

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan)))	Case No. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs)))	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority)))	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules)))	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders)))	Case No. 12-672-EL-RDR

**MOTION FOR PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT**

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January 14, 2013

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MOTION FOR PROTECTIVE ORDER

In accordance with Rule 4901-1-24(A), Ohio Administrative Code (“O.A.C.”), Industrial Energy Users-Ohio (“IEU-Ohio”) files this Motion for Protective Order and Memorandum in Support (“Motion”) seeking an order from the Public Utilities Commission of Ohio (“Commission”) holding that certain discovery requests of The Dayton Power and Light Company (“DP&L”) “may be had only on specified terms and conditions.”¹ Specifically, IEU-Ohio maintains that the information DP&L seeks in Interrogatories 4 through 7 is not currently known by IEU-Ohio, and IEU-Ohio indicated

¹ Rule 4901-1-24(A)(2), O.A.C.

that if it files testimony, it will identify concerns raised by IEU-Ohio's review.² Despite the fact that the information is not known, and DP&L (not IEU-Ohio) bears the statutory burden of proof to demonstrate that DP&L's ESP application may be approved,³ DP&L has filed a motion to compel IEU-Ohio to respond. Therefore, IEU-Ohio requests that the Commission hold that DP&L may not further harass or inquire from IEU-Ohio about the information sought in Interrogatories 4, 5, 6 and 7, which is not currently known, and which IEU-Ohio is not required to provide.

Additionally, IEU-Ohio seeks the Commission to hold that "[c]ertain matters may not be inquired into."⁴ Specifically, IEU-Ohio requests that the Commission hold that any information that might be in IEU-Ohio's possession or control related to either Ohio Power Company's ("AEP-Ohio") electric security plan ("ESP") Proceeding,⁵ or DP&L's withdrawn market rate offer ("MRO") application is not reasonably calculated to lead to the discovery of admissible evidence and is therefore not within the proper scope of discovery in this proceeding.⁶

As the Commission recently held, when a party serves improper discovery requests upon another party, the remedy is to seek a protective order under Rule

² These Interrogatories seek IEU-Ohio to identify any legal or mathematical issue with DP&L's revised ESP application, supporting testimony, workpapers, schedules, or other documents. Attachment A at 1-2. IEU-Ohio also objected to DP&L's Interrogatories 4 through 7, which are overly broad. Because of the overbroad scope of these requests, the requests are also improper because they seek information subject to the attorney-client privilege and/or work-product doctrine. IEU-Ohio has indicated it will provide supplemental information once known, but IEU-Ohio maintains that it is not required to identify any and all deficiencies in these documents.

³ Section 4928.143(C)(1), Revised Code.

⁴ Rule 4901-1-24(A)(4), O.A.C.

⁵ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.* (hereinafter, "AEP-Ohio's ESP Proceeding").

⁶ Attachment A at 3.

4901-1-24(A), O.A.C.⁷ IEU-Ohio has attempted to resolve these issues with DP&L, but IEU-Ohio's efforts have been to no avail. As explained in more detail below, IEU-Ohio requests that the Commission grant this Motion.

Respectfully submitted,

/s/ Matthew R. Pritchard
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⁷ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO, *et al.*, Entry at 6 (June 30, 2011).

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

DP&L filed an application to establish a standard service offer (“SSO”) in the form of an MRO on March 30, 2012. Despite months of settlement discussions, DP&L decided to unilaterally withdraw its MRO application. In its place, DP&L hastily filed an application to establish an SSO in the form of an ESP that was both incomplete and incorrect. IEU-Ohio, along with other intervenors, filed a motion seeking an order from the Commission directing DP&L to file additional information along with its application. This motion is still pending. DP&L, however, soon realized its own calculations embedded in its ESP application were incorrect. DP&L then filed a revised application

to establish an SSO in the form of an ESP (its third SSO application in nine months). DP&L again failed to provide the appropriate level of transparency in its revised ESP application. Specifically, DP&L did not disaggregate its total company financial information into its three lines of business (generation, transmission, and distribution). Parties have requested this information through discovery, but DP&L has indicated it does not exist and cannot be produced. DP&L's revised ESP application also failed to include the supporting internal financial information that drove DP&L's total company financial analysis. Parties have had to resort to the discovery process to gain access to this information, and DP&L has only begrudgingly turned over some of the supporting total company information.

While IEU-Ohio would like to help DP&L advance something that is both lawful and reasonable relative to the statutory requirements and the state policy, DP&L has failed to provide parties with the information necessary to do so. The information that has been sought will allow parties to better understand why DP&L believes customers should be required to provide a "regulated" return on equity ("ROE") that is calculated from DP&L's total company common equity balance when roughly half of the total company generation investment is dedicated to DPL Energy Resources' ("DPLER") and MC Squared's⁸ efforts to serve shopping customers in DP&L's territory, and more generation investment is likely dedicated to DPLER's and MC Squared's efforts to compete for retail customers elsewhere in Ohio as well as in other states.⁹ DP&L

⁸ MC Squared is a wholly owned subsidiary of DPLER. DPL Inc.'s SEC Form 10 Q/A at 19, available at: <http://www.sec.gov/Archives/edgar/data/27430/000078725012000011/c250-20120930x10qa.htm>.

⁹ As of September 2012, 63% of DP&L's load had switched, and DP&L's affiliates retained 73% of the switched load. The AES Corporation 47th Annual EEI Financial Conference at 14 (Nov. 2012) (attached as Attachment B) (also available at www.aes.com through the Presentation & Webcasts tab under the Investors tab). Thus, 45.99% of DP&L's total load is served by its competitive affiliates. DP&L's

refused to provide all necessary information as part of its ESP filing or part of its revised ESP filing and information has only slowly been trickling in through the discovery process (and in some instances, DP&L has refused to provide parties with additional information). Instead, DP&L has served discovery requests on parties such as IEU-Ohio that are overly broad and not likely to result in the discovery of admissible evidence.

II. INTERROGATORIES 4, 5, 6 AND 7

At issue in this Motion are Interrogatories 4, 5, 6 and 7 (along with several Requests for Production of Documents discussed below) from DP&L's first set of discovery upon IEU-Ohio. These interrogatories are overly broad and responding would cause IEU-Ohio an undue burden or expense. Specifically, these interrogatories read:

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

competitive affiliates purchase all of their generation supply from DP&L. DPL Inc.'s SEC Form 10 Q/A at 19, available at: <http://www.sec.gov/Archives/edgar/data/27430/000078725012000011/c250-20120930x10qa.htm>.

supporting testimony, workpapers, schedules, or other documents, and identify the reason for that contention.¹⁰

As explained above, DP&L has not provided all of the information necessary to review DP&L's ESP applications. DP&L did not provide the information as part of its initial or revised ESP applications and DP&L has not provided parties with all of the necessary information through discovery. And the information DP&L has provided through the discovery process is often untimely; in fact, much of DP&L's substantive response to IEU-Ohio's first two sets of discovery (due in early and mid-November) was not received until late December after IEU-Ohio filed its first motion to compel DP&L to respond to these requests.

In response to DP&L's discovery requests, IEU-Ohio identified that it is still in the process of reviewing DP&L's ESP applications, workpapers, testimony, and other documents and therefore the information DP&L seeks is not currently known. IEU-Ohio also indicated that if it files testimony, it will identify concerns raised by IEU-Ohio's review.¹¹ However, DP&L bears the statutory burden¹² of demonstrating that its ESP application may be authorized and DP&L cannot transfer that burden to IEU-Ohio by requesting IEU-Ohio to identify each and every error associated with its application.

Accordingly, IEU-Ohio requests the Commission hold that discovery regarding DP&L's Interrogatories 4, 5, 6 and 7 "may be had only on specified terms and

¹⁰ Attachment A at 1-2.

¹¹ IEU-Ohio also objected on grounds that the requests overly broad and identifying each and every error would cause IEU-Ohio to incur an undue burden or expense in responding, and the requests were also objectionable because the information it seeks is subject to the attorney-client privilege and/or work-product doctrine. Once the information DP&L seeks becomes known to IEU-Ohio, IEU-Ohio will update and address any objections it might have at that time.

¹² Section 4928.143(C)(1), Revised Code.

conditions.”¹³ Specifically, IEU-Ohio requests that the Commission hold that DP&L may not further harass or inquire from IEU-Ohio regarding the information sought in Interrogatories 4, 5, 6 and 7, which is not currently known, and which IEU-Ohio is not required to provide.¹⁴

III. REQUEST FOR PRODUCTION OF DOCUMENTS

Also at issue are four requests for production of documents. In Requests for Production of Documents 4 and 8, DP&L seeks any information in IEU-Ohio’s possession or control related to AEP-Ohio’s ESP application. In Requests for Production of Documents 6 and 7, DP&L also seeks any information in IEU-Ohio’s possession or control related to DP&L’s withdrawn MRO application. As discussed below, neither request for production seeks discoverable information. Accordingly, the Commission should grant a protective order stating that DP&L may not inquire into any information that might be in IEU-Ohio’s possession or control related to either AEP-Ohio’s ESP Proceeding, or DP&L’s withdrawn MRO application.

A. Requests for Production of Documents 4 and 8

DP&L’s Requests for Production of Documents 4 and 8 seek “[a]ll writings relating to the Commission’s decision in AEP-Ohio’s ESP Proceeding” and “[a]ll writings constituting or relating to communication among IEU-Ohio and any person ... relating to the Commission’s decision in AEP-Ohio’s Proceeding”¹⁵ IEU-Ohio properly objected to these requests because the requests are overly broad and are not reasonably calculated to lead to the discovery of admissible evidence. Because of the overbroad

¹³ Rule 4901-1-24(A)(2), O.A.C.

¹⁴ See Section 4928.143(C)(1), Revised Code.

¹⁵ Attachment A at 3.

scope of these requests, the requests are also improper because they seek information subject to the attorney-client privilege and/or work-product doctrine, seek information that constitutes a trade secret, and seek information that is not in IEU-Ohio's possession or control. Without waiving its objections, IEU-Ohio directed DP&L to IEU-Ohio's publicly filed documents in that proceeding. The Commission should grant this motion for a protective order based on IEU-Ohio's objections.

First, DP&L's requests are clearly overbroad; they seek all documents in IEU-Ohio's possession or control that in some way relate to AEP-Ohio's ESP Proceeding. DP&L has not limited its requests to any subject matter raised in this proceeding or the unrelated AEP-Ohio ESP Proceeding.

Second, DP&L's requests are not reasonably calculated to lead to the discovery of admissible evidence and DP&L has not made any attempt to assert otherwise. Neither DP&L's formal discovery requests, its informal communications with IEU-Ohio, or its motion to compel attempt to explain how any of the information it seeks is reasonably calculated to lead to the discovery of evidence admissible in this proceeding. The implication of DP&L's requests is to suggest that the Commission's decisions regarding AEP-Ohio's ESP application are somehow precedential and relevant to this proceeding. DP&L is incorrect. The Commission has indicated that the result it crafted for AEP-Ohio was unique to AEP-Ohio's circumstances.¹⁶ Although IEU-Ohio has challenged the legality and reasonableness of the Commission's orders regarding AEP-Ohio's ESP, the Commission has indicated these orders are only

¹⁶ *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry on Rehearing at 18 (Oct. 17, 2012). In calculating the revenue requirement of AEP-Ohio's Retail Stability Rider ("RSR"), the Commission relied heavily on the unique circumstances the Commission addressed in Case No. 10-2929-EL-UNC. *AEP-Ohio's ESP Proceeding*, Opinion and Order at 26-38 (Aug. 8, 2012).

applicable to the unique circumstances that AEP-Ohio faced. Accordingly, any information in IEU-Ohio's possession or control related to AEP-Ohio's ESP Proceeding is not reasonably calculated to lead to the discovery of admissible evidence.

Third, information exchanged in AEP-Ohio's ESP Proceeding contained protected trade secret information. At page 9 of the Commission's August 8, 2012 Opinion and Order in that proceeding, the Commission noted that the Attorney Examiners had granted all of the motions for protective orders filed in the proceeding, and the Commission's Opinion and Order stated that the protective orders would extend for 18 months after the issuance of the order. Thus, DP&L's overbroad discovery requests extend to information that is available to IEU-Ohio subject to protective orders.

Accordingly, IEU-Ohio requests that the Commission grant this Motion and hold that DP&L may not inquire into information that might be in IEU-Ohio's possession or control that relates to AEP-Ohio's ESP Proceeding because the information is not reasonably calculated to lead to the discovery of admissible evidence and is therefore are not within the proper scope of discovery in this proceeding.¹⁷

B. Requests for Production of Documents 6 and 7

DP&L's Request for Production of Documents 6 seeks "[a]ll writings constituting or relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP proceeding or MRO Application" and DP&L's Request for Production of Documents 7 seeks "[a]ll writings constituting or relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relating to

¹⁷ Rule 4901-1-24(A)(4), O.A.C.

DP&L's ESP Application or MRO Application.”¹⁸ IEU-Ohio properly objected to these requests as overly broad and on grounds that responding would cause IEU-Ohio an undue burden or expense. IEU-Ohio also objected on grounds that DP&L's overly broad discovery requests were not within the proper scope of discovery and DP&L has not attempted to demonstrate how all of the information it seeks is reasonably calculated to lead to the discovery of admissible evidence. Finally, IEU-Ohio objected to these overbroad requests on grounds that the requests seek communications subject to the attorney-client privilege and/or work-product doctrine, seek information that constitutes a trade secret, and seek information that is not within IEU-Ohio's possession or control.

Despite the objectionable discovery requests, IEU-Ohio has produced all non-privileged¹⁹ documents in its possession or control “relating to communications among IEU-Ohio and any of its members relating to DP&L's ESP Application” or “relating to communications among IEU-Ohio and any other person (including, but not limited to, intervenors) relative to DP&L's ESP Application.”²⁰ IEU-Ohio, however, requests that the Commission grant this Motion and hold that “[c]ertain matters not be inquired into.”²¹

¹⁸ Attachment A at 3.

¹⁹ The law firm of McNees Wallace & Nurick LLC has provided legal analysis and legal advice in confidence to IEU-Ohio. DP&L's discovery seeks any document “relating to” communications between IEU-Ohio and its individual members and between IEU-Ohio and third parties relating to this proceeding. DP&L's discovery requests contained the following definition for relating to: “ ‘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.” To the extent DP&L's overly broad requests seek confidential communications given in the rendition of legal advice between the law firm of McNees Wallace & Nurick LLC and IEU-Ohio, IEU-Ohio maintains its objection on grounds of attorney-client privilege.

²⁰ DP&L's overly broad discovery requests seek information that DP&L would already have access to and therefore would not be within the scope of discovery. See Rule 4901-1-16(G), O.A.C. For example, the service emails containing IEU-Ohio's documents filed with the Commission would not be within the scope of discovery.

²¹ Rule 4901-1-24(A)(4), O.A.C.

Specifically, IEU-Ohio requests that the Commission hold that DP&L may not inquire into information that might be in IEU-Ohio's possession or control that relates to DP&L's withdrawn MRO application because the information is not reasonably calculated to lead to the discovery of admissible evidence and is therefore are not within the proper scope of discovery in this proceeding.

IV. **CONCLUSION**

For the reasons stated above, IEU-Ohio requests that the Commission grant IEU-Ohio the relief requested in this Motion.

Respectfully submitted,

/s/ Matthew R. Pritchard
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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.

Update on DPL

- Performance has been adversely affected compared to our expectations at the time of acquisition – resulted in a goodwill impairment in the range of \$1.7 to \$2.0 billion
 - ◆ Lower margins due to:
 - Lower gas prices
 - Accelerated competition resulted in increased switching (as of September 2012, 63% of regulated load had switched)
- **Our action plan**
 - ◆ Achieve a reasonable outcome in the rate case negotiations
 - Filed an ESP October 5th
 - Expect final resolution by first quarter 2013
 - ◆ Expand retail customer base – retained 73% of the switched load
 - ◆ Balance sheet optimization – de-lever the business with cash generated at DPL

AFFIDAVIT OF MATTHEW R. PRITCHARD

State of Ohio : S.S.

County of Franklin :

I, Matthew R. Pritchard, counsel for the Industrial Energy Users-Ohio ("IEU-Ohio") in Case Nos. 12-426-EL-SSO, *et al.*, being first duly sworn, depose and say:

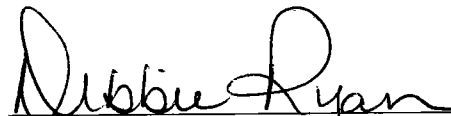
1. IEU-Ohio has attempted to resolve its discovery issues with The Dayton Power and Light Company ("DP&L") regarding DP&L's improper and objectionable discovery requests, but to no avail.
2. IEU-Ohio timely served its responses to DP&L's discovery requests on December 31, 2012.
3. On January 2, 2013, counsel for DP&L contacted IEU-Ohio claiming that IEU-Ohio's responses were inadequate.
4. Although IEU-Ohio disagreed with DP&L's assertions and stood on its objections, IEU-Ohio served supplemental responses upon DP&L on January 4, 2013, which further clarified IEU-Ohio's objections and responses.
5. On January 5, 2013, counsel for DP&L again contacted IEU-Ohio claiming that IEU-Ohio's objections and responses to DP&L's overly broad discovery requests were inadequate.
6. On January 7, 2013, I contacted DP&L and again reiterated IEU-Ohio's belief that DP&L's discovery requests were overly broad and would cause IEU-Ohio an undue burden or expense in responding.
7. On January 9, 2013, IEU-Ohio supplemented its responses to DP&L's discovery requests for a second time. IEU-Ohio disclosed all non-privileged documents in IEU-Ohio's possession or control that relate to DP&L's ESP proceeding. IEU-Ohio disclosed these documents in a good faith attempt to resolve DP&L's discovery dispute with IEU-Ohio even though IEU-Ohio does not believe that the documents were within the scope of discovery.
8. DP&L filed a motion to compel IEU-Ohio on January 9, 2013, claiming (incorrectly) that IEU-Ohio had failed to respond to all but three of DP&L's discovery requests.

9. To date, DP&L has refused to narrow the scope of the information it seeks through Interrogatories 4, 5, 6 and 7. Although IEU-Ohio believes these interrogatories were overly broad, IEU-Ohio has fully answered the questions inasmuch as IEU-Ohio does not currently know the answer to DP&L's requests. In accordance with Rule 4901-1-16(D), Ohio Administrative Code ("O.A.C."), IEU-Ohio agreed to supplement its response, as appropriate.
10. To date, DP&L has also refused to narrow the scope of the documents it seeks in its Requests for Production of Documents 4, 6, 7 and 8. IEU-Ohio has produced all non-privileged documents in its possession or control related to DP&L's ESP and the remainder of the documents sought through Requests for Production of Documents 4, 6, 7 and 8 are not reasonably calculated to lead to the discovery of admissible evidence.
11. IEU-Ohio properly objected to DP&L's discovery requests, but DP&L has filed a motion to compel IEU-Ohio to respond. In accordance with Rule 4901-1-24(A), O.A.C., and the Commission's direction at page 6 of its June 30, 2011, Entry in *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO, et al., I believe that IEU-Ohio must seek intervention from the Commission to prevent DP&L from causing IEU-Ohio further undue burden or expense.



Matthew R. Pritchard

Sworn before me and subscribed in my presence this 14th day of January 2013.



Notary Public
State of Ohio

DEBBIE SUE RYAN
NOTARY PUBLIC • STATE OF OHIO
Residing in Knox County
My Comm. Expires on Jan. 14, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Protective Order and Memorandum in Support* was served upon the following parties of record this 14th day of January 2013, *via* electronic transmission.

/s/ Matthew R. Pritchard

MATTHEW R. PRITCHARD

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1/14/2013 3:18:49 PM

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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 for Protective Order and Memorandum in Support electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio