

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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**MEMORANDUM OF APPLICANT THE DAYTON POWER AND LIGHT COMPANY  
IN OPPOSITION TO INDUSTRIAL ENERGY USERS-OHIO'S MOTION TO TAKE  
ADMINISTRATIVE NOTICE OR IN THE ALTERNATIVE TO REOPEN THIS  
PROCEEDING OR IN THE ALTERNATIVE TO SUPPLEMENT THE RECORD**

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The speculation of Industrial Energy Users-Ohio ("IEU-Ohio") about the meaning of one part of a slide in a public presentation is not good cause, or otherwise sufficient, for this Commission to take administrative notice or to reopen this proceeding or to supplement the record.

IEU-Ohio's motion focuses on one small piece of a PowerPoint presentation, the meaning of which is not self-evident without an accompanying explanation. The three statements in that small "DPL/DP&L" portion of the slide are as follows:

"DPL/DP&L: ~\$700 million bank commitments to refinance term loans and credit facilities

- Reducing debt by \$225 million
- Targeted to close later in May; extends debt maturities to 2016"

Based only upon those statements, IEU-Ohio leaps to the speculative conclusion that "this proceeding will have no impact on DP&L's ability to refinance the long-term debt that would come due in 2013" (IEU-Ohio Motion, p. 2 and Memorandum in Support, p. 7). Rather than pick up the telephone and inquire of counsel as to whether there was anything in the slide pertinent to this case, IEU-Ohio filed a motion in the midst of the post-hearing briefing. Indeed, the financing transactions referenced in the AES slide had been fully disclosed on May 10, 2013, in a Form 8-K filed by DPL Inc. with the Securities and Exchange Commission<sup>1</sup> -- which IEU-Ohio undoubtedly saw before filing its motion.

The larger point is that the record is not to be reopened every time, after a lengthy hearing and post-hearing briefs, that an intervenor sees an overhead slide from a presentation and wishes to supplement the record. Cases must come to an end, and this Commission has already extended DP&L's ESP in order to give the Commission time to consider this case. The interests of customers and of the Company are not served by re-opening the record, taking administrative notice, or supplementing the record after post-hearing briefs have been filed.

The specific facts showing IEU-Ohio's misinterpretation and mischaracterization of the slide are as follows:

1. DP&L's CFO Craig Jackson testified extensively and was cross examined about DP&L's debt, DP&L Ex. 16A, pp. 2-4 (Jackson); Tr. 122-25, 140-49, 260-61, 2911 (Jackson) and FES Exhibit 5.

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<sup>1</sup> <http://www.sec.gov/Archives/edgar/data/27430/000078725013000023/c250-20130510x8k.htm>

2. As shown by the short declaration of Mr. Jackson attached as Exhibit A, the refinancings referenced on that slide do not relate to, and were not a limitation upon, DP&L's separation of its generation assets. Rather, as explained in detail on the record in this case, DP&L's First and Refunding Mortgage creates a lien on all of DP&L's assets (transmission, distribution and generation). So long as that First and Refunding Mortgage is in existence in its current form, DP&L cannot effectuate a legal separation of the generation assets from the regulated assets. DP&L Ex. 16A, pp. 2-4 (Jackson); Tr. 687-90, 695-705 (Rice). In addition, both Messrs. Jackson and Rice explained the market limitations on refinancing. DP&L Ex. 16A, pp. 2-3 (Jackson); Tr. 687-90, 695-705 (Rice).
3. The "\$700 million bank commitments to refinance term loans and credit facilities" referenced in the slide consist of a \$200 million term loan at DPL Inc., a \$100 million revolving credit facility at DPL Inc., a \$300 million revolving credit facility at DP&L, and a \$100 million letter of credit facility at DP&L that supports its \$100 million variable rate demand notes (those notes relate to pollution control bonds). Thus, two of the credit facilities are at the DPL Inc. level and are not relevant to this proceeding. The DP&L revolver has not even been drawn upon and the letter of credit is only a credit enhancement, which is there to ensure that bondholders can freely put back to the Trustee the variable rate demand notes, even if the notes cannot be remarketed. IEU-Ohio simply speculates as to the effect of these necessary refinancings, and its proposed

supplementation of the record would add to the record neither clarity nor any material fact.

4. The lenders involved were told that generation separation will occur, and are monitoring this Commission's orders with regard to generation separation. However, the unsupported argument that "this proceeding will have no impact on its ability to refinance the long-term debt that will come due in 2013" (Memorandum in Support, p. 7) is false, for the reasons explained in Mr. Jackson's testimony at the hearing, Tr. 122-127. (Emphasis added.) In short, IEU-Ohio makes an argument about DP&L's long-term debt in reliance upon a slide showing DPL Inc. and DP&L short-term credit facilities.
5. The material financing market limitations described in detail at p. 4 of Jackson's rebuttal testimony (DP&L Ex. 16A) in this proceeding are unaffected (and certainly not cured or ameliorated) by the refinancings described in the AES slide attached to IEU-Ohio's motion.

The Commission has refused to take administrative notice in similar situations. For example, in AEP's recent long-term forecast report case, IEU-Ohio asked the Commission to take administrative notice of information that became available after the hearing in the matter concluded. In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters, Opinion & Order, pp. 27-29 (Case No. 10-501-EL-FOR) (January 9, 2013).

The Commission refused to take administrative notice:

"The Commission finds that it would be improper to take administrative notice or otherwise consider the information offered by IEU-Ohio at this late stage in the proceedings. It is necessary to establish some reasonable cut-off point for purposes of our

consideration of the stipulation, and we do not find it unreasonable to confine our analysis to the data that is already reflected in the record. Additionally, the Commission notes that our consideration of the information offered by IEU-Ohio would not alter our determination regarding the need for the Turning Point project. Therefore, IEU-Ohio's motion should be denied."

Id.

The Commission decision relied upon by IEU-Ohio (p. 7) is irrelevant because:

(1) there had been no evidentiary hearing in that matter; (2) the information at issue was actually relevant to the proceeding; and (3) the information presented by AEP in its reply comments contradicted information provided by Staff, and Staff did not oppose the claims made by the Company in its supplemental filing. In the Matter of the Application of Ohio Power Co. to Update Its gridSMART Rider, Finding & Order, p. 9 (Case No. 12-509-EL-RDR) (PUCO October 3, 2012). Further, IEU-Ohio also relies (p. 7, n.9) upon a case in which the Commission reopened the record of its own accord because the record before it was incomplete and did not address certain points; that case thus is not on point either. In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and/or Approval of Additional Programs for Inclusion in Its Existing Portfolio, Entry, p. 2 (Case No. 11-4393-EL-RDR) (PUCO March 21, 2012).

Administrative notice should not be taken of facts that are irrelevant<sup>2</sup> and IEU-Ohio's reliance upon facts concerning short-term credit facilities is, as shown above, irrelevant. As to IEU-Ohio's first alternative request to reopen this proceeding, there is no "good cause" (IEU-Ohio's Memorandum in Support, p. 6) because DP&L's proof at the hearing showed that

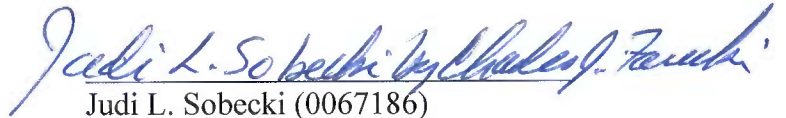
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<sup>2</sup> In the Matter of the Joint Application of SBC Communications, Inc. & ATT Corp. for Consent and Approval of a Change of Control, Entry, p. 2 (Case No. 05-269-TP-ACO) (October 12, 2005) (declining to take administrative notice because the party had "failed to establish a nexus between the survey and the Commission's consideration in this proceeding").

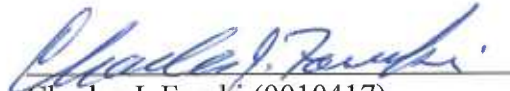
the impediment to generation separation relates to long-term debt. DP&L Ex. 16A, pp. 2-4; Tr. 687-703 (Rice), not the short-term credit facilities that are the subject of the slide attached to IEU-Ohio's motion. As to IEU-Ohio's second alternative request to supplement the record, similarly there is no factual basis to supplement the record either with IEU-Ohio's speculation, or with irrelevant facts about short-term credit facilities.

For each of the above reasons, IEU-Ohio's motion should be denied.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Memorandum of Applicant The Dayton Power and Light Company in Opposition to Industrial Energy Users-Ohio's Motion to Take Administrative Notice or in the Alternative to Reopen This Proceeding or in the Alternative to Supplement the Record has been served via electronic mail upon the following counsel of record, this 28th day of May, 2013:

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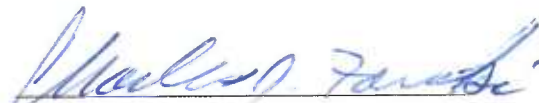
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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**DECLARATION OF CRAIG L. JACKSON IN SUPPORT OF MEMORANDUM OF  
APPLICANT THE DAYTON POWER AND LIGHT COMPANY IN OPPOSITION TO  
INDUSTRIAL ENERGY USERS-OHIO'S MOTION TO TAKE ADMINISTRATIVE  
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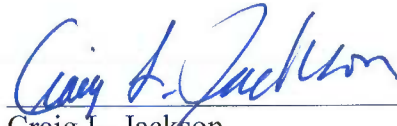
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Craig L. Jackson, being duly sworn, states:

1. I continue to be the Chief Financial Officer of The Dayton Power and Light Company, the Applicant in this proceeding. I have personal knowledge of the facts stated in this affidavit.

2. I have reviewed the Memorandum of Applicant The Dayton Power and Light Company in Opposition to Industrial Energy Users-Ohio's Motion to Take Administrative Notice or in the Alternative to Reopen This Proceeding or in the Alternative to Supplement the

Record. The facts stated in paragraph numbers 2-4 on pp. 2-4 are true. The material financing market limitations described in detail at p. 4 of my rebuttal testimony in this proceeding are unaffected (and certainly not cured or ameliorated) by the refinancings described in the AES slide attached to IEU-Ohio's motion.



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Craig L. Jackson

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**This foregoing document was electronically filed with the Public Utilities**

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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: Memorandum of Applicant The Dayton Power and Light Company in Opposition to Industrial Energy Users-Ohio's Motion to Take Administrative Notice or in the Alternative to Reopen This Proceeding or in the Alternative to Supplement the Record electronically filed by Mr. Charles J. Faruki on behalf of The Dayton Power and Light Company