

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**MOTION OF THE DAYTON POWER AND LIGHT COMPANY TO COMPEL
INDUSTRIAL ENERGY USERS-OHIO TO ANSWER INTERROGATORIES AND
PRODUCE DOCUMENTS IN RESPONSE TO THE DAYTON POWER AND LIGHT
COMPANY'S FIRST SET OF DISCOVERY TO INDUSTRIAL ENERGY USERS-OHIO**

Pursuant to Ohio Admin. Code § 4901-1-23, The Dayton Power & Light Company ("DP&L") moves the Public Utilities Commission of Ohio ("Commission") to issue an order compelling Industrial Energy Users-Ohio ("IEU-Ohio") to answer certain interrogatories and produce documents in response to DP&L's relevant and proper discovery requests. While IEU-Ohio has served repeated and burdensome discovery requests upon DP&L, IEU-Ohio appears to believe that the discovery rules do not apply to it. The Commission should conclude that the discovery rules do apply to IEU-Ohio, and the Commission should order IEU-Ohio to respond to DP&L's discovery requests.

In accordance with the requirements of Ohio Admin. Code § 4901-1-23(C), DP&L has made a good faith effort to resolve this matter without Commission involvement. Attached as Exhibit A is the declaration of DP&L's counsel, Jeffrey S. Sharkey, a partner at the law firm of Faruki Ireland & Cox P.L.L., which details the attempts by DP&L to resolve this issue without Commission intervention.

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

Attorneys for The Dayton Power and
Light Company

**MEMORANDUM IN SUPPORT OF MOTION OF THE DAYTON POWER
AND LIGHT COMPANY TO COMPEL INDUSTRIAL ENERGY USERS-OHIO
TO ANSWER INTERROGATORIES AND PRODUCE DOCUMENTS IN
RESPONSE TO THE DAYTON POWER AND LIGHT COMPANY'S FIRST
SET OF DISCOVERY TO INDUSTRIAL ENERGY USERS-OHIO**

I. Introduction

While IEU-Ohio has made repeated and burdensome discovery demands upon DP&L, IEU-Ohio appears to believe that it has no obligation to respond to discovery requests itself. IEU-Ohio has failed to respond to almost all of DP&L's interrogatories, and has refused to produce even a single page of documents to DP&L. DP&L thus asks the Commission to issue an order compelling IEU-Ohio to answer DP&L Interrogatories 1, 2, 3, 4, 5, 6, and 7, and to produce all documents responsive to DP&L Requests for Production of Documents 1, 2, 5, 6, 7, 8, and 9.

The discovery requests at issue fall into the following categories:

- (1) whether IEU-Ohio believes DP&L should be given an opportunity to earn a reasonable return on equity,
- (2) the experts IEU-Ohio intends to call to testify and IEU-Ohio's communications with such persons,
- (3) whether IEU-Ohio believes any portion of DP&L's Second Revised Application fails to comply with legal or regulatory requirements, contains any requests for relief to which DP&L is not entitled or are not adequately supported, or contains an error,
- (4) the documents IEU-Ohio used in responding to the discovery requests,
- (5) the documents IEU-Ohio may introduce at any deposition or hearing in this matter,

- (6) writings between IEU-Ohio and its members relating to this matter,
- (7) writings between IEU-Ohio and other persons relating to this matter, and
- (8) writings between IEU-Ohio and other persons relating to the

Commission's decisions in In the Matter of the Application of Columbus Southern Power Company, Case No. 11-346-EL-SSO ("AEP's ESP Proceeding").

IEU-Ohio has unjustifiably refused to produce this information based on objections that the requests are not likely to lead to the discovery of admissible evidence, unduly burdensome, and vague. IEU-Ohio has also objected to certain requests on the basis that they seek trade secret information or information that is subject to the attorney-client privilege or work product doctrine. Finally, IEU-Ohio has also left several requests entirely unanswered on the basis that it does not currently "know" the requested information.

As discussed below, these objections are without merit. The information sought by DP&L is highly relevant and necessary for DP&L to most efficiently engage in settlement discussions and prepare for the hearing in this matter.

In contrast to the 8 interrogatories and 9 requests for production that DP&L has served upon IEU-Ohio, DP&L has responded to 85 interrogatories, 29 requests for admissions, and 24 requests for the production of documents served upon it by IEU-Ohio. DP&L has produced over 52,918 pages as well as 5 documents in native format, with formulas intact, in response to IEU-Ohio's requests. In contrast, in both IEU-Ohio's original and supplemental responses to DP&L's requested discovery, IEU-Ohio produced not a single document in response to DP&L's requests. The Commission should order IEU-Ohio to comply with its discovery obligations.

II. The Information Sought By DP&L Is Highly Relevant And IEU-Ohio's Refusals To Respond Are Improper

IEU-Ohio refuses to respond to DP&L's valid discovery requests based, in part, on the objection that the information requested is irrelevant. Under the broad and permissive rules of discovery, this objection is without merit. Ohio Admin. Code § 4901-1-16 provides that the broad scope of discovery "is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings." Further, "a party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding." *Id.* The information sought does not have to be admissible, but need only appear reasonably calculated to lead to the discovery of admissible evidence. *Id.*

The discovery sought by DP&L is not only highly relevant, but is basic in nature, such as the identity of those IEU-Ohio expects to call to testify as an expert. The information requested by DP&L is relevant to this proceeding, and as set forth in detail below, IEU-Ohio's objections are improper.

A. Information Regarding Whether IEU-Ohio Believes DP&L Should Be Given An Opportunity To Earn A Reasonable Return On Equity

DP&L's Interrogatories 1 and 2 request information regarding whether IEU-Ohio believes DP&L should be given an opportunity to earn a reasonable rate on return:

"Interrogatory 1: State whether IEU agrees that DP&L should be given an opportunity to earn a reasonable return on equity.

- a. If the answer to the preceding interrogatory is affirmative, then identify the return on equity that IEU asserts is reasonable.
- b. If the answer to the preceding interrogatory is negative, then explain why not.

Interrogatory 2: State whether the IEU agrees that DP&L should be permitted to implement a non-bypassable charge that will allow DP&L the opportunity to earn a reasonable return on equity.

- a. If the answer to the preceding interrogatory is affirmative, then (1) identify the level of non-bypassable charges that IEU asserts is reasonable; (2) explain why IEU asserts that the level is reasonable; and (3) state the return on equity that IEU contends that DP&L would earn with such a charge.
- b. If the answer to the preceding interrogatory is negative, then explain why not."

IEU-Ohio objected to these interrogatories as being "vague" and "not reasonably calculated to lead to the discovery of admissible evidence." Exhibit 4, pp. 2-3. Then, instead of responding to the interrogatories, IEU-Ohio stated, "IEU-Ohio has filed public documents with the Commission detailing its position on this issue" and directed DP&L to documents not even filed in this matter. Id. Those documents do not answer the questions posed regarding whether DP&L should be permitted an opportunity to earn a reasonable return on equity in this case. DP&L's Interrogatories require an affirmative or negative response; IEU-Ohio has not given one. The Commission should order IEU-Ohio to provide an affirmative or negative response along with an explanation as requested by subparts (a) and (b).

B. Information Regarding The Experts IEU-Ohio Intends To Call To Testify And IEU-Ohio's Communications With Such Persons

DP&L's Interrogatory 3 and Request for Production of Documents 9 request IEU-Ohio identify the expert witness(es) it expects to call to testify on its behalf at the hearing and IEU-Ohio's communication with such individuals:

"Interrogatory 3: Pursuant to Ohio Admin. Code § 4901-1-16(C), identify each expert witness that IEU expects to testify on its behalf at the hearing, and state the subject matter on which each expert is expected to testify, and provide a brief summary of such experts expected testimony.

Request for Production of Documents 9: All writings constituting or relating to communications among those persons identified in Interrogatory No. 3 and any other person relating to DP&L's MRO Application or ESP Application."

In response, IEU-Ohio stated that it "has not yet been able to determine what issues it will need to pursue through the testimony of its own experts." Exhibit 4, p. 4. The Commission's rules require IEU-Ohio to identify the persons that it "expects" to testify. Ohio Admin. Code § 4901-1-16(C). The fact that IEU-Ohio has not made a final decision yet is irrelevant; it can supplement its responses later. Further, IEU-Ohio's claim that it has not made decisions is not plausible, as its deadline to file testimony is only three weeks away. In compliance with the Commission's rule, IEU-Ohio should be compelled to (a) identify the persons that it currently expects to testify, (b) identify the subjects of their expected testimony, and (c) produce the communications between IEU-Ohio and those individuals it identifies, and then IEU-Ohio can supplement its response at a later time.

C. Information Regarding Whether IEU-Ohio Believes Any Portion of DP&L's Second Revised Application Fails to Comply with Legal Requirements, Contains Any Requests for Relief to Which DP&L Is Not Entitled or That Are Not Adequately Supported, Or Contains an Error

DP&L's Interrogatories 4, 5, 6, and 7 request information regarding whether IEU-Ohio believes any portion of DP&L's Second Revised Application fails to comply with legal or regulatory requirements, contains any relief to which DP&L is not entitled or that is not adequately supported, or contains an error:

"Interrogatory 4: Identify any respect in which IEU contends that DP&L's Second Revised Application, the supporting testimony, workpapers, schedules, or other documents fail to comply with any applicable legal or regulatory requirement, and identify the reason for that contention.

Interrogatory 5: Identify any and all charges, rates, or other relief that is sought in the Second Revised Application, the supporting testimony, workpapers,

schedules, or other documents that IEU contends that DP&L is not entitled to receive under applicable laws and regulations, and identify the reason for that contention.

Interrogatory 6: Identify any and all charges, rates, or other relief requested in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents that IEU claims is not adequately supported in DP&L's filing, and identify the reason for that contention.

Interrogatory 7: Identify any and all mathematical, computational, or other errors that IEU contends exist in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents, and identify the reason for that contention."

IEU-Ohio objected to these interrogatories as being "unduly burdensome" and "seek[ing] information that is subject to the attorney-client privilege and/or work product doctrine." Exhibit 4, pp. 6-8. Instead of providing responsive information, however, IEU-Ohio stated that it "is currently reviewing DP&L [sic] most recently filed application" and that "[i]f IEU-Ohio files testimony, it will identify concerns raised by IEU-Ohio's review." *Id.* at pp. 5-8.¹ IEU-Ohio's response is wholly inadequate. IEU-Ohio is required to identify any such issues that it has now, and if IEU-Ohio subsequently identifies other issues, then it can supplement its response. IEU-Ohio should be compelled to provide a complete response to Interrogatories 4, 5, 6, and 7 based upon information that IEU-Ohio currently possesses.

D. Documents IEU-Ohio Used In Responding To The Discovery Requests

DP&L's Request for Production of Documents 1 asks for the documents IEU-Ohio used in responding to the discovery at issue:

"Request for Production of Documents 1: All writings that IEU consulted or relied upon to prepare its responses to DP&L's discovery requests."

¹ IEU-Ohio makes this objection to Interrogatories 4, 5, and 7, and a similar objection to Interrogatory 6. Exhibit 4, pp. 5-8. IEU-Ohio does identify one issue for both Interrogatories 5 and 6. *Id.* at pp. 6-7.

IEU-Ohio objected to this request as being "unduly burdensome" and "seek[ing] information that is subject to the attorney-client privilege and/or work product doctrine." Exhibit 4, p. 10. IEU-Ohio's "unduly burdensome" objection is without merit -- DP&L's requests do not require IEU-Ohio to perform any studies or analysis, but instead asks IEU-Ohio to provide available information. Although IEU-Ohio identifies various publicly filed and discovery documents, it vaguely leaves to guess whether it withheld additional responsive documents on any grounds. The Commission should order IEU-Ohio to state whether IEU-Ohio relied upon additional documents in responding to the discovery and then either produce such documents or state the basis for withholding such documents.

E. Documents IEU-Ohio May Introduce At Any Deposition Or Hearing In This Matter

DP&L's Request for Production of Documents 2 asks for the documents IEU-Ohio may use during depositions or the hearing in this matter:

"Request for Production of Documents 2: All writings that IEU may introduce at any depositions or hearings in this matter."

Again, IEU-Ohio objected to this request as being "unduly burdensome" and "seek[ing] information that is subject to the attorney-client privilege and/or work product doctrine." Exhibit 4, p. 11. Instead of providing responsive documents, however, IEU-Ohio stated that it "may use any document produced by any party or Staff in discovery, in the public domain, or included in the various filings by DP&L." *Id.* That response -- which refers vaguely to documents "in the public domain" without citing or producing them -- is wholly inadequate, and again disregards the purpose of discovery as provided by Ohio Admin. Code § 4901-1-16. IEU-Ohio should be compelled to specifically identify and produce all documents that it

currently knows of that it may use at any deposition or during any hearing, and then supplement its production if it later identifies additional documents.²

F. Writings Between IEU-Ohio And Its Members Relating To This Matter

DP&L's Request for Production of Documents 5 and 6 request writings between IEU-Ohio and its members that relate to this matter:

"Request for Production of Documents 5: All writings constituting or relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP Application.

Request for Production of Documents 6: All writings constituting or relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP proceedings or MRO Application."

IEU-Ohio objected to Request for Production of Documents 5 as being "unduly burdensome" and "seek[ing] information that is covered by the attorney-client privilege and/or work product doctrine." Exhibit 4, p. 14. IEU-Ohio objected to Request for Production of Documents 6 as being "unduly burdensome," "seek[ing] information that constitutes a trade secret," and "seek[ing] information covered by the attorney-client privilege and/or work product doctrine." *Id.* at p. 15. Then, instead of providing responsive documents, IEU-Ohio stated that it "has filed various public documents in this proceeding, which are available on the Commission's website." *Id.* at pp. 14-16.

IEU-Ohio's objection that such requests are unduly burdensome is mistaken.

DP&L is not asking for all communications between IEU-Ohio and its members; DP&L is

² The Office of the Ohio Consumers' Council has noticed depositions of DP&L's witnesses beginning January 14, 2013 (Notice to Take Depositions and Request for Production of Documents by the Office of the Ohio Consumers' Counsel, filed on January 3, 2013). Because DP&L will only be producing each witness once, IEU-Ohio will also be deposing DP&L's witnesses beginning January 14, 2013. Less than one week away, it is unlikely that IEU-Ohio has not yet begun identifying the documents it intends to use at such depositions.

requesting only the communications between IEU-Ohio and its members that relate to this matter. Furthermore, IEU-Ohio's response -- that again refers vaguely to "public documents" filed in this proceeding without any citation or production -- is again inadequate, and again disregards the purpose of discovery as provided by Ohio Admin. Code § 4901-1-16. In addition, IEU-Ohio's claim that those communications are privileged is plainly wrong; the communications between IEU-Ohio and the law firm representing it may be privileged; but IEU-Ohio is not a law firm and its members are not a law firm either; the communications between them thus cannot be privileged. DP&L is entitled to such communications; IEU-Ohio should be compelled to produce all responsive documents.

G. Writings Between IEU-Ohio And Other Persons Relating To This Matter

DP&L's Request for Production of Documents 7 requests writings between IEU-Ohio and third parties that relate to this matter:

"Request for Production of Documents 7: All writings constituting or relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relating to DP&L's ESP Application or MRO Application."

IEU-Ohio has repeatedly objected to Request for Production of Documents 7 on the ground that it is "unduly burdensome, seeks information that constitutes a trade secret, and seeks information that is not relevant and not likely to lead to the discovery of admissible evidence." Exhibit 4, p. 16; Exhibit 5, p. 2.³ Then, in a January 8, 2013 conversation, counsel for IEU-Ohio stated that Kevin Murray (IEU-Ohio's Executive Director) received such emails, but that counsel was not sure what IEU-Ohio's position was on whether he had access to them,

³ Again, instead of providing responsive documents, IEU-Ohio stated that it "has filed various public documents in this proceeding, which are available on the Commission's website." Exhibit 4, p. 16.

and IEU-Ohio may not have any documents at all that were responsive to this request. Exhibit A, ¶ 7. Such position is plainly baseless because Mr. Murray (and any other IEU-Ohio representative) manifestly has access to any emails that they received. Finally, DP&L has repeatedly asked IEU-Ohio to explain how the documents were stored so that the parties could work out a reasonable production method to avoid IEU-Ohio's claims that the requests were overbroad and burdensome (Exhibit 5, pp. 1-3); but IEU-Ohio has never explained how those documents were stored (*Id.*). In short, IEU-Ohio is continually changing its position in a desperate effort to avoid producing its communications with other parties in this case. The Commission should order IEU-Ohio to produce all of the communications that either it or its counsel have had with other parties to this case relating to this case.

H. Writings Between IEU-Ohio And Other Persons Relating To The Commission's Decisions In AEP's ESP Proceeding

Finally, DP&L's Request for Production of Documents 8 requests writings between IEU-Ohio and third parties that relate the Commission's decisions in AEP's ESP proceeding:

"Request for Production of Documents 8: All writings constituting or relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relating to the Commission's decisions in AEP's ESP proceeding, PUCO Case No. 11-346-EL-SSO."

IEU-Ohio objected to Request for Production of Documents 8 as being "unduly burdensome," "seek[ing] information that is subject to the attorney-client privilege and/or work product doctrine," "seek[ing] information that constitutes a trade secret," and "seek[ing] information that is not relevant and not likely to lead to the discovery of admissible evidence." Exhibit 4, p. 17. Then, instead of providing responsive documents, IEU-Ohio again stated that it

"has filed various public documents in that proceeding, which are available on the Commission's website." Id.

There are several reasons why IEU-Ohio's objections are baseless and its response inadequate. First, the information DP&L requested is not a trade secret; by definition, a trade secret must be secret, and DP&L's requests seek information that IEU-Ohio shared with third parties. Additionally, DP&L and IEU-Ohio have entered into a Stipulated Protective Agreement, making any trade secret objection meritless. IEU-Ohio's unsubstantiated objections should therefore be rejected by the Commission.

Second, IEU-Ohio's privilege objection can attach to only an extremely limited subset of documents. Initially, "voluntary disclosure of privileged communications to a third party waives a claim of privilege with regard to communications on the same subject matter." MA Equip. Leasing I, LLC v. Tilton, Nos. 12AP-564, 12AP-586, 2012 Ohio App. LEXIS 4102, at *16 (Franklin Cty. Oct. 9, 2012). Accordingly, even if a conversation was protected by the attorney-client privilege, the privilege disappears once such is shared with a third party. DP&L's requests seek IEU-Ohio's communications with third parties, which by definition, are not privileged.

IEU-Ohio attempts to circumvent this well-established doctrine of privilege waiver by claiming privilege through a "joint defense agreement" it entered into with "[v]arious parties ... in that proceeding." Exhibit 4, p. 17. This effort, however, is insufficient. First, the joint defense agreement does not provide a privilege in and of itself -- rather, it is an "exception[]" to the rule that disclosure of privileged communications to third parties constitutes a waiver of attorney-client privilege." MA Equip. Leasing, 2012 Ohio App. LEXIS 4102 at *22.

Second, a joint defense agreement memorializes a common interest privilege, and will apply only if all of the parties to the communications share a common interest. *Id.* at *15, 22 (noting that "[t]here is no material difference between Ohio's attorney-client privilege and the federal attorney-client privilege"); City of Columbus v. Hotels.com, No. 3:07cv2117, 2009 U.S. Dist. LEXIS 95524, at *11 (N.D. Ohio Oct. 14, 2009) ("When parties have a common interest in litigation and/or are conducting and joint defense, they have traditionally capable of sharing work product without waiving the protection of the privilege.") (emphasis added), aff'd, 693 F.3d 642 (6th Cir. 2012); Falana v. Kent State Univ., No. 5:08 CV 720, 2012 U.S. Dist. LEXIS 173114, at *11 (N.D. Ohio Dec. 6, 2012) ("One of the situations where the common interest exception applies is when the parties share a common defense interest and enter into a written joint defense agreement to assure that shared information remains privileged.") (emphasis added).

The Commission has acknowledged the privilege provided by joint defense agreements only when the parties shared a common interest. In the Matter of the Joint Application of the Timken Company and the Ohio Power Company for Approval of a Unique Arrangement for the Timken Company's Canton, Ohio Facilities, Case No. 10-3066-EL-AEC, 2011 Ohio PUC LEXIS 362, at *1-2 (PUCO Mar. 22, 2011) (enforcing a joint defense agreement entered by parties jointly applying for a unique arrangement and ordering in camera review for documents subject to a motion to compel that were dated after the joint defense agreement); In the Matter of the Application of Ohio Edison Company, Case No. 10-176-EL-ATA, 2011 Ohio PUC LEXIS 130, at *13 (PUCO Jan. 27, 2011) (enforcing a joint defense agreement entered by the Office of the Ohio Consumers' Council, the Citizens for Keeping the All-Electric Promise, and specific individual consumers (all with a customer-oriented interest), but finding the joint

defense agreement could not be used to withhold documents dated prior to the effective date of the agreement).

Many of the parties to this case do not share similar interests. IEU-Ohio is an association that includes industrial customers in DP&L's service territory, and its interests in this case are to (1) minimize the total amount of costs that DP&L will recover, and (2) as to DP&L's total approved costs, minimize the amount that is recovered from industrial customers. DP&L is willing to stipulate that IEU-Ohio has a common interest with customers or other customer groups.⁴ Thus for example, an email between IEU-Ohio and Ohio Energy Group regarding minimizing total recovery that is either attorney-client privilege or subject to the work product doctrine would be protected by the common interest privilege.

However, IEU-Ohio does not have a common interest with other, non-customer parties, such as Competitive Retail Electric Service ("CRES") Providers, environmental groups, and other stand-alone interest groups; there were numerous such parties in the AEP case, including, but not limited to, Duke Energy Retail Sales, LLC, FirstEnergy Solutions Corp., AEP Retail Energy Partners LLC, Retail Energy Supply Association, Exelon Generation Company, LLC, Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Dominion Retail Inc., EnerNOC, Inc., the Ohio Environmental Council, Paulding Wind Farm II, LLC, Appalachian Peace and Justice Network, Distributed Wind Energy Association, National Resources Defense Council, Sierra Club, and the Environmental Law and Policy Center. To the extent that any of those parties were copied on emails or other communications, such

⁴ These, in the AEP proceeding, include, but are not limited to, Ohio Manufacturers' Association Energy Group, Ohio Energy Group, Ohio Hospital Association, The Kroger Company, Ohio Partners for Affordable Energy, the Office of the Ohio Consumers' Counsel, Wal-Mart Stores East, LP, Sam's East, Inc., Association of Independent Colleges and Universities, City of Grove City, City of Hilliard, and Ormet Primary Aluminum Corporation.

communications are not entitled to protection under the common interest privilege. MA Equip. Leasing, 2012 Ohio App. LEXIS 4102, at *16.

In short, any communication that (1) is not in and of itself privileged, or (2) includes IEU-Ohio and any CRES provider or stand-alone interest group, is not protected by the common interest exception to the privilege waiver doctrine, and IEU-Ohio should be ordered to produce those communications.

III. Conclusion

IEU-Ohio has failed to provide substantive responses to nearly all of DP&L's discovery requests. For the reasons stated above, DP&L respectfully asks the Commission to grant its motion to compel and order the production of all relevant and responsive discovery by IEU-Ohio.

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

Attorneys for The Dayton Power and
Light Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of The Dayton Power and Light Company to Compel Industrial Energy Users-Ohio to Answer Interrogatories and Produce Documents in Response to The Dayton Power and Light Company's First Set of Discovery Requests to Industrial Energy Users-Ohio has been served via electronic mail upon the following counsel of record, this 9th day of January, 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.
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@BKLawfirm.com
mikurtz@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
HONDA OF AMERICA MFG., INC.
24000 Honda Parkway
Marysville, OH 43040
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

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
mwhite@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
6641 North High Street, Suite 200
Worthington, OH 43085
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

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	:	Case No. 12-426-EL-SSO
The Dayton Power and Light Company for	:	
Approval of Its Electric Security Plan	:	
	:	
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	:	
	:	
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, at 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. On December 20, 2012, DP&L served via electronic mail The Dayton Power and Light Company's First Set of Discovery to Industrial Energy Users-Ohio (attached as Exhibit 1).
3. On December 31, 2012, DP&L was served with Industrial Energy Users-Ohio's Responses to The Dayton Power and Light Company's First Set of Discovery (attached as Exhibit 2).

EXHIBIT A

4. On January 2, 2013, I advised Matthew Pritchard, an associate with McNees Wallace & Nurick LLC and counsel for Industrial Energy Users-Ohio ("IEU-Ohio") via email that IEU-Ohio's responses to DP&L's discovery requests were inadequate, and specifically pointed out the deficiencies (attached as Exhibit 3).

5. On January 4, 2013, DP&L was served with Industrial Energy Users-Ohio's Supplemental Responses to The Dayton Power and Light Company's First Set of Discovery (attached as Exhibit 4).

6. On January 5-8, 2013, I exchanged correspondence with Mr. Pritchard via email and again advised him that IEU-Ohio's supplemental responses were insufficient and that DP&L would be filing for motion to compel (attached as Exhibit 5).

7. On January 8, 2013, Mr. Pritchard and I spoke on the telephone. In the course of discussing documents responsive to DP&L Request for Production of Documents 7 -- requesting all communications between IEU-Ohio and any other person relating to this matter -- Mr. Pritchard stated that Kevin Murray (IEU-Ohio's Executive Director) would have received such emails, but Mr. Pritchard was not sure what IEU-Ohio's position was on whether he had access to them and further, that IEU-Ohio may not have any documents at all that were responsive to this request.

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

Dated January 9th, 2013.

s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its 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
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

**THE DAYTON POWER AND LIGHT COMPANY'S
FIRST SET OF DISCOVERY TO
INDUSTRIAL ENERGY USERS-OHIO**

Pursuant to Ohio Admin. Code § 4901-1-19, The Dayton Power and Light Company ("DP&L") requests that the Industrial Energy Users-Ohio ("IEU") answer or respond to each of the following document requests.

DEFINITIONS AND INSTRUCTIONS

1. As used in these Document Requests, the term "writing" shall mean each and every document (as defined in Ohio Admin. Code § 4901-1-20(A)(1)) in IEU's possession, custody or control, whether a copy, draft, or original, wherever located, with all exhibits, attachments, and schedules, including but not limited to the following: correspondence and

drafts of correspondence; income tax returns, forms, schedules or worksheets; inter- and intra-office memoranda; reports; comments; worksheets; plans; minutes; notes; notices or notifications; findings; memoranda; brochures, circulars, advertisements, or sales literature; notes, records, summaries, or other reports of conferences, meetings, visits, surveys, discussions, inspections, examinations, reviews or telephone conversations; purchase orders, quotations, estimates, invoices, bids, receipts, or acknowledgements, including the reverse sides of all such documents with printing, typing or writing on the reverse sides; bills of lading and other shipping documents; credit memoranda; contract or lease offers or proposals; executed or proposed agreements, contracts, franchise agreements, licenses, leases, or options; proposals; diaries, desk calendars, appointment books or telephone call books; property valuations or appraisals, and their updates; affidavits, statements and depositions, or summaries or excerpts thereof; stenographic notes; books and records, including but not limited to, journals, ledgers, balance sheets, profit and loss statements, together with all adjustments to the same and all notes and memoranda concerning them; financial data; stock certificates and evidence of stock ownership, newspaper or magazine articles; pamphlets, books, texts, magazines, journals and publications; notepads, tabulations, calculations, or computations; schedules; drafts; charts and maps; forecasts and projections; drawings, designs, plans, specifications, or diagrams; orders; pleadings and court filings; checks and check stubs (front and back); records or transcripts of statements, depositions, conversations, meetings, discussions, conferences, or interviews, whether in person or by telephone or by other means; workpapers; printouts or other stored information from computers or other information retention or processing systems; photographic matter or sound reproduction matter however produced, reproduced or stored; government reports, regulations, filings or orders; any other written, printed, typed, taped, recorded, or graphic matter; any

exhibits, attachments, or schedules to or with the foregoing; any drafts of the foregoing; and any copies or duplicates of the foregoing that are different because of marginal or handwritten notations, or because of any markings thereon.

2. "Identify" when used in reference to any person means to state his or her full name and present or last known home and business addresses, his or her occupation, his or her present or last known position, employer, or business affiliation, his or her present or last known business and home telephone numbers, and if such person has ever been employed by IEU or owned or participated in any way in IEU's business or activities, so indicate and state the nature and time period of such employment, ownership or participation. When a person has been identified in full in response to an Interrogatory as required by these definitions, it shall be sufficient to identify such person in response to subsequent Interrogatories, to state the full name of such person and refer to the previous Interrogatory where a full identification was given so long as all other information regarding such person required by these definitions remains the same.

3. "Person" means any natural person, corporation, partnership, joint venture, unincorporated association, and all other entities.

4. "IEU" means Industrial Energy Users-Ohio and any affiliate.

5. "ESP Application" means either DP&L's First or Second ESP Application filed in Case No. 12-426-EL-SSO, et al.

6. "Relating to" means constituting or evidencing and directly or indirectly mentioning, describing, referring to, pertaining to, being connected with or reflecting on the stated subject matter.

INTERROGATORIES

INTERROGATORY 1: State whether IEU agrees that DP&L should be given an opportunity to earn a reasonable return on equity.

- a. If the answer to the preceding interrogatory is affirmative, then identify the return on equity that IEU asserts is reasonable.
- b. If the answer to the preceding interrogatory is negative, then explain why not.

RESPONSE:

INTERROGATORY 2: State whether the IEU agrees that DP&L should be permitted to implement a non-bypassable charge that will allow DP&L the opportunity to earn a reasonable return on equity.

- a. If the answer to the preceding interrogatory is affirmative, then (1) identify the level of non-bypassable charges that IEU asserts is reasonable; (2) explain why IEU asserts that the level is reasonable; and (3) state the return on equity that IEU contends that DP&L would earn with such a charge.
- b. If the answer to preceding interrogatory is negative, then explain why not.

RESPONSE:

INTERROGATORY 3: Pursuant to Ohio Admin. Code § 4901-1-16(C), identify each expert witness that IEU expects to testify on its behalf at the hearing, and state the subject matter on which each expert is expected to testify, and provide a brief summary of such experts expected testimony.

RESPONSE:

INTERROGATORY 4: Identify any respect in which IEU contends that DP&L's Second Revised Application, the supporting testimony, workpapers, schedules, or other documents fail to comply with any applicable legal or regulatory requirement, and identify the reason for that contention.

RESPONSE:

INTERROGATORY 5: Identify any and all charges, rates, or other relief that is sought in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents that IEU contends that DP&L is not entitled to receive under applicable laws and regulations, and identify the reason for that contention.

RESPONSE:

INTERROGATORY 6: Identify any and all charges, rates, or other relief requested in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents that IEU claims is not adequately supported in DP&L's filing, and identify the reason for that contention.

RESPONSE:

INTERROGATORY 7: Identify any and all mathematical, computational, or other errors that IEU contends exist in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents, and identify the reason for that contention.

RESPONSE:

INTERROGATORY 8: Identify all members of IEU-Ohio located within DP&L's service territory.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All writings that IEU consulted or relied upon to prepare its responses to DP&L's discovery requests.
2. All writings that IEU may introduce at any depositions or hearings in this matter.
3. All writings relating to DP&L's ESP Application or MRO Application consulted or relied upon by IEU in preparing IEU's discovery requests to DP&L.
4. All writings relating to the Commission's decision in AEP's ESP proceeding, PUCO Case No. 11-346-EL-SSO.
5. All writings constituting or relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP Application.
6. All writings constituting or relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP proceeding or MRO Application.
7. All writings constituting or relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relating to DP&L's ESP Application or MRO Application.
8. All writings constituting or relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relating to the Commission's decisions in AEP's ESP proceeding, PUCO Case No. 11-346-EL-SSO.
9. All writings constituting or relating to communications among those persons identified in Interrogatory No. 3 and any other person relating to DP&L's MRO Application or ESP Application.

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: judl.sobecki@dpline.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

Attorneys for The Dayton Power and
Light Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's First Set of Discovery to Industrial Energy Users-Ohio has been served via electronic mail upon the following counsel of record, this 20th day of December, 2012:

Samuel E. Randazzo, Esq.
Frank P. Darr, Esq.
Matthew R. Pritchard, Esq.
Joseph E. Oliker, 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
tallexander@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
mikurtz@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

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
HONDA OF AMERICA MFG., INC.
24000 Honda Parkway
Marysville, OH 43040
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

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.
ICE MILLER LLP
250 West Street
Columbus, OH 43215
Christopher.Miller@icemiller.com
Gregory.Dunn@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
6641 North High Street, Suite 200
Worthington, OH 43085
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

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

**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. 672-EL-RDR

**INDUSTRIAL ENERGY USERS-OHIO'S
RESPONSES TO THE DAYTON POWER AND LIGHT COMPANY'S
FIRST SET OF DISCOVERY**

Samuel C. Randazzo (Counsel of Record)
Frank P. Darr
Matthew R. Pritchard
Joseph E. Oliker
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
joliker@mwncmh.com

December 31, 2012

Attorneys for Industrial Energy Users-Ohio

{C39503; }

**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. 672-EL-RDR

**INDUSTRIAL ENERGY USERS-OHIO'S
RESPONSES TO THE DAYTON POWER AND LIGHT COMPANY'S
FIRST SET OF DISCOVERY**

Pursuant to Rules 4901-1-19 and 4901-1-20, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") submits its Responses to The Dayton Power and Light Company's ("DP&L") First Set of Discovery to Industrial Energy Users-Ohio. IEU-Ohio explicitly reserves the right to supplement or modify its discovery responses in accordance with Rule 4901-1-16(D)(1)-(6), O.A.C.

INTERROGATORIES

INTERROGATORY 1: State whether IEU agrees that DP&L should be given an opportunity to earn a reasonable return on equity.

- a. If the answer to the preceding interrogatory is affirmative, then identify the return on equity that IEU asserts is reasonable.
- b. If the answer to the preceding interrogatory is negative, then explain why not.

RESPONSE: IEU-Ohio objects to this interrogatory inasmuch as it is vague and seeks information that is not relevant or likely to lead to the discovery of admissible evidence. Without waiving its objections, IEU-Ohio states as follows: the legal standard for approval of an electric security plan ("ESP") is whether "the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code." Section 4928.143(C)(1), Revised Code. IEU-Ohio would also note that Section 4928.38, Revised Code, states that DP&L's generation function is on its own in the competitive market.

Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 2: State whether the IEU agrees that DP&L should be permitted to implement a non-bypassable charge that will allow DP&L the opportunity to earn a reasonable return on equity.

- a. If the answer to the preceding interrogatory is affirmative, then (1) identify the level of non-bypassable charges that IEU asserts is reasonable; (2) explain why IEU asserts that the level is reasonable; and (3) state the return on equity that IEU contends that DP&L would earn with such a charge.
- b. If the answer to preceding interrogatory is negative, then explain why not.

RESPONSE: IEU-Ohio objects to this interrogatory inasmuch as it is vague and seeks information that is not relevant or not likely to lead to the discovery of admissible evidence. Without waiving its objection, IEU-Ohio states as follows: Ohio law only allows non-bypassable generation-related charges in very limited and statutorily defined circumstances. See Sections 4928.143(B)(2)(b)-(c), and 4928.144, Revised Code.

Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 3: Pursuant to Ohio Admin. Code § 4901-1-16(C), identify each expert witness that IEU expects to testify on its behalf at the hearing, and state the subject matter on which each expert is expected to testify, and provide a brief summary of such experts expected testimony.

RESPONSE: IEU-Ohio has not yet had an opportunity to determine what issues it will present through testimony and which witnesses will testify. At this juncture, all issues relevant to DP&L's application, testimony, and workpapers could be the subject of IEU-Ohio's testimony.

Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 4: Identify any respect in which IEU contends that DP&L's Second Revised Application, the supporting testimony, workpapers, schedules, or other documents fail to comply with any applicable legal or regulatory requirement, and identify the reason for that contention.

RESPONSE: IEU-Ohio objects to this interrogatory because it is unduly burdensome and seeks information that is subject to attorney-client privilege and/or is subject to the work product doctrine. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio has not yet had an opportunity to completely review all aspects of DP&L's Second Revised Application, including the associated testimony, workpapers, and discovery responses.

Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 5: Identify any and all charges, rates, or other relief that is sought in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents that IEU contends that DP&L is not entitled to receive under applicable laws and regulations, and identify the reason for that contention.

RESPONSE: IEU-Ohio objects to this interrogatory on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: see IEU-Ohio response to Interrogatory 4.

Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 6: Identify any and all charges, rates, or other relief requested in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents that IEU claims is not adequately supported in DP&L's filing, and identify the reason for that contention.

RESPONSE: IEU-Ohio objects to this interrogatory on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: see IEU-Ohio response to Interrogatory 4.

Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 7: Identify any and all mathematical, computational, or other errors that IEU contends exist in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents, and identify the reason for that contention.

RESPONSE: IEU-Ohio objects to this interrogatory on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: see IEU-Ohio response to Interrogatory 4.

Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 8: Identify all members of IEU-Ohio located within DP&L's service territory.

RESPONSE: IEU-Ohio objects to this interrogatory because it seeks publicly available information that DP&L can easily obtain. Without waiving its objection, IEU-Ohio states as follows: a list of IEU-Ohio members is located on IEU-Ohio's website (http://www.ieu-ohio.org/member_list.aspx).

Response Prepared By: Counsel for IEU-Ohio

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All writings that IEU consulted or relied upon to prepare its responses to DP&L's discovery requests.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection IEU-Ohio states as follows: IEU-Ohio has reviewed various documents in this proceeding including DP&L's applications, testimony, workpapers, discovery requests and discovery responses, FERC Form 1's, and SEC Form 10-K's.

Response Prepared By: Counsel for IEU-Ohio

2. All writings that IEU may introduce at any depositions or hearings in this matter.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio has not yet had an opportunity to completely review all aspects of DP&L's application, including the associated testimony, workpapers, and discovery responses.

Response Prepared By: Counsel for IEU-Ohio

3. All writings relating to DP&L's ESP Application or MRO Application consulted or relied upon by IEU in preparing IEU's discovery requests to DP&L.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome and seeks information covered by the attorney-client privilege and/or work product doctrine.

Response Prepared By: Counsel for IEU-Ohio

4. All writings relating to the Commission's decision in AEP's ESP proceeding, PUCO Case No. 11-346-EL-SSO.

RESPONSE: IEU-Ohio objects to this request on grounds that it is unduly burdensome, seeks information that is subject to the attorney-client privilege and/or work product doctrine, seeks information that is not necessarily relevant to this proceeding or likely to lead to the discovery of admissible evidence, and seeks information that constitutes a trade secret. Without waiving its objection,

IEU-Ohio states as follows: IEU-Ohio's opinions and factual assertions regarding AEP-Ohio's ESP proceeding is embodied in the documents that are publicly filed in Commission Case Nos. 11-346-EL-SSO, *et al.*

Response Prepared By: Counsel for IEU-Ohio

5. All writings constituting or relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP Application.

RESPONSE: IEU-Ohio objects to this request on grounds that it is unduly burdensome, seeks information covered by the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

6. All writings constituting or relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP proceeding or MRO Application.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome, seeks information subject to the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, seeks information that is not relevant and not likely to lead to the discovery of admissible evidence, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

7. All writings constituting or relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relating to DP&L's ESP Application or MRO Application.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome, seeks information subject to the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, seeks information that is not relevant and not likely to lead to the discovery of admissible evidence, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

8. All writings constituting or relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relating to the Commission's decisions in AEP's ESP proceeding, PUCO Case No. 11-346-EL-SSO.

RESPONSE: IEU-Ohio objects to this request because It is unduly burdensome, seeks information subject to the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, seeks information that is not relevant and not likely to lead to the discovery of admissible evidence, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

9. All writings constituting or relating to communications among those persons identified in Interrogatory No. 3 and any other person relating to DP&L's MRO Application or ESP Application.

RESPONSE: IEU-Ohio objects to this request because It is unduly burdensome, seeks information subject to the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, seeks information that is not relevant or not likely to lead to the discovery of admissible evidence, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Responses to The Dayton Power and Light Company's First Set of Discovery* was served upon the following parties of record this 31st day of December 2012, via electronic transmission..

/s/ Matthew R. Pritchard
Matthew R. Pritchard

judi.sobeckl@dplinc.com
randall.griffin@dplinc.com
cfaruki@ficlaw.com
jsharkey@ficlaw.com
arthur.meyer@dplinc.com
dboehm@BKLLawfirm.com
mkurtz@BKLLawfirm.com
etter@occ.state.oh.us
serio@occ.state.oh.us
yost@occ.state.oh.us
gerger@occ.state.oh.us
amy.spiller@duke-energy.com
jeanne.kingery@duke-energy.com
philip.sineneng@ThompsonHine.com
bmcmahon@emh-law.com
elizabeth.watts@duke-energy.com
rocco.d'ascenzo@duke-energy.com
ricks@ohanet.org
tobrien@bricker.com
barth.royer@aol.com
gary.a.jeffries@dom.com
drinebolt@ohiopartners.org
cmooney2@columbus.rr.com
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
vparisi@igsenergy.com
mswhite@igsenergy.com
barthroyer@aol.com
nolan@theoec.org
trent@theoec.org
cathy@theoec.org
williams.toddm@gmail.com
ejacobs@ablelaw.org
tobrien@bricker.com
mwarnock@bricker.com
tsiwo@bricker.com
mhpeticoff@vorys.com
smhoward@vorys.com
david.fein@constellation.com
cynthia.a.fonner@constellation.com
Tasha.hamilton@constellation.com
myurick@taftlaw.com
zkravitz@taftlaw.com
mhpeticoff@vorys.com
smhoward@vorys.com
Tony_Long@ham.honda.com
Stephen.bennett@exeloncorp.com

Cynthia.b.fonner@constellation.com
LGearhardt@ofbf.org
dconway@porterwright.com
aemerson@porterwright.com
haydenm@firstenergycorp.com
coneil@calfee.comk
shannon@calfee.com
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com
dakutik@jonesday.com
aehaedt@jonesday.com
jejadwin@aep.com
Thomas.Melone@AllcoUS.com
jmclark@directenergy.com
christopher.miller@icemiller.com
gregory.dunn@icemiller.com
alan.starkoff@icemiller.com
ssolberg@EimerStahl.com
stephanie.Chmiel@ThompsonHine.com
michael.Dillard@ThompsonHine.com
philip.sineneng@ThompsonHine.com
mjsatterwhite@aep.com
stnourse@aep.com
bojko@carpenterlipps.com
sechler@carpenterlipps.com
matt@matthewcoxlaw.com
gpoulos@enernoc.com
ssherman@kdlegal.com
jhague@kdlegal.com
william.wright@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
thomas.mcnamee@puc.state.oh.us
steven.beeler@puc.state.oh.us
devin.parram@puc.state.oh.us
gregory.price@puc.state.oh.us
mandy.willey@puc.state.oh.us
bryce.mckenney@puc.state.oh.us
henryeckhart@aol.com
Wls29@yahoo.com
berger@occ.state.oh.us
bill.wells@wpafb.af.mil
chris.thompson.2@tyndall.af.mil
mchristensen@columbuslaw.org

From: Sharkey, Jeffrey S.
Sent: Wednesday, January 02, 2013 3:35 PM
To: Matthew Pritchard
Cc: Judi L. Sobecki Esq. (Judi.Sobecki@AES.com); Dona R Seger-Lawson; Faruki, Charles J.; Sadlowski, Adam V.; Cline, Kelly M.
Subject: RE: IEU-Ohio's objections and responses to DP&L's 1st set upon IEU-Ohio (12-426) [IWOV-DMS.FID83439]

Matt:

IEU's responses to DP&L's discovery requests are almost all inadequate. Specifically:

1. Rogs 1-2 – The Interrogatories require either an affirmative or negative response. IEU entirely failed to respond to the Interrogatories.
2. Rog 3 – The PUCO's rule expressly requires IEU to identify persons that IEU expects to testify, and the subjects of their expected testimony. The fact that IEU has not made a final decision on those points is not responsive. It must identify the persons that it currently expects to testify and the subjects of their expected testimony, and IEU can supplement that response later.
3. Rogs 4-7 – IEU's response that it has not completed its review is not responsive and is wholly inadequate. IEU must identify items of which it is currently aware, and can supplement its answer later.
4. RFP 1 – IEU's response is vague. Did it withhold any documents that were responsive to this request on any grounds? If so, identify and explain those grounds, so that DP&L can address them in a motion to compel.
5. RFP 2 – IEU's response that it has not completed its review is not responsive and is wholly inadequate. The request sought documents that IEU "may" use; IEU is required to produce documents that it is currently aware of and can supplement later.
6. RFP 3 – Please explain the basis of the attorney-client privilege objection. In particular, please identify the entity that you assert is your firm's client.
7. RFP 5-6 – Communications between IEU and its members are not privileged since IEU is not a law firm. The trade secret objection is meritless, as the parties have an SPA. Since the request seeks communications between IEU and its members, I do not understand the objection that IEU does not have access to the requested information.
8. RFP 7-8 – The request seeks communications between IEU and any other person (including intervenors) relating to DP&L's ESP application and AEP's similar application. The privilege objection is meritless, since communications with third parties are not privileged. The trade secret objection is meritless, as the parties have an SPA. Since the request seeks communications between IEU and third parties, I do not understand the objection that IEU does not have access to the requested information. IEU must produce all of its communications (including communications involving its counsel) with other parties to this case, as that information is plainly relevant, is not protected under any applicable ground, and is readily identifiable.
9. RFP 9 – Communications involving a person that is expected to testify as an expert witness for IEU are plainly discoverable. They must be produced.

IEU's responses are wholly inadequate. If we do not hear from you by COB on January 3, then DP&L will file a motion to compel.

Jeff.

From: Matthew Pritchard [mailto:mpritchard@mwncmh.com]
Sent: Monday, December 31, 2012 3:43 PM
To: 'Alan Starkoff'; 'Allison Haedt'; 'Amy Spiller'; 'Andrew Campbell'; 'Bill C. Wells'; 'Cathryn Loucas'; Faruki, Charles J.; 'Christopher Miller'; 'Christopher Thompson'; 'Colleen Mooney'; 'Cynthia Fonner'; 'David Boehm'; 'David Kutik'; Debbie

Ryan; 'Devin Parram'; Ed Hess; 'Edmund Berger'; 'Elizabeth Watts'; 'Ellis Jacobs'; Frank Darr; 'Gergory J. Poulous'; 'Gregory Dunn'; 'Howard Petricoff'; 'J. Thomas Siwo'; 'James Lang'; 'Jay E. Jadwin'; 'Jeanne Klingery'; Sharkey, Jeffrey S.; Joe Bowser; Joe Olier; 'Joel Sechler'; 'Joseph M. Clark (joseph.clark@directenergy.com)'; 'Joseph Serio'; 'Joshua Hague'; 'Judi Sobacki'; Karen Bowman; Kevin Murray; 'Kimberly W. Bojko'; 'Laura McBride'; 'Lija Kaleps-Clark (lkalepsclark@vorys.com)'; 'M. Anthony Long'; 'Mark Hayden'; 'Mark Whitt (whitt@whitt-sturtevant.com)'; 'Mark Yurick'; 'Mary W. Christensen'; 'Matthew Cox'; Matthew Pritchard; 'Matthew Satterwhite'; 'Matthew Warnock'; 'Matthew White'; 'Melissa Yost'; 'Michael Kurtz'; 'Michael L. Dillard, Jr.'; 'Philip Sineneng'; Renee Gannon; 'Richard Sites'; 'Robert A. McMahon'; 'Rocco D'Ascenzo'; Sam Randazzo; 'Scott C. Solberg (ssolberg@EimerStahl.com)'; 'Stephanie M. Chmiel'; 'Stephen Bennett'; 'Stephen M. Howard'; 'Steve Nourse'; 'Steven Beeler'; 'Steven Sherman'; 'Thomas McNamee'; 'Thomas O'Brien'; 'Trent Dougherty'; 'Trevor Alexander'; Vicki Leach-Payne; 'Vincint Parisi'; 'William Wright'; 'Zachary Kravitz'

Subject: IEU-Ohio's objections and responses to DP&L's 1st set upon IEU-Ohio (12-426)

Good afternoon,

Attached is IEU-Ohio's objections and responses to DP&L's first set of discovery upon IEU-Ohio.

Matt Pritchard

Associate

McNees Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Direct Telephone: 614.719.2842

Fax: 614.469.4653

mpritchard@mwncmh.com



The foregoing message may be protected by the attorney client privilege. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, then delete it. Thank you.

Pursuant to U.S. Treasury Department Circular 230, unless we expressly state otherwise, any tax advice contained in this communications (including any attachments) was not intended to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any matter(s) addressed herein.

**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. 672-EL-RDR

**INDUSTRIAL ENERGY USERS-OHIO'S
SUPPLEMENTAL RESPONSES TO THE DAYTON POWER AND LIGHT COMPANY'S
FIRST SET OF DISCOVERY**

Samuel C. Randazzo (Counsel of Record)
Frank P. Darr
Matthew R. Pritchard
Joseph E. Olikier
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
joliker@mwncmh.com

January 4, 2013

Attorneys for Industrial Energy Users-Ohio

{C39553: }

**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. 672-EL-RDR

**INDUSTRIAL ENERGY USERS-OHIO'S
RESPONSES TO THE DAYTON POWER AND LIGHT COMPANY'S
FIRST SET OF DISCOVERY**

On December 31, 2012, pursuant to Rules 4901-1-19 and 4901-1-20, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") submitted its Responses to The Dayton Power and Light Company's ("DP&L") First Set of Discovery to Industrial Energy Users-Ohio. IEU-Ohio explicitly reserved the right to supplement or modify its discovery responses in accordance with Rule 4901-1-16(D)(1)-(6), O.A.C.

On January 2, 2013, counsel for DP&L requested IEU-Ohio supplement its responses to DP&L's first set of requests upon IEU-Ohio. Accordingly, IEU-Ohio submits the following supplemental responses.

INTERROGATORIES

INTERROGATORY 1: State whether IEU agrees that DP&L should be given an opportunity to earn a reasonable return on equity.

- a. If the answer to the preceding interrogatory is affirmative, then identify the return on equity that IEU asserts is reasonable.
- b. If the answer to the preceding interrogatory is negative, then explain why not.

RESPONSE: IEU-Ohio objects to this interrogatory inasmuch as it is vague and seeks information that is not relevant or likely to lead to the discovery of admissible evidence. Without waiving its objections, IEU-Ohio states as follows: the legal standard for approval of an electric security plan ("ESP") is whether "the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code." Section 4928.143(C)(1), Revised Code. IEU-Ohio would also note that Section 4928.38, Revised Code, states that DP&L's generation function is on its own in the competitive market.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objections on grounds that the request is vague and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio has filed public documents with the Commission detailing its position on this issue. These documents can be found in PUCO Case Nos. 11-346-EL-SSO, *et al.* An example of a document containing IEU-Ohio's position on this issue is IEU-Ohio's application for rehearing filed in that proceeding on September 7, 2012.

Supplemental Response Prepared by: Counsel for IEU-Ohio

INTERROGATORY 2: State whether the IEU agrees that DP&L should be permitted to implement a non-bypassable charge that will allow DP&L the opportunity to earn a reasonable return on equity.

- a. If the answer to the preceding interrogatory is affirmative, then (1) identify the level of non-bypassable charges that IEU asserts is reasonable; (2) explain why IEU asserts that the level is reasonable; and (3) state the return on equity that IEU contends that DP&L would earn with such a charge.
- b. If the answer to preceding interrogatory is negative, then explain why not.

RESPONSE: IEU-Ohio objects to this interrogatory inasmuch as it is vague and seeks information that is not relevant or not likely to lead to the discovery of admissible evidence. Without waiving its objection, IEU-Ohio states as follows: Ohio law only allows non-bypassable generation-related charges in very limited and statutorily defined circumstances. See Sections 4928.143(B)(2)(b)-(c), and 4928.144, Revised Code.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objection to this response on grounds that the request is vague and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio has opposed the use of unlawful non-bypassable riders. IEU-Ohio has filed public documents with the Commission detailing its position on this issue. These documents can be found in PUCO Case Nos. 11-346-EL-SSO, *et al.* An example of a document containing IEU-Ohio's position on this issue is IEU-Ohio's application for rehearing filed in that proceeding on September 7, 2012.

Supplemental Response Prepared by: Counsel for IEU-Ohio

INTERROGATORY 3: Pursuant to Ohio Admin. Code § 4901-1-16(C), identify each expert witness that IEU expects to testify on its behalf at the hearing, and state the subject matter on which each expert is expected to testify, and provide a brief summary of such experts expected testimony.

RESPONSE: IEU-Ohio has not yet had an opportunity to determine what issues it will present through testimony and which witnesses will testify. At this juncture, all issues relevant to DP&L's application, testimony, and workpapers could be the subject of IEU-Ohio's testimony.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio renews its assertion that at this time it does not currently know which experts are expected to testify. Because DP&L did not file sufficient information along with its October 5, 2012 application to establish a standard service offer ("SSO") in the form of an electric security plan ("ESP"), IEU-Ohio was required to seek the information through discovery. DP&L, unfortunately, has not been providing IEU-Ohio with timely responses to discovery requests, which has hindered IEU-Ohio's ability to review DP&L's claims and prepare its case. Additionally, DP&L has had to file a second application to establish an SSO in the form of an ESP because of its own errors. That application was filed roughly one month ago. Because of DP&L's delays, and because only one month has passed since DP&L filed its most recent application in this proceeding, IEU-Ohio has not yet been able to determine what issues it will need to pursue through the testimony of its own experts. IEU-Ohio will supplement this response once IEU-Ohio determines whether it will present a witness/witnesses and the subject matter of their expected testimony.

Supplemental Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 4: Identify any respect in which IEU contends that DP&L's Second Revised Application, the supporting testimony, workpapers, schedules, or other documents fail to comply with any applicable legal or regulatory requirement, and identify the reason for that contention.

RESPONSE: IEU-Ohio objects to this interrogatory because it is unduly burdensome and seeks information that is subject to attorney-client privilege and/or is subject to the work product doctrine. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio has not yet had an opportunity to completely review all aspects of DP&L's Second Revised Application, including the associated testimony, workpapers, and discovery responses.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objection on grounds that the request is unduly burdensome and seeks information that is subject to the work product doctrine. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio is currently reviewing DP&L most recently filed application. If IEU-Ohio files testimony, it will identify concerns raised by IEU-Ohio's review. Further, see IEU-Ohio's prior pleadings in this matter raising concerns with the initial ESP Application (these concerns may also be applicable to DP&L's Second Revised Application).

Supplemental Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 5: Identify any and all charges, rates, or other relief that is sought in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents that IEU contends that DP&L is not entitled to receive under applicable laws and regulations, and identify the reason for that contention.

RESPONSE: IEU-Ohio objects to this interrogatory on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: see IEU-Ohio response to Interrogatory 4.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objection to this interrogatory on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: see IEU-Ohio's Supplemental Response to Interrogatory 4. IEU-Ohio also contends that DP&L is not entitled to any charge, rate, or relief, which is collected through an unlawful non-bypassable charge or to the extent that any charge, rate, or other relief would cause DP&L's proposed ESP Application to be less favorable in the aggregate than the alternative market rate offer ("MRO") option. Section 4928.143(C)(1), Revised Code. Finally, all charges, rates, and other relief must be otherwise lawful.

Supplemental Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 6: Identify any and all charges, rates, or other relief requested in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents that IEU claims is not adequately supported in DP&L's filing, and identify the reason for that contention.

RESPONSE: IEU-Ohio objects to this interrogatory on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: see IEU-Ohio response to Interrogatory 4.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objections to this request on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: as indicated above, IEU-Ohio is still reviewing all of DP&L's application, testimony, workpapers, the revised application, revised testimony, revised workpapers, discovery responses, and DP&L's numerous supplemental discovery responses. However, one area where DP&L's revised application appears to be unsupported is in its claim that the Service Stability Rider ("SSR") and switching tracker are supported by Section 4928.143(B)(2)(d), Revised Code.

Supplemental Response Prepared By: Counsel for IEU-Ohio

INTERROGATORY 7: Identify any and all mathematical, computational, or other errors that IEU contends exist in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents, and identify the reason for that contention.

RESPONSE: IEU-Ohio objects to this interrogatory on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: see IEU-Ohio response to Interrogatory 4.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objection to this request on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio is currently reviewing DP&L most recently filed application. If IEU-Ohio files testimony, it will identify concerns raised by IEU-Ohio's review.

Supplemental Response Prepared By: Counsel for IEU-Ohio.

INTERROGATORY 8: Identify all members of IEU-Ohio located within DP&L's service territory.

RESPONSE: IEU-Ohio objects to this interrogatory because it seeks publicly available information that DP&L can easily obtain. Without waiving its objection, IEU-Ohio states as follows: a list of IEU-Ohio members is located on IEU-Ohio's website (http://www.ieu-ohio.org/member_list.aspx).

Response Prepared By: Counsel for IEU-Ohio

REQUESTS FOR PRODUCTION OF DOCUMENTS

RPD 1: All writings that IEU consulted or relied upon to prepare its responses to DP&L's discovery requests.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection IEU-Ohio states as follows: IEU-Ohio has reviewed various documents in this proceeding including DP&L's applications, testimony, workpapers, discovery requests and discovery responses, FERC Form 1's, and SEC Form 10-K's.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objection to this request because it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: in addition to the documents listed above documents that were relied upon, the public documents filed by IEU-Ohio in Case Nos. 11-346-EL-SSO, *et al.* were also relied upon in preparing its Supplemental Responses to this set of discovery requests.

Supplemental Response Prepared By: Counsel for IEU-Ohio

RPD 2: All writings that IEU may introduce at any depositions or hearings in this matter.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio has not yet had an opportunity to completely review all aspects of DP&L's application, including the associated testimony, workpapers, and discovery responses.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objection to this request on grounds that it is unduly burdensome and seeks information that is subject to the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: as explained in IEU-Ohio's Responses and Supplemental Responses above, DP&L's unilateral actions in not providing IEU-Ohio timely access to necessary information has hindered IEU-Ohio's ability to prepare its case. IEU-Ohio may use any document produced by any party or Staff in discovery, in the public domain, or included in the various filings of DP&L.

Supplemental Response Prepared By: Counsel for IEU-Ohio

RPD 3: All writings relating to DP&L's ESP Application or MRO Application consulted or relied upon by IEU in preparing IEU's discovery requests to DP&L.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome and seeks information covered by the attorney-client privilege and/or work product doctrine.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objection to this request on grounds that it is unduly burdensome and seeks information covered by the attorney-client privilege and/or work product doctrine. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio has relied upon its general knowledge, the documents publicly filed in this proceeding, and all information DP&L has transmitted to IEU-Ohio. These documents are available to DP&L.

Supplemental Response Prepared By: Counsel for IEU-Ohio

RPD 4: All writings relating to the Commission's decision in AEP's ESP proceeding, PUCO Case No. 11-346-EL-SSO.

RESPONSE: IEU-Ohio objects to this request on grounds that it is unduly burdensome, seeks information that is subject to the attorney-client privilege and/or work product doctrine, seeks information that is not necessarily relevant to this proceeding or likely to lead to the discovery of admissible evidence, and seeks information that constitutes a trade secret. Without waiving its objection, IEU-Ohio states as follows: IEU-Ohio's opinions and factual assertions regarding AEP-Ohio's ESP proceeding is embodied in the documents that are publicly filed in Commission Case Nos. 11-346-EL-SSO, *et al.*

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objections to this request on grounds that it is unduly burdensome, seeks information that is subject to the attorney-client privilege and/or work product doctrine, seeks information that is not necessarily relevant to this proceeding or likely to lead to the discovery of admissible evidence, and seeks information that constitutes a trade secret. Without waiving its objections, IEU-Ohio states as follows: IEU-Ohio assumes DP&L's request seeks IEU-Ohio's position about the Commission's decision in AEP-Ohio's ESP proceeding. IEU-Ohio's position in that case can be found in the various public documents IEU-Ohio filed in AEP-Ohio's proceeding.

Supplemental Response Prepared By: Counsel for IEU-Ohio

RPD 5: All writings constituting or relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP Application.

RESPONSE: IEU-Ohio objects to this request on grounds that it is unduly burdensome, seeks information covered by the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objections on grounds that this request on grounds that it is unduly burdensome, and seeks information covered by the attorney-client privilege and/or work product doctrine. To the extent the request also seeks communications among the individual members of IEU-Ohio and not just between IEU-Ohio and the members, IEU-Ohio maintains its objection that the request seeks information that IEU-Ohio does not have access to. IEU-Ohio has filed various public documents in this proceeding, which are available on the Commission's website and which were also served upon DP&L.

Supplemental Response Prepared By: Counsel for IEU-Ohio

RPD 6: All writings constituting or relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP proceeding or MRO Application.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome, seeks information subject to the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, seeks information that is not relevant and not likely to lead to the discovery of admissible evidence, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL REPSONSE: IEU-Ohio objects to this request on grounds that it is unduly burdensome, and seeks information that constitutes a trade secret. To the extent this request seeks internal communications of IEU-Ohio, IEU-Ohio also maintains its objection that the request seeks information covered by the attorney-client privilege and/or work product doctrine. IEU-Ohio has filed various public documents in this proceeding, which are available on the Commission's website and which were also served upon DP&L.

Supplemental Response Prepared By: Counsel for IEU-Ohio

RPD 7: All writings constituting or relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relating to DP&L's ESP Application or MRO Application.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome, seeks information subject to the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, seeks information that is not relevant and not likely to lead to the discovery of admissible evidence, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objection to this request on grounds that it is unduly burdensome, seeks information that constitutes a trade secret, and seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. To the extent this request seeks internal communications among IEU-Ohio and not just communications to third parties, IEU-Ohio maintains its objection that the request seeks information subject to the attorney-client privilege and/or work product doctrine. To the extent this request seeks information "among" persons/entities where IEU-Ohio was not involved in the communication, IEU-Ohio maintains its objection that it would not have access to that information. IEU-Ohio has filed various public documents in this proceeding, which are available on the Commission's website.

RPD 8: All writings constituting or relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relating to the Commission's decisions in AEP's ESP proceeding, PUCO Case No. 11-346-EL-SSO.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome, seeks information subject to the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, seeks information that is not relevant and not likely to lead to the discovery of admissible evidence, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio maintains its objection that this request is unduly burdensome, seeks information subject to the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, and seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. Various parties, including IEU-Ohio, entered into a joint defense agreement in that proceeding. To the extent this request seeks information "among" persons/entities where IEU-Ohio was not involved in the communication, IEU-Ohio maintains its objection that it would not have access to that information. IEU-Ohio has filed various public documents in that proceeding, which are available on the Commission's website.

Supplemental Response Prepared By: Counsel for IEU-Ohio

RPD 9: All writings constituting or relating to communications among those persons identified in Interrogatory No. 3 and any other person relating to DP&L's MRO Application or ESP Application.

RESPONSE: IEU-Ohio objects to this request because it is unduly burdensome, seeks information subject to the attorney-client privilege and/or work product doctrine, seeks information that constitutes a trade secret, seeks information that is not relevant or not likely to lead to the discovery of admissible evidence, and seeks information that IEU-Ohio does not have access to.

Response Prepared By: Counsel for IEU-Ohio

SUPPLEMENTAL RESPONSE: IEU-Ohio states that this request is not currently applicable because IEU-Ohio has not yet identified any expert witness in response to Interrogatory 9. However, once IEU-Ohio has had an opportunity to determine what experts it expects to testify, IEU-Ohio maintains that this request would be unduly burdensome, could seek information potentially subject to the attorney-client privilege and/or work product doctrine, could seek information that constitutes a trade secret, and could seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Once IEU-Ohio becomes aware of what experts it expects will testify, IEU-Ohio will update its response and objections to the request which is currently inapplicable.

Supplemental Response Prepared By: Counsel for IEU-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Supplemental Responses to The Dayton Power and Light Company's First Set of Discovery* was served upon the following parties of record this 4th day of January 2013, via electronic transmission.

/s/ Matthew R. Pritchard
Matthew R. Pritchard

judi.sobecki@dplinc.com
randall.griffin@dplinc.com
cfaruki@ficlaw.com
jsharkey@ficlaw.com
arthur.meyer@dplinc.com
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
etter@occ.state.oh.us
serio@occ.state.oh.us
yost@occ.state.oh.us
gerger@occ.state.oh.us
amy.spiller@duke-energy.com
jeanne.kingery@duke-energy.com
philip.sineneng@ThompsonHine.com
bmcmahon@emh-law.com
elizabeth.watts@duke-energy.com
rocco.d'ascenzo@duke-energy.com
ricks@ohanet.org
tobrien@bricker.com
barth.royer@aol.com
gary.a.jeffries@dom.com
drinebolt@ohiopartners.org
cmooney2@columbus.rr.com
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
vparisi@igsenergy.com
mswhite@igsenergy.com
barthroyer@aol.com
nolan@theoec.org
trent@theoec.org
cathy@theoec.org
williams.toddm@gmail.com
ejacobs@ablelaw.org
tobrien@bricker.com
mwarnock@bricker.com
tsiwo@bricker.com
mhpetricoff@vorys.com
smhoward@vorys.com
david.fein@constellation.com
cynthia.a.fonner@constellation.com
Tasha.hamilton@constellation.com
myurick@taftlaw.com

zkavitz@taftlaw.com
mhpetricoff@vorys.com
smhoward@vorys.com
Tony_Long@ham.honda.com
Stephen.bennett@exeloncorp.com
Cynthia.b.fonner@constellation.com
LGearhardt@ofbf.org
dconway@porterwright.com
aemerson@porterwright.com
haydenm@firstenergycorp.com
coneil@calfee.com
shannon@calfee.com
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com
dakutik@jonesday.com
aehaedt@jonesday.com
jejadwin@aep.com
Thomas.Melone@AllcoUS.com
jmclark@directenergy.com
christopher.miller@icemiller.com
gregory.dunn@icemiller.com
alan.starkoff@icemiller.com
ssolberg@EimerStahl.com
stephanie.Chmiel@ThompsonHine.com
michael.Dillard@ThompsonHine.com
philip.sineneng@ThompsonHine.com
mjsatterwhite@aep.com
stnourse@aep.com
bojko@carpenterlipps.com
sechler@carpenterlipps.com
matt@matthewcoxlaw.com
gpoulos@enernoc.com
ssherman@kdlegal.com
jhague@kdlegal.com
william.wright@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
thomas.mcnamee@puc.state.oh.us
steven.beeler@puc.state.oh.us
devin.parram@puc.state.oh.us
gregory.price@puc.state.oh.us
mandy.willey@puc.state.oh.us

bryce.mckenney@puc.state.oh.us
henryeckhart@aol.com
Wis29@yahoo.com
berger@occ.state.oh.us
bill.wells@wpafb.af.mil
chris.thompson.2@tyndall.af.mil
mchristensen@columbuslaw.org
chris.michael@icemiller.com

From: Sharkey, Jeffrey S.
Sent: Tuesday, January 08, 2013 8:44 AM
To: Matthew Pritchard; Judi L. Sobecki Esq. (Judi.Sobecki@AES.com); Faruki, Charles J.; Sadlowski, Adam V.; Cline, Kelly M.; Dona R Seger-Lawson
Cc: Sam Randazzo; Frank Darr; Joe Olikier
Subject: RE: IEU-Ohio's Supplemental Responses to DP&L's 1st Set Case No. 12-426-EL-SSO, et al. [IWOV-DMS.FID83439]

Matt:

As to communications between IEU and parties to DP&L's case regarding DP&L's case, I take it from your response that IEU is not withholding documents based upon a common interest privilege; please correct me if I am wrong. As to IEU's objection that the request is overbroad, DP&L disagrees. DP&L is not asking for all communications between IEU and those parties; DP&L is asking only for those communications that relate to DP&L's case. Any communication between IEU and any party to DP&L's pending case may be used in the case for a wide variety of purposes, including impeachment. DP&L is entitled to all of those communications, and DP&L is not required to attempt to create a list of every topic on which IEU may have had such communications for DP&L to be entitled to receive those documents.

Further, you claim that producing the documents would be an undue burden, but you have not responded to my inquiry about whether IEU or its counsel maintains electronic or paper copies of communications. I expect that the overwhelming majority of responsive documents would be emails, and if they are stored in an electronic file relating to DP&L's case, then IEU should be able to locate them; if they are not stored in an electronic file, then we could discuss search terms.

As to communications between IEU and parties to AEP's case regarding AEP's case, parties cannot immunize their communications from discovery merely by signing a JDA. A JDA memorializes the parties agreement that they believe that they have a common interest privilege, but it is the existence of the CIP – not the JDA – that will protect communications from discovery. And again, a CIP applies only if all of the parties to a communication have a common interest. For the sake of this case, DP&L is willing to stipulate that IEU has a common interest with customers or other customer groups. However, IEU does not have a common interest with other parties, such as CRES providers, environmental groups, etc; thus, to the extent that any of those other parties were copied on emails or other communications, those communications are not entitled to protection under the CIP.

Thanks for your clarification as to Kevin Murray's status. DO any other persons besides Kevin have a position at IEU?

Given that the hearing date is approaching, DP&L expects to be filing a motion to compel this week. That motion will seek all of the items listed in my original email that I sent to you in response to IEU's initial response, as IEU's supplement does not provide any meaningful additional responses.

Jeff.

From: Matthew Pritchard [mailto:mpritchard@mwncmh.com]
Sent: Monday, January 07, 2013 4:53 PM
To: Sharkey, Jeffrey S.; Judi L. Sobecki Esq. (Judi.Sobecki@AES.com); Faruki, Charles J.; Sadlowski, Adam V.; Cline, Kelly M.; Dona R Seger-Lawson
Cc: Sam Randazzo; Frank Darr; Joe Olikier
Subject: RE: IEU-Ohio's Supplemental Responses to DP&L's 1st Set Case No. 12-426-EL-SSO, et al. [IWOV-DMS.FID83439]

Kevin Murray is an employee of the law firm McNeese Wallace and Nurick, LLC. He also has the title of executive director of Industrial Energy Users-Ohio. The law firm of McNeese Wallace and Nurick LLC represents Industrial Energy Users-Ohio.

Your email below indicates you are still looking for "all" communications related to either case. Again, your requests are overly broad and would cause IEU-Ohio an undue burden in responding. It is also apparent that your requests are not reasonably calculated to lead to the discovery of admissible evidence. Our objections are proper and stand. We have a joint defense agreement with other parties in AEP-Ohio's ESP proceeding, and communications with those parties in AEP-Ohio's ESP proceeding related to AEP-Ohio's ESP proceeding are privileged. As I indicated previously, if you serve proper discovery requests upon us that are intelligible and have defined subject matters and scope we can better address your discovery requests.

Matt Pritchard

Associate

McNeese Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Direct Telephone: 614.719.2842

Fax: 614.469.4653

mpritchard@mwncmh.com



The foregoing message may be protected by the attorney client privilege. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, then delete it. Thank you.

Pursuant to U.S. Treasury Department Circular 230, unless we expressly state otherwise, any tax advice contained in this communications (including any attachments) was not intended to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any matter(s) addressed herein.

From: Sharkey, Jeffrey S. [<mailto:JSharkey@fclaw.com>]

Sent: Monday, January 07, 2013 1:41 PM

To: Matthew Pritchard; Judi L. Sobecki Esq. (Judi.Sobecki@AES.com); Faruki, Charles J.; Sadlowski, Adam V.; Cline, Kelly M.; Dona R Seger-Lawson

Cc: Sam Randazzo; Frank Darr; Joe Olikier

Subject: RE: IEU-Ohio's Supplemental Responses to DP&L's 1st Set Case No. 12-426-EL-SSO, et al. [IWOV-DMS.FID83439]

Matt:

As to your first point, to clarify, is IEU withholding emails relating to this case under any claim for a common interest privilege?

To clarify as to point two, DP&L asks IEU to produce only those communications that IEU had with parties to this case or AEP's ESP case, on which DP&L was not included, and which relate to either case. Will IEU agree to produce either the DP&L case or the AEP case communications? In addition, does IEU (or do any of its individual employees) maintain paper or electronic files of communications for specific cases? If so, DP&L would be willing to discuss a production of all of those emails/communications, provided that there was some reason to believe that the files were reasonably comprehensive; if IEU does not maintain such files, then DP&L would be willing to negotiate over a set of search terms to use; in either event, IEU would not need to review all of the emails related to other matters on its servers.

Finally, you have not responded to my request that IEU explain the basis of its privilege claims, and in particular who your firm's client is. For example, does Kevin Murray work for your firm or for IEU? if you send an email to Kevin Murray, do you claim that it is privileged? In any event, at a minimum, DP&L expects that if you send an email to an IEU employee that has non-privileged materials attached, then IEU must produce the non-privileged portions and may redact the remainder.

Jeff,

From: Matthew Pritchard [<mailto:mpritchard@mwncmh.com>]
Sent: Monday, January 07, 2013 10:47 AM
To: Sharkey, Jeffrey S.; Judi L. Sobecki Esq. (Judi.Sobecki@AES.com); Faruki, Charles J.; Sadlowski, Adam V.
Cc: Sam Randazzo; Frank Darr; Joe Oliker
Subject: RE: IEU-Ohio's Supplemental Responses to DP&L's 1st Set Case No. 12-426-EL-SSO, et al. [IWOV-DMS.FID83439]

Jeff,

I have a couple clarifications, but other than that our responses, as supplemented, stand. We've had less than a month to review your application, and much of your discovery responses were only received 2 weeks ago. As our review progresses we will supplement our responses, as appropriate, which we indicated. As to the clarifications, our joint defense agreement was in AEP-Ohio's ESP proceeding. We are not withholding documents/communications that we have had in this proceeding under that joint defense agreement; but our claim of privilege as to communications in AEP-Ohio's ESP proceeding stands. Second, I referenced IEU-Ohio's application for rehearing filed in AEP-Ohio's proceeding in a couple discovery responses. I inadvertently omitted page references from our supplemental responses. As required by Rule 4901-1-19(C), OAC, the applicable page references for Interrogatory 1 are 42, 50-57, 60-65, and for Interrogatory 2 are 36-46.

As to our communications in this case, our objections to your requests for production 5, 6, and 9 stand. Your requests are overly broad, vague, and would cause an undue burden or expense in answering. As you are more than aware we have had communications with every party in this case: all documents we serve in this proceeding are served upon DP&L and all intervenors. If DP&L provides specific discovery requests upon IEU-Ohio that are intelligible with defined subject matters and defined scope, IEU-Ohio can better address the specific materials DP&L is looking for. However, your blanket requests for anything related to this case and anything related to AEP-Ohio's ESP proceeding are objectionable.

Thanks,

Matt Pritchard
Associate
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Direct Telephone: 614.719.2842
Fax: 614.469.4653
mpritchard@mwncmh.com



The foregoing message may be protected by the attorney client privilege. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, then delete it. Thank you.

Pursuant to U.S. Treasury Department Circular 230, unless we expressly state otherwise, any tax advice contained in this communications (including any attachments) was not intended to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any matter(s) addressed herein.

From: Sharkey, Jeffrey S. [<mailto:JSharkey@ficlaw.com>]

Sent: Saturday, January 05, 2013 9:29 AM

To: Matthew Pritchard

Cc: Judi L. Sobecki Esq. (Judi.Sobecki@AES.com); Dona R Seger-Lawson; Faruki, Charles J.; Sadlowski, Adam V.; Cline, Kelly M.

Subject: RE: IEU-Ohio's Supplemental Responses to DP&L's 1st Set Case No. 12-426-EL-SSO, et al. [IWOV-DMS.FID83439]

Matt:

IEU's supplement is no better than IEU's initial response. IEU still has not responded to almost all of the interrogatories, and has not produced even a single document to DP&L. DP&L will be filing a motion to compel next week.

As to DP&L's requests for communications between IEU and intervenors (RFP 7-8), IEU has asserted that there is a joint defense agreement among the intervenors. Several points. First, please provide a copy of the agreement immediately. Second, as you know, the purpose of a JDA is to memorialize a common interest privilege. Assuming that the PUCO acknowledges the existence of a common interest privilege, a common interest privilege exists only if the parties to the communication have a common interest. It is pretty obvious here that IEU does not have a common interest with many of the intervenors as many of them are not customers of DP&L. DP&L is thus entitled to those communications. In lieu of requesting that IEU prepare a privilege log as to each communication with the other intervenors, will IEU stipulate that it has had communications with each and every intervenor? We can then address with the PUCO whether IEU in fact has a common interest with those parties.

Jeff.

From: Renee Gannon [<mailto:rgannon@mwncmh.com>]

Sent: Friday, January 04, 2013 5:19 PM

To: Alan Starkoff; Allison Haedt; Amy Spiller; Andrew Campbell; Bill C. Wells; Cathryn Loucas; Faruki, Charles J.; Christopher Miller (christopher.miller@icemiller.com); Christopher Thompson; Colleen Mooney; Cynthia Fonner; David Boehm; David Kutik; Debbie Ryan; Devin Parram; Ed Hess; Edmund Berger; Elizabeth Watts; Ellis Jacobs; Frank Darr; Gergory J. Poulous; Gregory Dunn; Howard Petricoff; J. Thomas Siwo; James Lang; Jay E. Jadwin; Jeanne Kingery; Sharkey, Jeffrey S.; Joe Bowser; Joe Olikier; Joel Sechler; Joseph M. Clark (joseph.clark@directenergy.com); Joseph Serio; Joshua Hague; Judi Sobecki; Karen Bowman; Kevin Murray; Kimberly W. Bojko; Laura McBride; Lija Kaleps-Clark (lkalepsclark@vorys.com); M. Anthony Long; Mark Hayden; Mark Whitt (whitt@whitt-sturtevant.com); Mark Yurick; Mary W. Christensen; Matthew Cox; Matthew Pritchard; Matthew Satterwhite; Matthew Warnock; Matthew White; Melissa Yost; Michael Kurtz; Michael L. Dillard, Jr.; Philip Sineneng; Renee Gannon; Richard Sites; Robert A. McMahon; Rocco D'Ascenzo; Sam Randazzo; Scott C. Solberg (ssolberg@EimerStahl.com); Stephanie M. Chmiel; Stephen Bennett; Stephen M. Howard; Steve Nourse; Steven Beeler; Steven Sherman; Thomas McNamee; Thomas O'Brien; Trent Dougherty; Trevor Alexander; Vicki Leach-Payne; Vincint Parisi; William Wright; Zachary Kravitz

Subject: IEU-Ohio's Supplemental Responses to DP&L's 1st Set Case No. 12-426-EL-SSO, et al.

Good Afternoon,

Please find attached IEU-Ohio's Supplemental Responses to DP&L's First Set.

Thank you,

Renee

L. Renee Gannon

Assistant to:

Joseph E. Olikar

Scott E. Elisar

McNees Wallace & Nurick

21 East State Street #1700

Columbus, Ohio 43215

614-719-2849 (direct dial)

614-469-4653 (fax)

rgannon@mwncmh.com



"Character is formed not by laws, commands and decrees, but by quiet influence, unconscious suggestions and personal guidance." Marion L. Burton

The foregoing message may be protected by the attorney client privilege. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, then delete it. Thank you.

Pursuant to U.S. Treasury Department Circular 230, unless we expressly state otherwise, any tax advice contained in this communications (including any attachments) was not intended to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any matter(s) addressed herein.

The information contained in this e-mail is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, attorney's work product and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by replying to this message and then delete it, in its entirety, from your system. Although this e-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Faruki Ireland & Cox P.L.L. for any loss or damage arising in any way from its use.

The information contained in this e-mail is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, attorney's work product and/or exempt from disclosure under applicable law. If the reader of this message is not the intended

recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by replying to this message and then delete it, in its entirety, from your system. Although this e-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Faruki Ireland & Cox P.L.L. for any loss or damage arising in any way from its use.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/9/2013 3:32:45 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: Motion Motion of The Dayton Power and Light Company to Compel Industrial Energy Users-Ohio to Answer Interrogatories and Produce Documents in Response to The Dayton Power and Light Company's First Set of Discovery to Industrial Energy Users-Ohio electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company