as of year-end 2013, I make adjustments to the balance sheet used in my testimony in support of the proposed ESP. First, I estimate accounts receivable as percentages of revenue. Second, I calculate cash as the value that makes the balance sheet balance.<sup>2</sup>

7. As shown on WJC-II, if the current rate structure were continued, in total, for 2013, the Company's total revenues would be [REDACTED] (including the RSC which currently provides approximately [REDACTED] of revenues). The resulting net income for DP&L would be [REDACTED] under the current rate structure. However, if the RSC were removed from the current rate structure, the Company's net income would be significantly reduced to [REDACTED] for the year.

8. As shown in Exhibit WJC-I, with the reduction of the Company's net income to [REDACTED] under the continuation of the entire current rate structure, the ROE would fall to [REDACTED] on an annualized basis. That level of ROE is reasonable given the Company's business and would be sufficient to allow DP&L to maintain its financial integrity.

9. However, if the RSC were removed from the current rate structure and applied in 2013, the drop in the Company's net income would result in an ROE of just [REDACTED].

---

<sup>1</sup> This estimate of retail revenues is very close to the proposed ESP because the proposed plan is a mix of 90% of the existing rates and 10% based on competitive bid rates.

<sup>2</sup> My analysis of the proposed ESP was based on projections from DP&L that included cash balances. That analysis used Other Current Assets as the balancing mechanism. I also ensure that the cash balance is at least \$10 million; else short term debt is issued.

well below a reasonable ROE. A sustained ROE at that level would cause significant financial distress for the company and threaten its financial integrity. Such poor financial performance for 2013 would result in DP&L's credit rating being reduced in the near term, increase its cost of borrowed funds and pose an obstacle to the refinancing of the Company's long term debt that matures in 2013 and renegotiation of its revolving line of credit.

10. The above results do not incorporate any additional customer shopping beyond the level that had occurred as of April 2012, as in the Base Case of my testimony analyzing the proposed ESP. I also examined the ROE with and without the RSC in the presence of projected customer shopping.<sup>3</sup> As noted in my prior testimony, additional shopping beyond the level experienced by DP&L through August 2012 would reduce DP&L's net income. Exhibit WJC-I shows that with the shopping that DP&L projects for 2013, its annualized ROE is [REDACTED] with the RSC and [REDACTED] without the RSC.

11. The results and conclusions stated above are based on the application of DP&L's current rate structure to the entire year of 2013. If the proposed ESP were implemented at some point during the year, with the current rates applying to only the first part of the year, then the ROEs shown in Exhibit WJC-I would be representative of the annualized ROE earned during the portion of the year for which the existing rates remain in place.


12. If the Commission does not implement the proposed ESP as of January 1, removal of the RSC from the existing rate structure during the continuation period would have a material adverse effect on DP&L's financial integrity. Such an order would threaten DP&L's

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<sup>3</sup> To facilitate comparison, I have assumed the same \$51 million dividend under all scenarios here. Under the scenario that includes additional shopping, it is necessary to issue short-term debt to maintain a \$10 million cash balance.

financial condition and likely would result in a credit ratings downgrade and/or increased cost of borrowing. Further, elimination of the RSC likely would be interpreted by the financial community and rating agencies as indicative of the Commission's likely decision regarding DP&L's proposed ESP. The Company's credit rating is already on Standard & Poor's CreditWatch list for possible downgrade, so any negative result or signal could hasten the lowering of its credit rating to below investment grade. While the other major rating agencies have not indicated potential actions, poor results in 2013 and/or indications of financial difficulties in forthcoming years could prompt them to act as well.

Executed on October 11, 2012, at Boston, Massachusetts.

  
William J. Chambers

**The Dayton Power and Light Company**  
**Case No. 12-426-EL-SSO**  
**Return on Equity Summary**  
**Continue Current Rate Structure in 2013**

Data: Forecasted WJC-I  
 Type of Filing: Original Page 1 of 1  
 Work Paper Reference No(s): WJC-II; WJC-III; WJC-2.D; WJC-11; Witness Responsible: William J. Chambers  
 WP-12 Proforma Financials Cost of Debt and CLJ-1- FILING with Detail.xlsx;  
 WP-12 Proforma Financials Cost of Debt and CLJ-1- FILING-incr switching DETAIL.xlsx

Line No.	Description	Without Shopping		With Shopping		Source
		RSC	No RSC	RSC	No RSC	
(A)	(B)	(C)	(D)	(E)	(F)	(G)
1	Net Income					Line 38 from WJC-II.
2	Issuance of pref. stock					Line 15 from WJC-2.D.
3	Average Equity					See Below.
4	Annualized ROE					See Below.

**Notes & Sources:**  
 3 ( ) (2012 Common Shareholder's Equity, see WJC-11) + Line 36 for each scenario from WJC-III) / 2.  
 4 (Line 1 + Line 2) / Line 3.

**The Dayton Power and Light Company**  
 Case No. 12-426-EL-SSO  
**Projected Statements of Income (unaudited) (\$ in millions)**  
 Continue Current Rate Structure in 2013

WJC-II  
 Page 1 of 1  
 Witness Responsible: William J. Chambers

Data: Forecasted  
 Type of Filing: Original  
 Work Paper Reference No(s) : WP-12 Proforma Financials Cost of Debt and CLL-1- FILING with Detail.xlsx;  
 WP-12 Proforma Financials Cost of Debt and CLL-1- FILING-incr switching DETAIL.xlsx  
 Additional detail for financial integrity: 9.28.12.xlsx; WJC-2.B; WJC-3.B; WJC-1.1; WP-12.2; WJC-IV  
 Line

No. (A)	Description (B)	Without Shopping		With Shopping		Source (G)
		RSC (C)	No RSC (D)	RSC (E)	No RSC (F)	
1	Operating Revenues					
2	Retail					See Below.
3	Recovery of Non-bypassable Charge					See Below.
4	Wholesale					From WJC-2.B, WJC-3.B.
5	RTO Capacity and Other RTO Revenues					From WJC-2.B, WJC-3.B.
6	Other Revenues					From WJC-2.B, WJC-3.B.
7	Total Revenues					Sum(Line 2 - Line 6).
8						
9	Fuel and Purchased Power					From WJC-2.B, WJC-3.B.
10	Fuel Costs					From WJC-2.B, WJC-3.B.
11	Purchased Power					Line 10 + Line 11.
12	Total Fuel and Purchased Power					
13						
14	Gross Margin					Line 7 - Line 12.
15						
16	Operating Expenses					From WJC-2.B, WJC-3.B.
17	Operation and Maintenance					From WJC-2.B, WJC-3.B.
18	Depreciation and Amortization					From WJC-2.B, WJC-3.B.
19	General Taxes					From WJC-2.B, WJC-3.B.
20	Total Operating Expenses					Sum(Line 17 - Line 19).
21						
22	Operating Income					Line 14 - Line 20.
23						
24	EBITDA					Line 18 + Line 22.
25						
26	L.T. Rate					From Worksheet 12.2.
27	Additional Interest Expense					See Below.
28	Original Gross Interest Expense					From WJC-2.B, WJC-3.B.
29	Actual Gross Interest Expense					Line 27 + Line 28.
30	Other Interest Expense					From WJC-2.B, WJC-3.B.
31	Total Interest Expense					Line 29 + Line 30.
32	Other Income (Deductions)					From WJC-2.B, WJC-3.B.
33						
34	Earnings Before Income Tax					Line 22 + Line 31 + Line 32.
35						
36	Income Tax					Line 34 * 35.8%.
37						
38	Net Income					Line 34 - Line 36.

Notes & Sources:  
 2 Without Shopping: Line 7(C) from WJC-IV; With Shopping: (Line 7(C) / Line 7(D) from WJC-IV) \* 2013 value of Line 2 from WJC-3.B.  
 3 RSC value of [REDACTED] from Line 2(C) from WJC-IV; No RSC value of \$0 from Joint Motion.  
 27 Additional [REDACTED] in L.T. Debt (see WJC-1.1) \* Line 26 \* -1.

The Dayton Power and Light Company  
 Case No. 12-426-EL-SSO  
 Projected Balance Sheet (unaudited) (\$ in millions)  
 Continue Current Rate Structure in 2013

WJC-III  
 Page 1 of 1  
 Witness Responsible: William J. Chambers

Data: Forecasted  
 Type of Filing: Original  
 Work Paper Reference No(s): WJC-2.B; WJC-2.C; WJC-3.B; WJC-3.C; WJC-II; WJC-11;  
 WP-12 Proforma Financials Cost of Debt and CLJ-1-FILING with Detail.xls;  
 WP-12 Proforma Financials Cost of Debt and CLJ-1-FILING-iter switching DETAIL.xls

Line	No. (A)	Description (B)	Estimated Balance at December 31, 2013		Source (G)
			Without Shopping (C)	With Shopping (F)	
			RSC (D)	No RSC (E)	
1		Assets			
2		Cash and temporary cash investments			See Below.
3		Accounts receivable			See Below.
4		Inventories, at average cost			From WJC-2.C, WJC-3.C.
5		Taxes applicable to subsequent years			From WJC-2.C, WJC-3.C.
6		Other			From WJC-2.C, WJC-3.C.
7		Total Current Assets			Sum(Line 2 - Line 6)
8		Property, Plant and Equipment			From WJC-2.C, WJC-3.C.
9		Property, Plant and Equipment			From WJC-2.C, WJC-3.C.
10		Accumulated depreciation and amortization			Line 10 + Line 11.
11		Total Property, Plant and Equipment			From WJC-2.C, WJC-3.C.
12		Income taxes recoverable through future revenues			From WJC-2.C, WJC-3.C.
13		Other regulatory assets			From WJC-2.C, WJC-3.C.
14		Other			Sum(Line 14 - Line 16).
15		Total Other Noncurrent Assets			Line 7 + Line 12 + Line 17.
16		Total Assets			
17		Liabilities and Shareholder's Equity			
18		Accounts payable			From WJC-2.C, WJC-3.C.
19		Accrued taxes			From WJC-2.C, WJC-3.C.
20		Short-term debt			See Below.
21		Other			From WJC-2.C, WJC-3.C.
22		Current Liabilities			Sum(Line 23 - Line 26)
23		Deferred taxes			From WJC-2.C, WJC-3.C.
24		Unamortized investment tax credit			From WJC-2.C, WJC-3.C.
25		Other			From WJC-2.C, WJC-3.C.
26		Non Current Liabilities			Sum(Line 29 - Line 31).
27		Current and Non Current Liabilities			Line 27 + Line 32.
28		Capitalization			
29		Common Shareholder's Equity			See Below.
30		Preferred Stock			From WJC-2.C, WJC-3.C.
31		Total Long Term Debt			See Below.
32		Total Capitalization			Sum(Line 36 - Line 38).
33		Total Liabilities and Shareholder's Equity			Line 33 + Line 39.

Notes & Sources:  
 2 Line 41 - Line 17 - Line 12 - Sum(Line 3 - Line 6).  
 3 For Without Shopping: Line 7 from WJC-II \* (2013 value of Line 3 from WJC-2.C / 2013 value of Line 7 from WJC-2.B).  
 For With Shopping: Line 7 from WJC-II \* (2013 value of Line 3 from WJC-3.C / 2013 value of Line 7 from WJC-3.B).  
 25 \$0 unless Line 2 falls below \$10M, then increased until Line 2 equals \$10M.  
 36 2012 Common Shareholder's Equity, see WJC-11 + (Line 38 from WJC-II for each scenario - \$51M (Projected Common and Preferred Dividends issued in 2013. See Internal Documents).  
 38 LT Debt from Internal Documents + [REDACTED] (see WJC-11).

**The Dayton Power and Light Company**  
**Case No. 12-426-EL-SSO**  
**2013 Retail Revenue - Current and Proposed**

Data: Forecasted WJC-IV  
 Type of Filing: Original Page 1 of 1  
 Work Paper Reference No(s): Schedule 1 (A,B) (Current Rates & Revenue).xlsx; Witness Responsible: William J. Chambers  
 Schedule 8 (Projected Revenues)-Revised.xlsx; WJC-2.B

Line No.	Description	Current (C)	Proposed (D)	Source (E)
(A)	(B)			
1	Selected Revenue			
2	Recovery of Non-bypassable Charge			
3	Variable Revenue			
4				
5	Difference between Current and Proposed Variable Revenue			
6				
7	Total Retail Revenue			

Notes and Sources:  
 1, 2 (C) from Schedule 1B of Schedule 1 (A,B) (Current Rates & Revenue).xlsx,  
 (D) from Period 1 of Schedule 8 (Projected Revenues)-Revised.xlsx.  
 7 Line 7(D) equal to 2013 Retail Revenue from WJC-2.B. Line 7(C) = Line 7(D) - Line 5.