

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
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In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 12-427-EL-ATA
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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
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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
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In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders	:	Case No. 12-672-EL-RDR
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**MOTION OF THE DAYTON POWER AND LIGHT COMPANY TO COMPEL  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL TO  
ANSWER INTERROGATORIES AND PRODUCE DOCUMENTS IN RESPONSE  
TO THE DAYTON POWER AND LIGHT COMPANY'S FIRST SET OF  
DISCOVERY TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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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 the Office of the Ohio Consumers' Counsel ("OCC") to answer certain interrogatories and produce documents in response to DP&L's relevant and proper discovery requests. While OCC has served repeated and burdensome discovery requests upon DP&L, OCC has not responded adequately to DP&L's discovery requests. The Commission should order OCC 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,

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**MEMORANDUM IN SUPPORT OF MOTION OF THE DAYTON POWER  
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COUNSEL TO ANSWER INTERROGATORIES AND PRODUCE DOCUMENTS IN  
RESPONSE TO THE DAYTON POWER AND LIGHT COMPANY'S FIRST SET OF  
DISCOVERY TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**I.           Introduction**

While OCC has made repeated and burdensome discovery demands upon DP&L, OCC has failed to respond to almost all of DP&L's interrogatories. DP&L thus asks the Commission to issue an order compelling OCC to answer DP&L Interrogatory 4, and to produce all documents responsive to DP&L Requests for Production of Documents 2, 11, 12, and 13.

The discovery requests at issue fall into the following categories:

- (1) whether OCC believes any portion of DP&L's Second Revised Application fails to comply with legal or regulatory requirements,
- (2) the documents OCC may introduce at any deposition or hearing in this matter,
- (3) writings between OCC and other persons relating to this matter,
- (4) writings between OCC and other persons relating to the Commission's decisions in AEP's ESP Proceeding, and
- (5) writings between and among the potential experts OCC identified.

OCC has unjustifiably refused to produce this information based on objections that the requests are not likely to lead to the discovery of admissible evidence, beyond the scope of discovery, unreasonable, unduly burdensome, vague, and ambiguous. OCC has also objected to certain requests on the basis that they seek information that is subject to the attorney-client

privilege or work product doctrine. Finally, OCC has also objected to several requests on the basis that the requests seek a legal opinion.

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.

Discovery is not a one-way street. In contrast to the 7 interrogatories and 13 requests for production that DP&L has served upon OCC, OCC has served DP&L with 462 interrogatories, 104 requests for the production of documents, and 5 requests for admissions. DP&L has produced over 45,000 pages as well as numerous documents in native format, with formulas intact, in response to OCC's requests. The Commission should order OCC to comply with its discovery obligations.

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

OCC refuses to respond to DP&L's valid discovery requests based, in part, on the objection that the information requested is beyond the scope of discovery. 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, "any 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 documents OCC used in responding to the discovery at issue. The information requested by DP&L is relevant to this proceeding, and as set forth in detail below, OCC's objections are improper.

**A. Information Regarding Whether OCC Believes Any Portion Of DP&L's Second Revised Application Fails To Comply With Legal Requirements**

DP&L's Interrogatory 4 requests information regarding whether OCC believes any portion of DP&L's Second Revised Application fails to comply with legal or regulatory requirements:

"Interrogatory 4: Identify any respect in which OCC claims 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."

OCC objected to this interrogatory as being "beyond the scope of discovery, unreasonable and unduly burdensome, constituting attorney work product, and seeking a legal opinion." Exhibit 6, p. 12. Instead of responding to the interrogatory, however, OCC stated that its "experts have not completed their analysis." Id.

OCC's response is inadequate. OCC is required to identify any such issues that it has now, and if OCC subsequently identifies other issues, then it can supplement its response. OCC should be compelled to provide a complete response to Interrogatory 4 based upon information that OCC currently possesses.

**B. Documents OCC May Introduce At Any Deposition Or Hearing In This Matter**

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

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

OCC objected to this request as "inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney client privilege." Exhibit 6, p. 17. OCC vaguely identified any of DP&L's responses to discovery requests in this proceeding as well as "DP&L, DPL, [and] AES filings with the Securities [and] Exchange Commission." Id. More concerning, however, OCC also, and even more vaguely identified, "filings," "discovery," "stipulations," and Commission "Orders and Entries in previous proceedings involving DP&L." Id.

Such response is inadequate and disregards the purpose of discovery as provided by Ohio Admin. Code § 4901-1-16. OCC should be compelled to specifically identify and produce all documents to which it referred to in its response.<sup>1</sup>

DP&L reserves its rights to object to any document that OCC attempts to introduce that was not produced.

**C. Writings Between OCC And Other Persons Relating To This Matter**

DP&L's Request for Production of Documents 11 requests writings between OCC and third parties that relate to this matter:

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<sup>1</sup> Prior to the procedural schedule being amended, on January 3, 2013, OCC noticed depositions of DP&L's witnesses, which were to begin on January 14, 2013. Having provided such notice, it is unlikely that OCC has not yet begun to specifically identify the documents it intends to use at depositions.

"Request for Production of Documents 11: All writings constituting or relating to communications among OCC and any other person (including, but not limited to, intervenors) relating to DP&L's ESP Application or MRO Application."

OCC objected to request as being "overly broad and unduly burdensome," seeking "information that is protected by the attorney client privilege and/or the trial preparation doctrine," and "inquiri[ng] into matters that are not relevant to the subject matter of the proceeding and are not 'reasonably calculated to lead to discovery of admissible evidence.'" Exhibit 6, p. 23 (citations omitted). In OCC's supplemental response, it stated that "[w]ritings relating to communications between OCC and IEU are the subject of a Motion for Protective Order filed by IEU (id.); OCC also produced 2 pages of email communications between OCC and Staff, and 2 pages between OCC and the Kroger Company.

To the extent that the Commission orders Industrial Energy Users-Ohio ("IEU") to produce its communications with other parties in this case, which it should so order, the Commission should also order OCC to produce all of the communications that either it or its counsel have had with other parties to this case, including IEU, relating to this case. Such documents are plainly relevant and are not privileged.

**D. Writings Between OCC And Other Persons Relating To The Commission's Decisions In AEP's ESP Proceeding**

DP&L's Request for Production of Documents 12 requests writings between OCC and third parties that relate the Commission's decisions in AEP's ESP proceeding:

"Request for Production of Documents 12: All writings constituting or relating to communications among OCC 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."

OCC objected to the request as being "overly broad and unduly burdensome," seeking "information that is protected by the attorney client privilege and/or the trial preparation doctrine," and "inquiri[ng] into matters that are not relevant to the subject matter of the proceeding and are not 'reasonably calculated to lead to discovery of admissible evidence.'" Exhibit 6, p. 24 (citations omitted). In its supplemental response, OCC stated that its "communications with other intervenors related to AEP's ESP proceeding ... are protected by the terms of a Joint Defense Agreement reached in that proceeding." *Id.*

OCC's objections are baseless and its response inadequate. Specifically, OCC'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 OCC's communications with third parties, which by definition, are not privileged.

OCC attempts to circumvent this well-established doctrine of privilege waiver by claiming privilege through a "Joint Defense Agreement" it entered into with parties in that proceeding. Exhibit 6, p. 24. This effort, however, is insufficient. First, a 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 a joint defense, they have traditionally [been] 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 among 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 that 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. OCC is a residential utility consumer advocate and educator. 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 residential customers. DP&L is willing to agree, for purposes of this motion only, that OCC has a common interest with customers or other customer groups.<sup>2</sup> Thus for example, an email between only OCC 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 exception to privilege waiver.

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

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<sup>2</sup> Parties with similar interests in the AEP proceeding include Industrial Energy Users-Ohio, Ohio Manufacturers' Association Energy Group, Ohio Energy Group, Ohio Hospital Association, The Kroger Company, Ohio Partners for Affordable Energy, 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.

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

**E. Writings Relating To This Matter Between And Among The Experts OCC Has Identified**

Finally, DP&L's Request for Production of Documents 13 requests OCC produce its communications with those individuals it has identified as potential expert witnesses it expects to call to testify on its behalf at the hearing:

"Request for Production of Documents 13: 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."

OCC objected to this request as being "overly broad and unduly burdensome," "seek[ing] information that is protected by the attorney client privilege and/or the trial preparation doctrine," and "inquir[ing] into matters that are not relevant to the subject matter of the proceeding and that are not 'reasonably calculated to lead to discovery of admissible evidence.'" Exhibit 6, p. 25 (citations omitted). Then, instead of responding to the request, OCC directed DP&L to OCC's response to Request for Production of Documents 11 in which OCC stated was withholding documents "pending the PUCO's ruling on IEU's Motion for Protective Order." Id., pp. 23, 25.

This response is entirely irrelevant. Again, to the extent that the OCC can use IEU's Motion for a Protective Order as a shield to withhold relevant, discoverable documents, it can use such shield only to protect documents solely between OCC and IEU. Here, communications between and among OCC and its experts do not fall within such category. OCC

should be compelled to produce the communications between and among OCC and the experts it identified in response to DP&L Interrogatory 3.

**III. Conclusion**

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

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Motion of The Dayton Power and Light Company to Compel the Office of the Ohio Consumers' Counsel to Answer Interrogatories and Produce Documents in Response to The Dayton Power and Light Company's First Set of Discovery Requests to the Office of the Ohio Consumers' Counsel has been served via electronic mail upon the following counsel of record, this 25th day of January, 2013:

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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. 12-672-EL-RDR
	:	

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**DECLARATION OF JEFFREY S. SHARKEY**

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I, Jeffrey S. Sharkey, declare as follows:

1. My name is Jeffrey S. Sharkey, and 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 the Office of the Ohio Consumers' Counsel (attached as Exhibit 1).
3. On January 10, 2013, DP&L was served with Responses and Objections to Dayton Power and Light's First Set of Discovery by the Office of the Ohio Consumers' Counsel (attached as Exhibit 2).

**EXHIBIT A**

4. On January 15, 2013, I advised Melissa Yost and Maureen Grady, both of whom are counsel for the Office of the Ohio Consumers' Counsel ("OCC") via email that OCC's responses to DP&L's discovery requests were inadequate, specifically pointing out the deficiencies, and noted DP&L would be filing a motion to compel in the event OCC failed to provide the requested information (attached as Exhibit 3).

5. On January 16, 2013, Ms. Yost responded to my email, stating OCC would "review [my] concerns and respond by the end of this week" (attached as Exhibit 4).

6. On January 18, 2013, Ms. Yost again responded to my email, reiterating certain objections and stating that OCC would supplement certain responses (attached as Exhibit 5).

7. On January 22, 2013, DP&L was served with Supplemental Responses and Objections to Dayton Power and Light's First Set of Discovery by the Office of the Ohio Consumers' Counsel (attached as Exhibit 6).

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

Dated January 25, 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

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**THE DAYTON POWER AND LIGHT COMPANY'S  
FIRST SET OF DISCOVERY  
TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Pursuant to Ohio Admin. Code § 4901-1-19, The Dayton Power and Light Company ("DP&L") requests that the Office of The Ohio Consumers' Counsel ("OCC") 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 the OCC'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 the OCC or owned or participated in any way in the OCC'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. "OCC" means the Office of The Ohio Consumers' Counsel 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 OCC 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 OCC asserts is reasonable.
- b. If the answer to the preceding interrogatory is negative, then explain why not.

### **RESPONSE:**

**INTERROGATORY 2:** State whether the OCC 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 OCC asserts is reasonable; (2) explain why OCC asserts that the level is reasonable; and (3) state the return on equity that OCC 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 OCC expects to testify at the hearing on its behalf, and state the subject matter on which each expert is expected to testify and provide a brief summary of such expert's expected testimony.

**RESPONSE:**

**INTERROGATORY 4:** Identify any respect in which OCC claims 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 OCC claims 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 OCC 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 OCC contends exist in the Second Revised Application, the supporting testimony, workpapers, schedules, or other documents, and identify the reason for that contention.

**RESPONSE:**

## REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All writings that OCC consulted or relied upon to prepare its responses to DP&L's discovery requests.
2. All writings that OCC 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 OCC in preparing OCC'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 between OCC and any residential customers relating to ESP proceeding or DP&L's ESP Application.
6. All writings constituting or relating to communications between OCC and any residential customers relating to AEP's, PUCO Case No. 11-346-EL-SSO.
7. All writings constituting or relating to communications between OCC and any residential customers relating to DP&L's ESP Application.
8. All writings constituting or relating to communications among OCC and any residential customers relating to DP&L's ESP Application.
9. All writings constituting or relating to communications among OCC and any residential customers relating to DP&L's MRO Application.
10. All writings constituting or relating to communications among OCC and any residential customers relating to the Commission's decisions in AEP's ESP proceeding, PUCO Case No. 11-346-EL-SSO.
11. All writings constituting or relating to communications among OCC and any other person (including, but not limited to, intervenors) relating to DP&L's ESP Application or MRO Application.
12. All writings constituting or relating to communications among OCC 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.

13. 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

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**CERTIFICATE OF SERVICE**

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

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Dayton Power and Light Company for        ) Case No. 12-426-EL-SSO  
Approval of its Market Rate Offer.        )

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

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

In the Matter of the Application of The        ) Case No. 12-429-EL-WVR  
Dayton Power and Light Company for        )  
Waiver of Certain Commission Rules.        )

In the Matter of the Application of The        ) Case No. 12-672-EL-RDR  
Dayton Power and Light Company to        )  
Establish Tariff Riders.                    )

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**RESPONSES AND OBJECTIONS TO DAYTON POWER AND LIGHT'S FIRST  
SET OF DISCOVERY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC"), by and through its counsel, hereby submits its Responses and Objections to the First Set of Interrogatories and Requests for Production of Documents submitted to OCC by The Dayton Power and Light Company ("DP&L" or the "Company") in the above-captioned case. OCC's responses to these discovery requests are being provided subject to, and without waiver of, the general objections stated below and the specific objections posed in response to

each interrogatory and request for production of documents. The general objections are hereby incorporated by reference into the individual response made to each discovery request. OCC's responses to these discovery requests are submitted without prejudice to, and without waiving any general objections not expressly set forth therein.

The provision of any response below shall not waive OCC's objections. The responses below, while based on diligent investigation and reasonable inquiry by OCC and its counsel, reflect only the current state of OCC's knowledge and understanding and belief with respect to the matters about which the discovery requests seek information, based upon the information and discovery to date. OCC's investigation is not yet complete and is continuing as of the date of the responses below. OCC anticipates the possibility that it may discover additional information and/or documents, and without obligating itself to do so, OCC reserves the right to continue its investigation and to modify or supplement the responses below, as required by the Ohio Adm. Code, with such pertinent information or documents as it may reasonably discover. The responses below are made without prejudice to OCC's right to rely upon or use subsequently discovered information or documents, or documents or information inadvertently omitted from the responses below as a result of mistake, error, or oversight. OCC reserves the right to object on appropriate grounds to the use of such information and/or documents. The fact that OCC, in the spirit of cooperation, has elected to provide information below in response to the Company's discovery requests shall not constitute or be deemed a waiver of OCC's objections. OCC hereby fully preserves all of its objections to the discovery request or the use of its responses for any purpose.

Furthermore, OCC's provision of responses to these discovery requests shall not be construed as a waiver of the attorney-client privilege, the trial preparation doctrine, or any other applicable privilege or doctrine. OCC reserves its right to file a motion for protective order under Ohio Adm. Code 4901-1-24 in order to protect OCC from annoyance, embarrassment, oppression or undue burden or expense or for any other reason.

### **GENERAL OBJECTIONS**

1. OCC objects to any discovery request as improper, overbroad, and unduly burdensome to the extent that they purport to impose upon OCC any obligations broader than those set forth in the Commission's rules or otherwise permitted by law. In part, the rules of discovery require that matters inquired into must be relevant to the subject matter of the proceeding, and must appear to be "reasonably calculated to lead to the discovery of admissible evidence." Ohio Adm. Code 4901-1-16(B).
2. OCC objects to these discovery requests and to the Company's Definitions and Instructions as improper, overbroad, and unduly burdensome to the extent that they improperly seek or purport to require the disclosure of information protected by the attorney-client privilege, trial preparation doctrine or any other applicable privilege or doctrine. Such responses as may hereafter be given shall not include any information protected by such privileges or doctrines, and the inadvertent disclosure of such information shall not be deemed as a waiver of any such privilege or doctrine.

3. OCC objects to these discovery requests and to the Company's Definitions and Instructions to the extent that they improperly seek or purport to require OCC to provide documents and information not in OCC's possession, custody or control.
4. The objections and responses contained herein and documents produced in response hereto are not intended nor should they be construed to waive OCC's right to object to these requests, responses or documents produced in response hereto, or the subject matter of such requests, responses, or documents, as to their competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, in or at any hearing of this or any other proceeding.
5. OCC objects to these discovery requests to the extent they improperly seek or purport to require the production of documents or information which is not relevant to the subject matter of the proceeding nor reasonably calculated to lead to the discovery of admissible evidence.
6. OCC objects to these discovery requests and to the Company's Definitions and Instructions to the extent they improperly seek or purport to require production of documents in a form other than how the documents are maintained in the regular course of business.
7. OCC objects to these discovery requests insofar as they request the production of documents or information that are publicly available or already in the Company's possession, custody, or control.
8. OCC objects to each and every discovery request that seeks to obtain "all," "each" or "any" document to the extent that such requests are overly broad and unduly burdensome and seek information that is not relevant to the subject matter of this

proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

9. OCC objects to these discovery requests to the extent that such requests are not limited to a stated time period or identify a stated period of time that is longer than is relevant for purposes of this proceeding, as such discovery is unduly broad and overly burdensome.
10. OCC objects to these discovery requests to the extent they are vague, ambiguous, use terms that are subject to multiple interpretations but are not properly defined for purposes of these discovery requests, or otherwise provide no basis from which OCC can determine what information is sought.
11. The objections and responses contained herein are not intended nor should they be construed to waive the OCC's rights to object to other discovery involving or relating to the subject matter of these requests, responses or documents produced in response hereto.

## INTERROGATORIES

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

**RESPONSE:**

**Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege.**

**OCC also objects to this interrogatory as vague and ambiguous and seeks a legal opinion. The interrogatory is vague and ambiguous because it does not indicate whether the question pertains to the instant Electric Security Plan (ESP) proceeding, ESP proceedings in general, base rate proceedings before the PUCO, or any proceeding before the PUCO. Further, although the Company's generation assets are now subject to the competitive market, it does not indicate whether such assets are included in this question or not.**

**Without waiving any specific or general objection, OCC responds as follows: If Ohio law provides that DP&L should be given an opportunity to earn a reasonable return on equity, then DP&L should be given such an opportunity (to the extent provided by Ohio law.) At this time, OCC has not identified a reasonable return on equity that DP&L should be given the opportunity to earn in this proceeding**

- a. If the answer to the preceding interrogatory is affirmative, then identify the return on equity that OCC asserts is reasonable.

**RESPONSE:**

**Please see the response and objections provided to Interrogatory 1 above. To the extent DP&L interprets OCC's response as being affirmative, the explanation is provided above.**

- b. If the answer to the preceding interrogatory is negative, then explain why not.

**RESPONSE:**

**Please see the response and objections provided to the Interrogatory 1 above. To the extent DP&L interprets OCC's response as being negative, the explanation is provided above.**

INTERROGATORY 2: State whether the OCC 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.

**RESPONSE:**

**Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. OCC also objects to this interrogatory as vague and ambiguous and seeks a legal opinion. It is unclear whether the question is asked with respect to the instant Electric Security Plan ("ESP") proceedings, ESP proceedings in general, base rate proceedings before the PUCO, or any proceeding before the PUCO.**

**Without waiving any specific or general objection, OCC responds as follows:**

**If Ohio law provides that DP&L may be permitted to implement a non-bypassable charge, then DP&L may implement such a charge (to the extent provided by Ohio law.) OCC has not identified a level of non-bypassable charge that is reasonable.**

- a. If the answer to the preceding interrogatory is affirmative, then (1) identify the level of non-bypassable charges that OCC asserts is reasonable; (2) explain why OCC asserts that the level is reasonable; and (3) state the return on equity that OCC contends that DP&L would earn with such a charge.

**RESPONSE:**

**Please see the response and objections provided to the Interrogatory 2 above. To the extent DP&L interprets OCC's response as being affirmative, the explanation is provided above.**

- b. If the answer to preceding interrogatory is negative, then explain why not.

**RESPONSE:**

**Please see the response and objections provided to the Interrogatory 2 above. To the extent DP&L interprets OCC's response as being negative, the explanation is provided above.**

**INTERROGATORY 3:** Pursuant to Ohio Admin. Code § 4901-1-16(C), identify each expert witness that OCC expects to testify at the hearing on its behalf, and state the

subject matter on which each expert is expected to testify and provide a brief summary of such expert's expected testimony.

**RESPONSE:**

**Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege.**

**Without waiving any specific or general objections, OCC responds as follows:**

**At this time, OCC has not identified any expert witness that will testify on OCC's behalf. OCC reserves the right to identify expert witnesses at any time prior to the closing of the record. If OCC identifies any expert witness that will testify in this proceeding, OCC will supplement this response consistent with Ohio Adm. Code 4901-1-16(D).**

INTERROGATORY 4: Identify any respect in which OCC claims 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: OCC objects to this interrogatory as beyond the scope of discovery, unreasonable and unduly burdensome, constituting attorney work product, and seeking a legal opinion. To the extent that the question seeks to elicit expert opinion regarding the Company's failure to adhere to applicable policy requirements, OCC has not yet determined what expert(s), if any, will testify on such subject matter but will identify such expert(s) and the subject matter(s) upon which they will testify**

**regarding such issues once it is determined that OCC will present expert testimony on such subject matter(s) and the expert who will present such testimony.**

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 OCC claims that DP&L is not entitled to receive under applicable laws and regulations, and identify the reason for that contention.

**RESPONSE: OCC objects to this interrogatory as beyond the scope of discovery, unreasonable and unduly burdensome, constituting attorney work product, and seeking a legal opinion. To the extent that the question seeks to elicit expert opinion regarding the permissible scope of charges, rates, and relief that is sought by DP&L, OCC has not yet determined what expert(s), if any, will testify on such subject matter but will identify such expert(s) and the subject matter(s) upon which they will testify regarding such issues once it is determined that OCC will present expert testimony on such subject matter(s) and the expert who will present such testimony.**

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 OCC claims is not adequately supported in DP&L's filing, and identify the reason for that contention.

**RESPONSE: OCC objects to this interrogatory as beyond the scope of discovery, unreasonable and unduly burdensome, and constituting attorney work product. To**

**the extent that the question seeks to elicit expert opinion regarding whether the Company's filing is adequately supported, OCC has not yet determined what expert(s), if any, will testify on such subject matter but will identify such expert(s) and the subject matter(s) upon which they will testify regarding such issues once it is determined that OCC will present expert testimony on such subject matter(s) and the expert who will present such testimony.**

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

**RESPONSE: OCC objects to this interrogatory as beyond the scope of discovery, unreasonable and unduly burdensome, and constituting attorney work product. To the extent that the question seeks to elicit expert opinion regarding whether the Company's filing contains mathematical, computational or other errors, OCC has not yet determined what expert(s), if any, will testify on such subject matter but will identify such expert(s) and the subject matter(s) upon which they will testify regarding such issues once it is determined that OCC will present expert testimony on such subject matter(s) and the expert who will present such testimony.**

**OBJECTIONS AND RESPONSES TO REQUESTS FOR DOCUMENTS**

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

**RESPONSE:**

**Objection. Request for Production No. 1 seeks information that was objected to in response to the Interrogatories Nos. 1 through 7 above, and those objections are incorporated herein. OCC also objects because Request for Production No. 1 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

**OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

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

**RESPONSE:**

**Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. Without waiving any specific or general objection, OCC responds as follows:**

**At this time, OCC has not identified any writings that it 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 OCC in preparing OCC's discovery requests to DP&L.

**RESPONSE:**

**Objection. Request for Production No. 3 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

**See filings in this proceeding per Ohio Adm. Code 4901-1-20(D).**

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

**RESPONSE:**

**Objection. Request for Production No. 4 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

**See filings in PUCO Case No. 11-346-EL-SSO per Ohio Adm. Code 4901-1-20(D).**

5. All writings constituting or relating to communications between OCC and any residential customers relating to ESP proceeding or DP&L's ESP Application.

**RESPONSE:**

**Objection. Request for Production No. 5 is overly broad and unduly burdensome. OCC objects to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

**Without waiving any specific or general objection, the following response is provided: OCC has identified a document responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

6. All writings constituting or relating to communications between OCC and any residential customers relating to AEP's, PUCO Case No. 11-346-EL-SSO.

**RESPONSE:**

**Objection. Request for Production No. 6 is overly broad and unduly burdensome. OCC Objects to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided: OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

7. All writings constituting or relating to communications between OCC and any residential customers relating to DP&L's ESP Application.

**RESPONSE:**

**Objection. Request for Production No. 7 is overly broad and unduly burdensome. OCC Objects to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. In addition, this request inquires into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided: OCC has identified a document responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

8. All writings constituting or relating to communications among OCC and any residential customers relating to DP&L's ESP Application.

**RESPONSE:**

**See OCC's response and objections to Request for Production No. 7.**

9. All writings constituting or relating to communications among OCC and any residential customers relating to DP&L's MRO Application.

**RESPONSE:**

**See OCC's response and objections to Request for Production No. 7.**

10. All writings constituting or relating to communications among OCC and any residential customers relating to the Commission's decisions in AEP's ESP proceeding, PUCO Case No. II-346-EL-SSO.

**RESPONSE:**

**Objection. Request for Production No. 10 is overly broad and unduly burdensome. OCC Objects to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided: OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

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

**RESPONSE:**

**Objection. Request for Production No. 11 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

12. All writings constituting or relating to communications among OCC 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:**

**Objection. Request for Production No. 12 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

**OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party. See also filings in PUCO Case No. 11-346-EL-SSO per Ohio Adm. Code 4901-1-20(D).**

13. 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:**

**Objection. Request for Production No. 13 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B). See response and objections to Interrogatory No. 3.**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of these Responses and Objections was served in accordance with Ohio Adm. Code 4901-1-18 on the persons stated below via electronic transmission, this 10th day of January, 2013.

/s/ Melissa R. Yost

Melissa R. Yost

Assistant Consumers' Counsel

### SERVICE LIST

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**From:** Sharkey, Jeffrey S.  
**Sent:** Tuesday, January 15, 2013 5:44 PM  
**To:** Melissa Yost; MAUREEN GRADY  
**Cc:** Judi L. Sobecki Esq. ([Judi.Sobecki@AES.com](mailto:Judi.Sobecki@AES.com)); Dona R Seger-Lawson; Faruki, Charles J.; Sadlowski, Adam V.; Cline, Kelly M.  
**Subject:** OCC's Discovery Responses [IWOV-DMS.FID83439]

Melissa and Maureen:

OCC's responses to DP&L's discovery requests are almost entirely inadequate. Specifically:

1. DP&L Rogs 1-2: They require either an affirmative or a negative response. As you know, it is appropriate to ask questions of law in interrogatories; thus OCC's response that OCC supports such recovery if it is provided for under Ohio law is inadequate. Please provide an affirmative or negative response.
2. DP&L Rog 3: OAC 4901-1-16(C) requires OCC to identify persons that it "expects" to be witnesses. OCC must therefore identify the persons that it currently expects to be witnesses; if OCC later changes its mind, it must supplement the response.
3. DP&L Rogs 4-7: OCC must identify any errors, etc that it currently knows of or claims to exist. The fact that OCC has not made a final decision as to experts does not matter; OCC must identify any responsive information that it currently possesses. OCC can supplement its responses later.
4. DP&L RFP 1, 5-10, 12:: OCC states that it will produce documents. The only documents that I have received are OCC press releases and the like. Are those the only responsive documents that OCC possess?
5. DP&L RFP 2: OCC is required to produce any documents that it may introduce as exhibits. If OCC identifies additional responsive documents later, it can produce them then. DP&L reserves its rights to object to any document that OCC attempts to introduce that was not produced.
6. DP&L RFP 3: The request asked OCC to produce all documents that it relied upon to prepare discovery requests. OCC's response identifies only documents filed in this case. I know that is incomplete, since OCC has inquired regarding DPL SEC filings. What work did OCC do to verify that its answer to this request was complete?
7. DP&L RFP 11: OCC's communications with other parties to this case relating to this case are plainly relevant, and are not privileged. They must be produce immediately. To the extent that OCC stands on its objections, please confirm that OCC will bring copies of those documents to the January 30 discovery conference for the Attorney Examiner to inspect.
8. DP&L RFP 12: See RFP 11.
9. DP&L RFP 13: DP&L is entitled to all communications that OCC has had with persons that OCC expects to be experts. Please produce immediately.

Please let me know before the end of the week whether OCC will provide the requested information so that DP&L can file a motion to compel in advance of the January 30 conference.

Jeff.

**EXHIBIT 3**

Jeffrey S. Sharkey, Esq. | Faruki Ireland & Cox P.L.L. | Email: [jsharkey@ficlaw.com](mailto:jsharkey@ficlaw.com)  
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**From:** Melissa Yost [<mailto:yost@occ.state.oh.us>]  
**Sent:** Wednesday, January 16, 2013 8:52 AM  
**To:** Sharkey, Jeffrey S.; MAUREEN GRADY  
**Cc:** DonaR Seger-Lawson; Judi L. Sobecki Esq. ([Judi.Sobecki@AES.com](mailto:Judi.Sobecki@AES.com)); Sadlowski, Adam V.; Faruki, Charles J.; Cline, Kelly M.  
**Subject:** Re: OCC's Discovery Responses [IWOV-DMS.FID83439]

Hi Jeff,

OCC will review your concerns and respond by the end of this week as you have requested. Thank you.

>>> "Sharkey, Jeffrey S." <[JSharkey@ficlaw.com](mailto:JSharkey@ficlaw.com)> 1/15/2013 5:44 PM >>>  
Melissa and Maureen:

OCC's responses to DP&L's discovery requests are almost entirely inadequate. Specifically:

1. DP&L Rogs 1-2: They require either an affirmative or a negative response. As you know, it is appropriate to ask questions of law in interrogatories; thus OCC's response that OCC supports such recovery if it is provided for under Ohio law is inadequate. Please provide an affirmative or negative response.
2. DP&L Rog 3: OAC 4901-1-16(C) requires OCC to identify persons that it "expects" to be witnesses. OCC must therefore identify the persons that it currently expects to be witnesses; if OCC later changes its mind, it must supplement the response.
3. DP&L Rogs 4-7: OCC must identify any errors, etc that it currently knows of or claims to exist. The fact that OCC has not made a final decision as to experts does not matter; OCC must identify any responsive information that it currently possesses. OCC can supplement its responses later.
4. DP&L RFP 1, 5-10, 12:: OCC states that it will produce documents. The only documents that I have received are OCC press releases and the like. Are those the only responsive documents that OCC possess?
5. DP&L RFP 2: OCC is required to produce any documents that it may introduce as exhibits. If OCC identifies additional responsive documents later, it can produce them then. DP&L reserves its rights to object to any document that OCC attempts to introduce that was not produced.
6. DP&L RFP 3: The request asked OCC to produce all documents that it relied upon to prepare discovery requests. OCC's response identifies only documents filed in this case. I know that is incomplete, since OCC has inquired regarding DPL SEC filings. What work did OCC do to verify that its answer to this request was complete?
7. DP&L RFP 11: OCC's communications with other parties to this case relating to this case are plainly relevant, and are not privileged. They must be produce immediately. To the extent that OCC stands on its objections, please confirm that OCC will bring copies of those documents to the January 30 discovery conference for the Attorney Examiner to inspect.
8. DP&L RFP 12: See RFP 11.
9. DP&L RFP 13: DP&L is entitled to all communications that OCC has had with persons that OCC expects to be experts. Please produce immediately.

**EXHIBIT 4**

Please let me know before the end of the week whether OCC will provide the requested information so that DP&L can file a motion to compel in advance of the January 30 conference.

Jeff.

Jeffrey S. Sharkey, Esq. | Faruki Ireland & Cox P.L.L. | Email: [jsharkey@ficlaw.com](mailto:jsharkey@ficlaw.com)

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**From:** Melissa Yost [mailto:yost@occ.state.oh.us]  
**Sent:** Friday, January 18, 2013 5:32 PM  
**To:** Sharkey, Jeffrey S.  
**Cc:** DonaR Seger-Lawson; Judi L. Sobecki Esq. (Judi.Sobecki@AES.com); Sadlowski, Adam V.; Faruki, Charles J.; Cline, Kelly M.; Tad Berger; MAUREEN GRADY  
**Subject:** Re: OCC's Discovery Responses [IWOV-DMS.FID83439]

Hi Jeff,

In regards to your email below, OCC has now identified expert witnesses that are expected to testify at the hearing regarding DP&L's pending ESP application. Consistent with the Commission's rules, OCC will supplement its response to Interrogatories No 1 through 7.

Additionally, OCC will supplement its response to Requests to Produce Numbers 1, 2, 3.

OCC has produced all of the documents that have been identified as being responsive to Requests to Produce Numbers 5 through 10 at this time.

In regards to Request to Produce No. 11, OCC will supplement its response and produce additional responsive documents that are not privileged. But OCC will not produce any documents (that are subject of IEU's pending Motion for Protection) unless the Attorney Examiner denies the motion.

In regards to Request to Produce No. 12, OCC will not be producing any additional documents. This request inquires into matters that are not relevant to the subject matter of this proceeding and is not "reasonably calculated to lead to discovery of admissible evidence." Additionally, OCC's written communications with other parties in that case are protected by a Joint Defense Agreement.

In regards to Request to Produce No. 13, DP&L requests that OCC produce "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." Now that OCC has identified experts that are expected to testify, OCC will supplement this response consistent with the Commission rules. However, OCC will not produce any communications with its expert witnesses that were prepared in anticipation of litigation and/or are protected by the attorney-client privilege.

OCC will provide its supplement to you on January 22, 2013. Have a nice weekend!

Melissa

>>> "Sharkey, Jeffrey S." <[JSharkey@ficlaw.com](mailto:JSharkey@ficlaw.com)> 1/15/2013 5:44 PM >>>

Melissa and Maureen:

OCC's responses to DP&L's discovery requests are almost entirely inadequate. Specifically:

1. DP&L Rogs 1-2: They require either an affirmative or a negative response. As you know, it is appropriate to ask questions of law in interrogatories; thus OCC's response that OCC supports such recovery if it is provided for under Ohio law is inadequate. Please provide an affirmative or negative response.
2. DP&L Rog 3: OAC 4901-1-16(C) requires OCC to identify persons that it "expects" to be witnesses. OCC must therefore identify the persons that it currently expects to be witnesses; if OCC later changes its mind, it must supplement the response.
3. DP&L Rogs 4-7: OCC must identify any errors, etc that it currently knows of or claims to exist. The fact that OCC has not made a final decision as to experts does not matter; OCC must identify any responsive information that it currently possesses. OCC can supplement its responses later.
4. DP&L RFP 1, 5-10, 12:: OCC states that it will produce documents. The only documents that I have received are OCC press releases and the like. Are those the only responsive documents that OCC possess?
5. DP&L RFP 2: OCC is required to produce any documents that it may introduce as exhibits. If OCC identifies additional responsive documents later, it can produce them then. DP&L reserves its rights to object to any document that OCC attempts to introduce that was not produced.
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Jeff.

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

In the Matter of the Application of The        ) Case No. 12-429-EL-WVR  
Dayton Power and Light Company for        )  
Waiver of Certain Commission Rules.       )

In the Matter of the Application of The        ) Case No. 12-672-EL-RDR  
Dayton Power and Light Company to        )  
Establish Tariff Riders.        )

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**SUPPLEMENTAL  
RESPONSES AND OBJECTIONS TO DAYTON POWER AND LIGHT'S FIRST  
SET OF DISCOVERY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

The Office of the Ohio Consumers' Counsel ("OCC"), by and through its counsel, hereby submits its Supplemental Responses and Objections to the First Set of Interrogatories and Requests for Production of Documents submitted to OCC by The Dayton Power and Light Company ("DP&L" or the "Company") in the above-captioned case. OCC's supplemental responses to these discovery requests are being provided subject to, and without waiver of, the general objections stated below and the specific

objections posed in response to each interrogatory and request for production of documents. The general objections are hereby incorporated by reference into the individual response made to each discovery request. OCC's responses to these discovery requests are submitted without prejudice to, and without waiving any general objections not expressly set forth therein.

The provision of any response below shall not waive OCC's objections. The responses below, while based on diligent investigation and reasonable inquiry by OCC and its counsel, reflect only the current state of OCC's knowledge and understanding and belief with respect to the matters about which the discovery requests seek information, based upon the information and discovery to date. OCC's investigation is not yet complete and is continuing as of the date of the responses below. OCC anticipates the possibility that it may discover additional information and/or documents, and without obligating itself to do so, OCC reserves the right to continue its investigation and to modify or supplement the responses below, as required by the Ohio Adm. Code, with such pertinent information or documents as it may reasonably discover. The responses below are made without prejudice to OCC's right to rely upon or use subsequently discovered information or documents, or documents or information inadvertently omitted from the responses below as a result of mistake, error, or oversight. OCC reserves the right to object on appropriate grounds to the use of such information and/or documents. The fact that OCC, in the spirit of cooperation, has elected to provide information below in response to the Company's discovery requests shall not constitute or be deemed a waiver of OCC's objections. OCC hereby fully preserves all of its objections to the discovery request or the use of its responses for any purpose.

Furthermore, OCC's provision of responses to these discovery requests shall not be construed as a waiver of the attorney-client privilege, the trial preparation doctrine, or any other applicable privilege or doctrine. OCC reserves its right to file a motion for protective order under Ohio Adm. Code 4901-1-24 in order to protect OCC from annoyance, embarrassment, oppression or undue burden or expense or for any other reason.

### **GENERAL OBJECTIONS**

1. OCC objects to any discovery request as improper, overbroad, and unduly burdensome to the extent that they purport to impose upon OCC any obligations broader than those set forth in the Commission's rules or otherwise permitted by law. In part, the rules of discovery require that matters inquired into must be relevant to the subject matter of the proceeding, and must appear to be "reasonably calculated to lead to the discovery of admissible evidence." Ohio Adm. Code 4901-1-16(B).
2. OCC objects to these discovery requests and to the Company's Definitions and Instructions as improper, overbroad, and unduly burdensome to the extent that they improperly seek or purport to require the disclosure of information protected by the attorney-client privilege, trial preparation doctrine or any other applicable privilege or doctrine. Such responses as may hereafter be given shall not include any information protected by such privileges or doctrines, and the inadvertent disclosure of such information shall not be deemed as a waiver of any such privilege or doctrine.

3. OCC objects to these discovery requests and to the Company's Definitions and Instructions to the extent that they improperly seek or purport to require OCC to provide documents and information not in OCC's possession, custody or control.
4. The objections and responses contained herein and documents produced in response hereto are not intended nor should they be construed to waive OCC's right to object to these requests, responses or documents produced in response hereto, or the subject matter of such requests, responses, or documents, as to their competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, in or at any hearing of this or any other proceeding.
5. OCC objects to these discovery requests to the extent they improperly seek or purport to require the production of documents or information which is not relevant to the subject matter of the proceeding nor reasonably calculated to lead to the discovery of admissible evidence.
6. OCC objects to these discovery requests and to the Company's Definitions and Instructions to the extent they improperly seek or purport to require production of documents in a form other than how the documents are maintained in the regular course of business.
7. OCC objects to these discovery requests insofar as they request the production of documents or information that are publicly available or already in the Company's possession, custody, or control.
8. OCC objects to each and every discovery request that seeks to obtain "all," "each" or "any" document to the extent that such requests are overly broad and unduly burdensome and seek information that is not relevant to the subject matter of this

proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

9. OCC objects to these discovery requests to the extent that such requests are not limited to a stated time period or identify a stated period of time that is longer than is relevant for purposes of this proceeding, as such discovery is unduly broad and overly burdensome.
10. OCC objects to these discovery requests to the extent they are vague, ambiguous, use terms that are subject to multiple interpretations but are not properly defined for purposes of these discovery requests, or otherwise provide no basis from which OCC can determine what information is sought.
11. The objections and responses contained herein are not intended nor should they be construed to waive the OCC's rights to object to other discovery involving or relating to the subject matter of these requests, responses or documents produced in response hereto.

## INTERROGATORIES

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

**RESPONSE:**

**Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege.**

**OCC also objects to this interrogatory as vague and ambiguous and seeks a legal opinion. The interrogatory is vague and ambiguous because it does not indicate whether the question pertains to the instant Electric Security Plan (ESP) proceeding, ESP proceedings in general, base rate proceedings before the PUCO, or any proceeding before the PUCO. Further, although the Company's generation assets are now subject to the competitive market, it does not indicate whether such assets are included in this question or not.**

**Without waiving any specific or general objection, OCC responds as follows:**

**If Ohio law provides that DP&L should be given an opportunity to earn a reasonable return on equity, then DP&L should be given such an opportunity (to the extent provided by Ohio law.) At this time, OCC has not identified a reasonable return on equity that DP&L should be given the opportunity to earn in this proceeding.**

**Supplemental Response (1/22/2013): Without waiving any specific or general objection, DP&L should be given, through appropriate PUCO base rate**

proceedings, an opportunity to earn a reasonable return on equity on its regulated rate base, to the extent that such rate base is used and useful, does not constitute excess capacity, is the result of reasonable and prudent planning, the Company has maintained reasonable and adequate service to customers, and the acquisition and use of such property is otherwise consistent with sound ratemaking principles and policies. At this point in time, only transmission and distribution rate base is subject to regulation. Generation rate base is not subject to regulation. Pursuant to Section 4928.38 of the Revised Code, subsequent to December 31, 2003, the Company is “wholly responsible” for how to use generation revenues . . . wholly responsible for whether it is in a competitive position” and “fully on its own in the competitive [generation] market.”

- a. If the answer to the preceding interrogatory is affirmative, then identify the return on equity that OCC asserts is reasonable.

**RESPONSE:**

**Please see the response and objections provided to Interrogatory 1 above. To the extent DP&L interprets OCC’s response as being affirmative, the explanation is provided above.**

- b. If the answer to the preceding interrogatory is negative, then explain why not.

**RESPONSE:**

**Please see the response and objections provided to the Interrogatory 1 above. To the extent DP&L interprets OCC's response as being negative, the explanation is provided above.**

INTERROGATORY 2: State whether the OCC 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.

**RESPONSE:**

**Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. OCC also objects to this interrogatory as vague and ambiguous and seeks a legal opinion. It is unclear whether the question is asked with respect to the instant Electric Security Plan ("ESP") proceedings, ESP proceedings in general, base rate proceedings before the PUCO, or any proceeding before the PUCO.**

**Without waiving any specific or general objection, OCC responds as follows:**

**If Ohio law provides that DP&L may be permitted to implement a non-bypassable charge, then DP&L may implement such a charge (to the extent provided by Ohio law.) OCC has not identified a level of non-bypassable charge that is reasonable.**

Supplemental Response (1/22/2013): **Without waiving any specific or general objection, Senate Bill 221, and, in particular, R.C. 4928.143, do not provide "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.” R.C. 4928.143(B)(2) does provide that an electric security plan may include non-bypassable charges for specified items, subject to approval by the Commission under the terms of R.C. 4928.143(C). However, “the opportunity to earn a reasonable return on equity” is not one of the items which is specified as being an item which may be included in an electric security plan under R.C. 4928.143(B)(2). Furthermore, an electric security plan must always be more favorable in the aggregate than a plan that would otherwise apply under R.C. 4928.142.**

- a. If the answer to the preceding interrogatory is affirmative, then (1) identify the level of non-bypassable charges that OCC asserts is reasonable; (2) explain why OCC asserts that the level is reasonable; and (3) state the return on equity that OCC contends that DP&L would earn with such a charge.

**RESPONSE:**

**Please see the response and objections provided to the Interrogatory 2 above. To the extent DP&L interprets OCC’s response as being affirmative, the explanation is provided above.**

- b. If the answer to preceding interrogatory is negative, then explain why not.

**RESPONSE:**

**Please see the response and objections provided to the Interrogatory 2 above. To the extent DP&L interprets OCC's response as being negative, the explanation is provided above.**

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

**RESPONSE:**

**Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege.**

**Without waiving any specific or general objections, OCC responds as follows:**

**At this time, OCC has not identified any expert witness that will testify on OCC's behalf. OCC reserves the right to identify expert witnesses at any time prior to the closing of the record. If OCC identifies any expert witness that will testify in this proceeding, OCC will supplement this response consistent with Ohio Adm. Code 4901-1-16(D).**

**Supplemental Response (1/22/2013): Without waiving any specific or general objections, OCC identifies the following expert witnesses:**

- 1. Kathy Hagans may testify about any or all of the following subjects:  
Reconciliation Rider Corporate Separation Plan; Transmission Cost  
Recovery Rider;**

2. Daniel Duann may testify about any or all of the following subjects: Service Stability Rider, Financial Integrity, Switching Tracker, and MRO v. ESP;
3. Greg Slone may testify about any or all of the following subjects: Competitive Bid Pricing, Auction products, Switching levels, Fuel Rider;
4. Beth Hixon may testify about any or all of the following subjects: ESP v. MRO Test, Switching Tracker;
5. Jim Williams may testify about any or all of the following subjects: Affordability, Billing system update;
6. Wilson Gonzalez may testify about any or all of the following subjects: Rider AER, Yankee Solar;
7. Jim Wilson (Consultant) may testify about any or all of the following subjects: Auction price forecast;
8. Ken Rose (Consultant) may testify about any or all of the following subjects: Financial Integrity, Stranded Costs, Blending Rates; and
9. Scott Rubin (Consultant) may testify about any or all of the following subjects: Rate Design/Allocation.

OCC reserves the right to identify additional witnesses to testify about any or all of the above-indicated subjects or to testify about additional subjects, or to identify additional subjects about which the above-witnesses will testify.

INTERROGATORY 4: Identify any respect in which OCC claims 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:** OCC objects to this interrogatory as beyond the scope of discovery, unreasonable and unduly burdensome, constituting attorney work product, and seeking a legal opinion. To the extent that the question seeks to elicit expert opinion regarding the Company's failure to adhere to applicable policy requirements, OCC has not yet determined what expert(s), if any, will testify on such subject matter but will identify such expert(s) and the subject matter(s) upon which they will testify regarding such issues once it is determined that OCC will present expert testimony on such subject matter(s) and the expert who will present such testimony.

Supplemental Response (1/22/2013): Without waiving any specific or general objections, OCC's experts have not completed their analysis of the supporting testimony, workpapers, schedules, or other documents submitted by DP&L as part of the Second Revised Application for the purpose of determining whether the form of such filed papers complies with applicable legal and regulatory requirements. Nor have OCC's experts, to date, identified shortcomings in the form of the filing. As discussed in response No. 5 below, however, and, as will be discussed in the testimony of OCC's witnesses, the relief requested in the Second Revised Application is inconsistent with that authorized by law in numerous respects. OCC reserves the right to analyze shortcomings in the form, as well as substance, of the filing, and to update this response accordingly.

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 OCC claims that DP&L is not entitled to receive under applicable laws and regulations, and identify the reason for that contention.

**RESPONSE:** OCC objects to this interrogatory as beyond the scope of discovery, unreasonable and unduly burdensome, constituting attorney work product, and seeking a legal opinion. To the extent that the question seeks to elicit expert opinion regarding the permissible scope of charges, rates, and relief that is sought by DP&L, OCC has not yet determined what expert(s), if any, will testify on such subject matter but will identify such expert(s) and the subject matter(s) upon which they will testify regarding such issues once it is determined that OCC will present expert testimony on such subject matter(s) and the expert who will present such testimony.

Supplemental Response (1/22/2013): Without waiving any specific or general objections, at this point in time, it is OCC's position that DP&L is not entitled to the proposed Service Stability Rider and Switching Tracker under the terms of R.C. 4928.143. OCC is still analyzing whether DP&L is entitled to other charges, rates or relief sought in the Second Revised Application pursuant to applicable statutes and regulations. There are numerous reasons why DP&L is not entitled to the proposed Service Stability Rider and Switching Tracker, which will be set forth in the testimony OCC's expert witnesses. OCC reserves the right to challenge any or all of the charges, rates or other relief sought by DP&L, and to update this response accordingly.

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 OCC claims is not adequately supported in DP&L's filing, and identify the reason for that contention.

**RESPONSE:** OCC objects to this interrogatory as beyond the scope of discovery, unreasonable and unduly burdensome, and constituting attorney work product. To the extent that the question seeks to elicit expert opinion regarding whether the Company's filing is adequately supported, OCC has not yet determined what expert(s), if any, will testify on such subject matter but will identify such expert(s) and the subject matter(s) upon which they will testify regarding such issues once it is determined that OCC will present expert testimony on such subject matter(s) and the expert who will present such testimony.

Supplemental Response (1/22/2013): Without waiving any specific or general objections, consistent with the foregoing response to Interrogatory No. 5, DP&L has not adequately supported its claims for either the Service Stability Rider or the Switching Tracker as such charges are not permitted under the terms of R.C. 4928.143. Nor has the Company adequately supported such claims from a factual standpoint as will be explained by OCC's expert witnesses in their testimony. OCC is still analyzing whether DP&L is entitled to other charges, rates or relief sought in the Second Revised Application pursuant to applicable statutes and regulations. OCC reserves the right to challenge any or all of the charges, rates or other relief sought by DP&L, and to update this response accordingly.

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

**RESPONSE:** OCC objects to this interrogatory as beyond the scope of discovery, unreasonable and unduly burdensome, and constituting attorney work product. To the extent that the question seeks to elicit expert opinion regarding whether the Company's filing contains mathematical, computational or other errors, OCC has not yet determined what expert(s), if any, will testify on such subject matter but will identify such expert(s) and the subject matter(s) upon which they will testify regarding such issues once it is determined that OCC will present expert testimony on such subject matter(s) and the expert who will present such testimony.

Supplemental Response (1/22/2013): Without waiving any specific or general objections, at this point in time, OCC has not identified mathematical or computational errors in the Second Revised Application, the supporting testimony, workpapers, schedules or other documents.

**OBJECTIONS AND RESPONSES TO REQUESTS FOR DOCUMENTS**

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

**RESPONSE:**

**Objection. Request for Production No. 1 seeks information that was objected to in response to the Interrogatories Nos. 1 through 7 above, and those objections are incorporated herein. OCC also objects because Request for Production No. 1 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party.

**Supplemental Response (1/22/2013): Without waiving any specific or general objections, OCC consulted or relied upon the following writings to prepare its responses to DP&L’s discovery requests:**

- a. IEU’s responses to DP&L’s discovery requests directed to IEU.
- b. DP&L’s Motion to Compel and IEU’s Motion for a Protective Order. See Ohio Adm. Code 4901-1-20(D).

c. Revised Code Title 49. See Ohio Adm. Code 4901-1-20(D).

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

**RESPONSE:**

Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. Without waiving any specific or general objection, OCC responds as follows:

At this time, OCC has not identified any writings that it may introduce at any depositions or hearings in this matter.

**Supplemental Response (1/22/2013):** Without waiving any specific or general objections, OCC may introduce at any depositions or hearings in this matter, any or all of the following:

- a. DP&L's Responses to discovery requests of any party to this proceeding
- b. DP&L, DPL & AES filings with the Securities & Exchange Commission. See Ohio Adm. Code 4901-1-20(D).
- c. DP&L filings and or discovery responses in previous proceedings reflecting its financial condition or projected financial condition.
- d. Stipulations between parties in previous proceedings involving DP&L wherein DP&L agreed to a specified result. See Ohio Adm. Code 4901-1-20(D).
- e. Commission Opinion and Orders and Entries in previous proceedings involving DP&L wherein the PUCO provided a specified result for DP&L. See Ohio Adm. Code 4901-1-20(D).

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

**RESPONSE:**

**Objection. Request for Production No. 3 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

**See filings in this proceeding per Ohio Adm. Code 4901-1-20(D).**

**Supplemental Response (1/22/2013): Without waiving any specific or general objections, in preparing OCC's discovery requests in this matter, OCC reviewed/consulted the following materials:**

- a. **Company filing. See Ohio Adm. Code 4901-1-20(D).**
- b. **Company filings, parties' stipulations, and Commission Orders in the Company's Electric Transition Plan, Rate Stabilization Plan, and previous Electric Security Plan proceedings. See Ohio Adm. Code 4901-1-20(D).**
- c. **Discovery requests of other parties in this proceeding.**
- d. **DP&L's discovery responses in this proceeding.**
- e. **DP&L, DPL & AES filings with the Securities & Exchange Commission. See Ohio Adm. Code 4901-1-20(D).**

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

**RESPONSE:**

**Objection. Request for Production No. 4 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

**See filings in PUCO Case No. 11-346-EL-SSO per Ohio Adm. Code 4901-1-20(D).**

5. All writings constituting or relating to communications between OCC and any residential customers relating to ESP proceeding or DP&L's ESP Application.

**RESPONSE:**

**Objection. Request for Production No. 5 is overly broad and unduly burdensome. OCC objects to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

**Without waiving any specific or general objection, the following response is provided: OCC has identified a document responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

**Supplemental Response (1/22/2013):**

**OCC has identified a document responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

6. All writings constituting or relating to communications between OCC and any residential customers relating to AEP's, PUCO Case No. 11-346-EL-SSO.

**RESPONSE:**

**Objection. Request for Production No. 6 is overly broad and unduly burdensome. OCC Objects to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided: OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

7. All writings constituting or relating to communications between OCC and any residential customers relating to DP&L's ESP Application.

**RESPONSE:**

**Objection. Request for Production No. 7 is overly broad and unduly burdensome. OCC Objects to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided: OCC has identified a document responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

**Supplemental Response (1/22/2013):**

**OCC has identified a document responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

8. All writings constituting or relating to communications among OCC and any residential customers relating to DP&L's ESP Application.

**RESPONSE:**

**See OCC's response and objections to Request for Production No. 7.**

**Supplemental Response (1/22/2013):**

**See OCC's supplemental response and objections to Request for Production No. 7.**

9. All writings constituting or relating to communications among OCC and any residential customers relating to DP&L's MRO Application.

**RESPONSE:**

**See OCC's response and objections to Request for Production No. 7.**

**Supplemental Response (1/22/2013):**

**See OCC's supplemental response and objections to Request for Production No. 7.**

10. All writings constituting or relating to communications among OCC and any residential customers relating to the Commission's decisions in AEP's ESP proceeding, PUCO Case No. II-346-EL-SSO.

**RESPONSE:**

**Objection. Request for Production No. 10 is overly broad and unduly burdensome. OCC Objects to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not "reasonably calculated to lead to discovery of admissible evidence." Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided: OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

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

**RESPONSE:**

**Objection. Request for Production No. 11 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Supplemental Response (1/22/2013): Writings relating to communications between OCC and IEU are the subject of a Motion for Protective Order filed by IEU with respect to OCC’s communications with IEU. Additionally, communications involving offers of settlement are not “reasonably calculated to lead to the discovery of admissible evidence.” See Ohio Adm. Code 4901-1-16(B). Consequently, OCC is retaining such communications pending the PUCO’s ruling on IEU’s Motion for Protective Order. Without waiving any specific or general objection, the following response is provided: OCC has identified non-privileged documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party.**

12. All writings constituting or relating to communications among OCC 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:**

**Objection. Request for Production No. 12 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).**

**Without waiving any specific or general objection, the following response is provided:**

**OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party. See also filings in PUCO Case No. 11-346-EL-SSO per Ohio Adm. Code 4901-1-20(D).**

**Supplemental Response (1/22/2013): Without waiving any specific or general objections, OCC’s communications with other intervenors related to AEP’s ESP proceeding at Docket No. 11-346-EL-SSO are protected by the terms of a Joint Defense Agreement reached in that proceeding and executed by the parties.**

13. 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:**

**Objection. Request for Production No. 13 is overly broad and unduly burdensome and seeks information that is protected by the attorney client privilege and/or the trial preparation doctrine. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B). See response and objections to Interrogatory No. 3.**

**Supplemental Response (1/22/2013): See OCC’s supplemental response and objections to Request for Production No. 11.**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of these Responses and Objections (Supplemental of January 22, 2013) was served in accordance with Ohio Adm. Code 4901-1-18 on the persons stated below via electronic transmission, this 22<sup>nd</sup> day of January, 2013.

/s/ Melissa R. Yost

Melissa R. Yost

Assistant Consumers' Counsel

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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 Motion of The Dayton Power and Light Company to Compel The Office of the Ohio Consumers' Counsel to Answer Interrogatories and Produce Documents in Response to The Dayton Power and Light Company's First Set of Discovery to The Office of The Ohio Consumers' Counsel electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company