

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The	)	
Dayton Power and Light Company for	)	Case No. 13-2420-EL-UNC
Authority to Transfer or Sell Its	)	
Generation Assets.	)	

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**MOTION TO COMPEL RESPONSES TO DISCOVERY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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In the Matter of the Application of The Dayton Power and Light Company for Authority to Transfer or Sell Its Generation Assets. ) Case No. 13-2420-EL-UNC )

In this case where the Dayton Power & Light Company's ("DP&L" or "Utility") many proposals will likely increase the rates all customers pay, the Office of the Ohio Consumers' Counsel ("OCC") seeks answers from the Utility about statements and claims made in its two Applications. Both Applications are pending before the Public Utilities Commission ("PUCO" or "Commission"). The Supplemental Application, in particular, contains a number of new requests for charges it will seek to collect from customers.<sup>1</sup> These charges could cost customers tens of millions, if not hundreds of millions, of dollars. And yet, the Utility refuses to respond to OCC's discovery requests that are designed to elicit basic information about the effect of its proposals on customers' electricity rates.

1 DP&L's Supplemental Application includes: (1) a proposal to continue DP&L's Service Stability Rider ("SSR") even after sale or transfer of its generating assets, (2) a proposal for DP&L to retain the environmental liabilities associated with its generating assets and charge such costs to customers, and for an accounting deferral until such costs are claimed in a rate proceeding (3) a proposal to charge customers all costs incurred by DP&L, such as financing costs, that are associated with the sale or transfer of DP&L's generating assets, (4) a proposal to retain DP&L's 4.9% ownership interest and obligations associated with its purchase power agreement with Ohio Valley Electric Corporation ("OVEC") and for an accounting deferral until such costs are claimed in a future rate matter, and (5) a proposal to permit DP&L to "temporarily maintain total long term debt of \$750 million or total debt equal to 75% of rate base – whichever is greater" through 2018, in contravention of the terms of a previous settlement requiring a capital structure including at least 50% equity. DP&L Supplemental Application at 3-8.

OCC, on behalf of the residential utility consumers of DP&L, moves<sup>2</sup> the PUCO, the legal director, the deputy legal director, or an attorney examiner for an order compelling DP&L to fully respond to OCC's Second Set of Interrogatories. Specifically, OCC moves to compel responses to Interrogatories Nos. INT-114 through INT-145 and requests for production of documents RPD-48 to RPD-87. These discovery requests are attached to this pleading as OCC Exhibit 1.

As explained in the attached Memorandum in Support, DP&L objected to each and every one of OCC's interrogatories and requests for production (identified above) with the same 12 objections. Not one of OCC's interrogatories or requests for production was answered with a substantive response.<sup>3</sup> DP&L's primary objection appears to be that because "[t]here is no hearing set in the matter, so there is no reason to conduct discovery."<sup>4</sup> Responding to OCC's discovery requests "would thus be irrelevant and unduly burdensome."<sup>5</sup> The Utility's objections, are improper, lack merit and are inconsistent with the PUCO Rules of Practice.

In light of the Utility's objections, coupled with its refusal to attempt to resolve differences, OCC files this Motion to Compel. The grounds for this Motion are set forth in detail in the attached Memorandum in Support.

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<sup>2</sup> See Ohio Adm. Code 4901-1-12 and 4901-1-23.

<sup>3</sup> Such "hardball tactics" in discovery have been strongly criticized by the justices of the Ohio Supreme Court: "The problems brought to lawyers by their clients are difficult enough to resolve in a professional manner without adding to the expense and waste of time necessitated by gamesmanship during discovery\*\*\*[S]uch conduct should never be condoned and courts should exercise sound discretion in curbing it through imposition of sanctions." *Nakoff v. Fairview Gen. Hosp.* (1996), 75 Ohio St. 3d 254, 261-262.

<sup>4</sup> Exhibit 2 at 4 (General Objection 12) and pp. 5-62.

<sup>5</sup> *Id.*

The PUCO should accordingly grant OCC's Motion and hold that OCC has an ample right to obtain discovery of any matter, not privileged, which is relevant to the subject matter of this proceeding.<sup>6</sup> The PUCO should also require DP&L to produce a privilege log if it is asserting privilege as a basis for not answering any of OCC's discovery requests. The OCC also asks that if a privilege log is ordered, that the PUCO provide follow up with an *in camera* inspection of the documents, consistent with the Ohio Supreme Court's ruling in *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, 167.

Respectfully submitted,

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<sup>6</sup> R.C. 4903.082 and Ohio Adm. Code 4901-1-16(B).

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In the Matter of the Application of The Dayton Power and Light Company for Authority to Transfer or Sell Its Generation Assets. ) Case No. 13-2420-EL-UNC )

## I. INTRODUCTION

DP&L had requested, among other things, that the PUCO waive its requirement<sup>10</sup> for an evidentiary hearing. DP&L alleged that there is no need to conduct a hearing on its Supplemental Application because the PUCO has “already conducted an extensive

<sup>10</sup> R.C. 4901:1-37-09(D) requires the PUCO to fix a time and place for a hearing if the application proposes to alter the jurisdiction of the PUCO over a generation asset. DP&L's Supplemental Application proposes to do just that.



evidentiary hearing in its recent ESP proceeding as to whether DP&L should be ordered to transfer its generation assets.”<sup>11</sup>

Over eleven diverse parties filed comments, including the PUCO Staff, OCC, OPAE, IEU-Ohio, Ohio Manufacturers’ Association Energy Group, FirstEnergy Solutions, and Ohio Energy Group. Although each of these parties represents different interests, all of these commenters uniformly urged the PUCO to reject DP&L’s plan for divestment (as proposed in its Supplemental Application) and deny its request to waive a hearing. The primary reason most parties urged the PUCO to reject DP&L’s Application was because that Application did not contain enough detailed information to assess the effects of DP&L’s proposals on the parties and their clients.<sup>12</sup>

In its Comments, OCC urged the PUCO reject the Supplemental Application because it is substantially inadequate under the law.<sup>13</sup> OCC argued that a full hearing should be held, as required by Ohio Admin. Code 4901:1-37-09(D), preceded by ample

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<sup>11</sup> Supplemental Application at 10 (Feb. 25, 2014). This claim is misleading. In the recent ESP proceeding although corporate separation was a subject of the ESP, the issues presented by DP&L in its Supplemental Application were NOT part of that evidentiary hearing, nor have they been introduced before the Utility’s February 25, 2014 filing in this docket.

<sup>12</sup> See PUCO Staff Comments at 1-2, 7 (opposing the waiver of hearing because “numerous necessary details, which have yet to be provided by DP&L” make it premature to grant the request” and noting the lack of information provided on the transfer of assets); OPAE Comments at 1-2, noting that rather than providing necessary information the application is alarming as it seeks to collect from customers the environmental liabilities of the Utility; First Energy Solutions Comments at 1 (“Once again, the Dayton Power & Light Company has failed to provide sufficient information in its supplemental application to allow substantive comment on its proposal”(parentheticals omitted); IEU-Ohio at 1(noting that the application still does not provide information required by the PUCO to determine whether the transfer satisfies the PUCO rules and the law); Ohio Energy Group Comments at 7 (arguing that “the stark lack of detail provided by the Company thus far necessitates that a hearing be held on its Supplemental Application.”); OMA Comments at 3,6 (“Given the lack of information, interested parties cannot effectively protect their interests by analyzing the comprehensive effects of DP&L’s plan or potential plans to transfer its generation assets” and requesting that “the PUCO deny DP&L’s Supplemental Application in its entirety as incomplete.”).

<sup>13</sup> R.C. 4928.17(B).

opportunity for discovery, consistent with the PUCO rules and Ohio law.<sup>14</sup> OCC's Comments convey that it is essential that the PUCO, the parties, and the public have a clear understanding of the details and the implications of DP&L's new proposal.<sup>15</sup>

Following the filing of its Comments and Reply Comments, OCC served its first set of discovery on DP&L on March 28, 2014 and its second set of discovery, which is the subject of this Motion, on DP&L on April 11, 2014.<sup>16</sup> DP&L did not provide one substantive response to either set of discovery and subsequently filed a Motion for Protective Order with respect to discovery filed in this proceeding. OCC has since filed a Motion to Compel with respect to DP&L's First Set of Discovery and a Memorandum Contra DP&L's Motion for Protective Order. With respect to the second set specifically, DP&L did not provide a single substantive response to OCC's 32 interrogatories or 40 requests for production of documents ("RPDs"). Instead, DP&L objected to each and every one of these discovery requests.<sup>17</sup>

However, as discussed below, OCC's discovery is reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Utility's numerous rote objections should be overruled for a number of reasons as discussed below. Primarily, DP&L cannot rely upon its flawed position that because there is no hearing set in this matter, "there is no reason to conduct discovery."<sup>18</sup> Such a view is flatly contradicted by Ohio Admin. Code 4901-1-17. Initially, because the PUCO rules require a hearing in this proceeding, the presumption is that a hearing will occur. There has been no PUCO

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<sup>14</sup> OCC Comments at 3, citing to R.C. 4903.082 and Ohio Admin. Code 4901:1-16.

<sup>15</sup> OCC Comments (March 25, 2014); *see also* PUCO Staff Comments at 1-2, 7.

<sup>16</sup> OCC Exhibit 1.

<sup>17</sup> OCC Exhibit 2.

<sup>18</sup> Exhibit 2 at 4 (General Objection 12) and 5-62.

determination that there is good cause not to go forward with a hearing. And there has been no order issued by the PUCO that has limited the discovery in this case.

Secondarily, DP&L's kitchen sink objections are so broad that they are meaningless.

There is no way for OCC or the PUCO to understand in what way OCC's interrogatories are alleged to be objectionable.

Ohio Adm. Code 4901-1-23(C) details the technical requirements for a motion to compel, all of which are met in this OCC pleading. Those requirements include the filing of an affidavit explaining how the party seeking to compel discovery has exhausted all other reasonable means of resolving the differences with the party from whom the discovery is sought.

The OCC has detailed in the attached affidavit,<sup>19</sup> consistent with Rule 4901-1-23(C)(3), the efforts which have been undertaken to resolve differences between it and the Utility. At this point it is clear that the parties are not able to reach a resolution. The Utility is steadfast in its mistaken belief that because there is no hearing set in this matter, "there is no reason to conduct discovery" and that it has "no obligation to respond" to OCC's discovery requests.<sup>20</sup> DP&L has indicated that it intends to stand on its objections and will not respond to OCC's second set of discovery requests<sup>21</sup> and has taken the further step of seeking protection from discovery by filing a motion for protective order.<sup>22</sup>

For the reasons explained more fully below, the PUCO should find that OCC is entitled to conduct discovery and compel DP&L to respond to OCC's requests

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<sup>19</sup> Exhibit 3.

<sup>20</sup> See Exhibit 2 and Exhibit 3, Attachment 2.

<sup>21</sup> Id.

<sup>22</sup> See Motion for Protection filed April 22, 2014.

immediately. The PUCO should also require DP&L to produce a privilege log, if DP&L is permitted to assert privilege as a basis for not answering OCC's discovery requests. Following the production of a discovery log, the PUCO should schedule an *in camera* hearing to review the merits of the privilege being asserted, consistent with *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, 167.

## **II. SCOPE OF STATUTORY RIGHT TO DISCOVERY**

R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.” Therefore the OCC, a party in this proceeding,<sup>23</sup> is entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the PUCO to ensure that parties are allowed “full and reasonable discovery” under its rules. Under the PUCO's rules, “discovery may begin immediately after a proceeding is commenced.”<sup>24</sup> And nowhere in the PUCO rules is there any provision that limits discovery to only those proceedings which are scheduled to have a hearing.

The PUCO has adopted rules that specifically define the scope of discovery. Ohio Adm. Code 4901-1-16(B) provides:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

The PUCO's rule is similar to Ohio Civ. R.26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad

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<sup>23</sup> See Ohio Adm. Code 4901-1-16(H). OCC filed a motion to intervene on February 3, 2014.

<sup>24</sup> Ohio Adm. Code 4901-1-17(A). Accord Ohio Civ. R.33(A) (interrogatories may be served by any party without leave on the plaintiff “after commencement of the action.”).

discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.<sup>25</sup>

This scope of discovery is applicable to written interrogatories. Written interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the discovery is served, under Ohio Adm. Code 4901-1-19. Each interrogatory must be answered “separately and fully, in writing and under oath, unless objected to, in which case the reasons for the objection shall be stated in lieu of an answer. The answer shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them.”

OCC’s right to discovery is assured by law, rule and Supreme Court precedent.<sup>26</sup> OCC is entitled to timely and complete responses to its discovery inquiries. OCC seeks responses to its discovery requests and is unable to obtain the responses without the PUCO compelling the Utility to respond.

### **III. ARGUMENT**

#### **A. The Discovery Sought Is Reasonably Calculated To Lead To The Discovery Of Admissible Evidence.**

OCC’s discovery is directed to specific statements in the Utility’s initial filing and supplemental application. It addresses the following issues:

- Determination of Fair Market Value (“FMV”) and impact of market conditions on FMV. [Supplemental Application at ¶¶4,5]  
(OCC-INT-126, 143) (RPD-59, 65, 79, 81)

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<sup>25</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O’Neill* (1996), 75 Ohio St. 3d 1479.

<sup>26</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789.

- The price at which DP&L would have to sell its generating assets to maintain financial integrity, pay off indebtedness, and that would be acceptable to DP&L and how this differs from the supportable transfer price to an affiliate GenCo and the time frame for such transactions [Supplemental Reply Comments at 3-5, 15] (OCC INT-2-118, 119, 120, 121, 122 123, 124, 127, 128, 129, 139, 140, 142) (OCC RPD- 49, 50, 51, 52, 55, 57, 58, 63, 64, 80, 83, 85)
- The connection between the continuation of the SSR, market conditions, the sale or transfer of generation assets and DP&L's financial integrity [Supplemental Application at ¶9(a); Supplemental Reply Comments at 5, 15]. (OCC-INT-125, 131) (RPD-53, 60)
- Evaluation of the Company's financial integrity through an impairment analysis (OCC-INT-132) (OCC-RPD-56)
- The capacity prices, changes in market conditions and other factors claimed by DP&L to cause it to explore the possible sale of its generation assets to a third party [Supplemental Application at ¶9(a); Supplemental Reply Comments at 3] (OCC INT-114, 115, 116, 11756, 80, 69, 74, 79, 80, 97, 108-110) (OCC RPD-54)
- Allocation of financial integrity issues and indebtedness between generation, transmission, and distribution (OCC-INT-130) (RDP-66)
- Impact of affiliate/parent financial condition on DP&L's ability to sell or transfer generation assets [Supplemental Reply Comments at 15] (OCC-INT-141) (RPD-87)

- DP&L’s proposal to retain the environmental liabilities associated with its generating assets and charge such costs to customers [Supplemental Application at ¶9(b); Supplemental Reply Comments at 7]  
(OCC INT-133, 134, 135) (OCC-RPD-48, 67, 81, 84)
- The utility’s proposal to charge customers all costs incurred by DP&L, such as financing costs, that are associated with the sale or transfer of DP&L’s generating assets [Supplemental Application at ¶9(c)]  
(OCC INT-2-144)
- DP&L’s proposal to retain 4.9% ownership interest and obligations associated with its purchase power agreement with Ohio Valley Electric Corporation (“OVEC”) and to address retail rate issues in a separate proceeding[Supplemental Application at ¶9(d); Supplemental Reply Comments at 12]  
(OCC INT-136, 137, 138) (RPD-61, 62, 68, 69, 70, 71, 72, 73, 82)
- DP&L’s proposal to permit DP&L to “temporarily maintain total long term debt of \$750 million or total debt equal to 75% of rate base – whichever is greater” through 2018, in contravention of the terms of a previous settlement requiring a capital structure including at least 50% equity. [Supplemental Application at ¶9(e)]  
(RPD-74, 75, 76, 77)
- DP&L’s proposed commitments contained on page 9 of its Supplemental Application  
(RPD-78).
- Communications with PUCO regarding issues in this proceeding

(OCC INT-145) (RPD-86)

The PUCO's rules adopt the broad discovery test found in Ohio Civil Rule 26(b)(1). Under the PUCO's rules (and Civ. Rule 26(b)(1)), discovery is permitted of information "reasonably calculated to lead to the discovery of admissible evidence." The PUCO has described its test as one of reasonable calculation, not certainty.<sup>27</sup> This test for relevancy is much broader than the test to be utilized at trial. "Evidence is only irrelevant by the discovery test when the information sought will not reasonably lead to the discovery of admissible evidence."<sup>28</sup> Under this broad discovery test, OCC's discovery—which seeks information on essential issues in the case—is clearly relevant. The essential information sought is derived solely from the Utility's Application and Supplemental Application. Both these documents frame the issues in this case. OCC's discovery is relevant. The discovery is reasonably calculated to lead to the discovery of admissible evidence.

**B. OCC's Motion to Compel Should Be Granted And The PUCO Should Require DP&L To Immediately Provide Full, Complete and Responsive Answers To OCC's Discovery Requests.**

- 1. DP&L's primary objection that there is no need for discovery unless a hearing is ordered conflicts with Ohio Admin. Code 4901:1-17. That rule permits discovery to begin once a proceeding is commenced. Additionally, the PUCO has not issued any order limiting the ample discovery rights of parties that exist under the law and the PUCO rules.**

It appears that DP&L's primary objection to OCC's discovery is that the "deadline for filing comments has already passed, and there is no hearing set in this

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<sup>27</sup> *In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of The Cleveland Electric Illuminating Company and Related Matters*, Case No. 84-18-EL-EFC, Entry (Apr. 9, 1985).

<sup>28</sup> *Tschantz v. Ferguson* (1994), 97 Ohio App.3d 693, 715 (citation omitted).



matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue.”<sup>29</sup> While no specific hearing has yet been scheduled in this matter, it can be presumed, that absent the PUCO granting DP&L’s waiver, a hearing will be held. This is because DP&L’s plan would alter the jurisdiction of the PUCO over DP&L’s generating assets. Under the PUCO’s rules this means that the PUCO is **required** to hold a hearing.<sup>30</sup> So the presumption is, contrary to DP&L’s assertions, a hearing will be held, even though the PUCO has not set a hearing date.

While DP&L sought to waive the hearing, its request has not been ruled upon. DP&L’s request was made (Dec. 30, 2013) as part of its initial application in this proceeding. As explained in OCC’s initial comments,<sup>31</sup> there are many reasons why the waiver should not be granted.

Now, there is even more reasons for the PUCO to reject the waiver and hold a hearing as its rules require. DP&L has completely changed its corporate separation proposal. With the filing of its Supplemental Application (Feb. 25, 2014) it has presented a number of requests for special rate treatment that were not presented in its initial application. The special rate treatment requested could cost customers tens of millions, if not hundreds of millions, of dollars. Thus, the need for a hearing is even more pronounced..

And while comments and reply comments have been filed as to DP&L’s Application and Supplemental Application, the PUCO has not in any way limited the discovery rights of the parties in this matter. Under the PUCO’s rules the parties are

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<sup>29</sup> See Exhibit 2 at 4 (General Objections 12) and 5-62.

<sup>30</sup> Ohio Admin. Code 4901:1-37-09(D).

<sup>31</sup> OCC Comments at 8-14 \*(eb. 4, 2014).

afforded rights to ample discovery under the law.<sup>32</sup> Under the PUCO's rules<sup>33</sup> discovery may begin once a proceeding has commenced. This proceeding commenced when DP&L filed its initial application -- December 30, 2013.

DP&L's flawed interpretation that the PUCO rules do not provide for discovery when a hearing is required under PUCO rules (but not scheduled) is not supported by any PUCO rule or practices. Nowhere in the PUCO rules is there any provision that limits discovery to only those proceedings which are scheduled to have a hearing. Nowhere in the PUCO rules is there a requirement that, in a pending case, discovery rights of parties are cut off after a PUCO-initiated pleading cycle. Nowhere in the PUCO rules is there a provision that stays discovery pending its decision as to whether to waive a hearing-- especially where the hearing is required under the PUCO rules.<sup>34</sup> To the contrary, the PUCO's rules provide for discovery to continue even in instances where there was no decision whether a hearing would be held.<sup>35</sup>

DP&L seeks PUCO approval of special rate treatment in its Supplemental Application. The special rate treatment it seeks would allow it to collect from customers unspecified sums of money over an unknown period of time.

Discovery is a necessary part of the analysis that OCC and all parties must undertake in order to evaluate the Utility's proposal. The discovery process will aid the

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<sup>32</sup> See R.C. 4903.082.

<sup>33</sup> Ohio Admin. Code 4901:1-17.

<sup>34</sup> Ohio Admin. Code 4901:1-37-09(D).

<sup>35</sup> See, e.g., *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Case No. 1-5351-GA-UNC, Entry (Jan. 27, 2012)(permitting discovery even when the PUCO had not determined what further process would be necessary); cf., *In the Matter of the Complaint of the Office of Consumers' Counsel v. Ohio Bell*, Case No. 93-576-TP-CSS, Entry (July 27, 1993)(rejecting utility's position that it need not respond to discovery prior to a PUCO determination of whether reasonable grounds for complaint exist, finding it meritless).

parties in understanding how DP&L's proposals will affect customers. Ultimately, ample discovery rights should not be impeded by the Utility. Discovery provides the parties an opportunity to better inform the PUCO and assist it in its review of DP&L's applications.

These "ample rights" to discovery necessarily include a party's right to receive complete, timely responses to discovery requests so that parties are prepared for whatever comes next.<sup>36</sup> But under DP&L's approach, OCC and others have no rights.

Fortunately, DP&L's approach is not countenanced under law, rule, or practice. Nor should it be.

**2. OCC's Motion to Compel should be granted because DP&L has failed to establish that the information sought is privileged.**

One of DP&L's rote objections to OCC's discovery is that the discovery is "privileged and work product."<sup>37</sup> According to DP&L's "General Objections," it "objects to each and every discovery request to the extent that it seeks information that is privileged by statute or common law, including privileged communications between attorney and client or attorney work product." DP&L gives no further explanation of which privilege it is invoking—attorney-client or attorney work-product. Neither does it indicate which of the above privileges applies to which discovery response.

A proper claim of privilege, whether attorney-client or trial preparation/work-product doctrine, requires a specific designation and description of information and documents within its scope as well as precise and certain reasons for preserving their

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<sup>36</sup> See Rule 4901-1-23; *In re: Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 10 (Mar. 17, 1987)(observing that "the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly...").

<sup>37</sup> See, e.g., Exhibit 2 at 1-2 (General Objections 3) and 5-62.

confidentiality.<sup>38</sup> Unless the description is precise, there is no basis on which to weigh whether a privilege exists. Hence, if a party is resisting discovery on a claim of privilege, it must show sufficient facts as to bring the identified and described discovery within the confines of the privilege.<sup>39</sup> DP&L did not.

It is uncontroverted that the burden of establishing whether a privilege applies rests upon the party asserting the privilege, not on the party seeking discovery.<sup>40</sup> For instance, when claiming attorney-client privilege, the party raising the privilege must establish that the privilege applies to a particular communication that is sought to be disclosed.<sup>41</sup> The mere existence of a lawyer-client relationship does not create, without the privilege being asserted with specificity, a “cloak of protection...draped around all occurrences and conversations which have any bearing, direct, or indirect upon the relationship of the attorney with his client.”<sup>42</sup> The privilege must be proven document by document, with the demonstration typically being made with a privilege log.<sup>43</sup> Thus, a separate claim must be raised in response to each request for disclosure.<sup>44</sup>

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<sup>38</sup> See e.g., Notes to Decision of Ohio Civ. R. 26 citing *Frank W. Schjafer, Inc. v. C. Garfield*, 82 Ohio App.3d 322 (Ohio App. 2 Dist. 1992).; Fed. R. Civ. P. 26(b)(5)(A). *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer*, Case No. 10-2586-EL-SSO, Entry (Dec. 13, 2010)(holding that where the utility claimed privilege but did not elaborate on its claim, the examiner was unable to consider the assertion of privilege. Intervenor’s motion to compel was granted.).

<sup>39</sup> See e.g. *In the matter of the Complaint of Office of Consumers’ Counsel v. Dayton Power & Light Co.*, Case No. 90-455-GE-CSS, Entry (Aug. 16, 1990)(holding that the burden of proving an entitlement to an attorney client privilege must be met by the person asserting the privilege.).

<sup>40</sup> *Herbert v. Lando*, 441 U.S. 153, 175, 99 S.Ct. 1635, 1648; *In re Allen*, 106 F.3d 582, 600 (4<sup>th</sup> Cir. 1997), cert. denied, 522 U.S. 1047 (1998).

<sup>41</sup> *In re: Guardianship of Marcia S. Clark*, 2009-Ohio-6577 at ¶8.

<sup>42</sup> Sec. 5.02[8], 4 Weinstein’s Federal Evidence, Chapter 503, Lawyer-Client Privilege (Matthew Bender 2d ed.).

<sup>43</sup> *United States v. Rockwell*, 897 F.2d 1255 (3<sup>rd</sup> Cir. 1990).

<sup>44</sup> Sec. 5.02[11a], 4 Weinstein’s Federal Evidence, Chapter 503, Lawyer-Client Privilege.

A party wishing to protect a document from disclosure under the work-product doctrine also has the burden of proving that the materials should not be discoverable.<sup>45</sup> The burden is fulfilled only if the party can show 1) the material is a document, electronically stored information or tangible thing; 2) prepared in anticipation of litigation and 3) prepared by a party or its representative.<sup>46</sup> Upon a showing of all of these requirements, the burden shifts to the opposing party to show “good cause” for obtaining such documents.<sup>47</sup> But here, even though attorney work-product privilege is also claimed, DP&L has failed to identify specifically what tangible information exists, and how it meets the definition of work-product, or how tangible documents are responsive to OCC’s Interrogatories. So the burden has not shifted to OCC.<sup>48</sup>

DP&L relied upon both the attorney-client privilege and the attorney work-product doctrine to avoid responding to OCC’s discovery. But it made no attempt whatsoever to identify specific documents or information that these privileges apply to. DP&L merely claims that “each and every discovery request” is objectionable because it

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<sup>45</sup> *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, 166.

<sup>46</sup> See Ohio Civ. R. 26(B)(3) (2008).

<sup>47</sup> Ohio Civ. R. 26(B)(3).

<sup>48</sup> Moreover, even if DP&L had initially met its burden of establishing the work-product doctrine applies to specific information OCC has requested, the inquiry does not end. If a party can show good cause—a demonstrated “need for the materials –i.e., a showing that the materials or the information they contain, are relevant and otherwise unavailable”—discovery of the requested materials may be granted. Here there is good cause because the information requested is relevant and otherwise unavailable. Under Ohio Civil Rules of Evidence, Rule 403, relevant evidence is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. The facts of consequence to this proceeding include determining whether DP&L’s application is reasonable. The information sought is relevant under the test set forth in Rule 403. Good cause can be shown.

is privileged in some respect. DP&L's blanket assertion of privilege is insufficient to meet this burden.<sup>49</sup>

DP&L should be compelled to provide information to enable OCC and the PUCO to determine whether privilege exists, and if it exists, whether it has been waived or is covered by an exception to privilege. DP&L has failed to demonstrate that either the attorney-client privilege or the attorney work-product/trial preparation doctrine applies to "each and every discovery request."

DP&L was asked by OCC to produce a privilege log, but declined to do so.<sup>50</sup> Such a log is a tool to enable parties to judge the validity of the privilege claim. It also assists the attorney examiner in evaluating the merits of a privilege claim.<sup>51</sup> While the PUCO rules and practice do not generally require a privilege log to be produced if privilege is claimed, the PUCO has acknowledged that it is common practice for a privilege log to be produced in response to a motion to compel.<sup>52</sup> Then the PUCO is required to follow up with an *in camera* inspection of each document identified as privileged.<sup>53</sup> Such a practice is in line with the Ohio Supreme Court dictates in *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, 167.

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<sup>49</sup> *Hitachi Medical Systems America, Inc. v. Branch*, 2010 U.S. District, Lexis 1597 at 7 (N.D. Ohio) (Sept. 24, 2010).

<sup>50</sup> See Exhibit 3.

<sup>51</sup> See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Entry at ¶19 (Jan. 27, 2011).

<sup>52</sup> *Id.* at ¶18.

<sup>53</sup> See, e.g., *In the Matter of the Complaint of AT&T v. Global NAPs Ohio, Inc.*, Case No. 08-960-TP-CSS, Entry at 4 (Mar. 17, 2008).

**3. The Motion to Compel should be granted because DP&L failed to establish that responding to OCC's discovery is unduly burdensome.**

DP&L objected to “each and every discovery request” on the grounds that it is “harassing, unduly burdensome, oppressive, or overbroad.”<sup>54</sup> DP&L also objected to “responding to OCC’s discovery requests as a whole” on grounds that it “would be unduly burdensome.”<sup>55</sup>

This is a case where DP&L has burdened the parties with two separate filings in three months. It is a case where, if DP&L prevails, it would burden Ohio customers with paying additional charges that could cost customers tens of millions, if not hundreds of millions, of dollars. Given the number of claims made and broad nature of the charges sought by DP&L, DP&L should be extremely limited in what it would describe to the PUCO as its “burden” in answering questions. Unfortunately, DP&L has not been forthcoming with meaningful information about its claims and, in fact, has avoided sharing essential information needed to understand the basis and justification of its claims. Consequently, reasonable discovery is necessary to fill in the gaps in information resulting from DP&L’s incomplete filings.

Moreover, DP&L has failed to explain how responding to these discovery requests would be unduly burdensome. All it has offered is conclusory statements devoid of factual support (*i.e.*, information like the number of hours, the cost, or the volume of

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<sup>54</sup> See Exhibit 2 at 1 (General Objection 2 and 5-62).

<sup>55</sup> See Exhibit 2, at 1. While OCC’s requests may be numerous, the number alone is insufficient to establish undue burden, whereas here, the requests are relatively straightforward, the case is somewhat complex, and the Utility’s responses may help narrow the issues. See, e.g., *U.S. v. Marsten Apartments, Inc.*, Case No. 95-CV-75178-DT Opinion and Order at 6 (citations omitted) (June 16, 1997). This is especially so where the PUCO rules do not limit the number of interrogatories or requests for production.

information that would be required to comply with the discovery). Federal case law<sup>56</sup> has held that, when a party objects to an interrogatory based on oppressiveness or undue burden, that party must specifically, show how each interrogatory is overly broad, burdensome, or oppressive, despite the broad and liberal construction afforded discovery rules.<sup>57</sup> In objecting, the party must submit affidavits or offer evidence revealing the nature of the burden.<sup>58</sup> General objections without specific support may result in waiver of the objection.<sup>59</sup>

Here, the Utility has merely alleged that responding to each and every discovery request is unduly burdensome. Such unsubstantiated assertions failed to specifically demonstrate how the interrogatories and requests for production are unduly burdensome. Because the burden falls upon the party resisting discovery to clarify and explain its objections and to provide support<sup>60</sup> and the Utility has failed to do so, the PUCO should overrule this objection.

DP&L should expect that detailed discovery will be “incident” to seeking from customers unspecified amounts of money over an unknown period of time. DP&L bears the burden of proving its applications meet the public interest provisions of R.C. 4928.17. Given the potential for increases to customers’ rates as a result of DP&L’s special rate

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<sup>56</sup> Although federal case law is not binding upon the PUCO with regard to interpreting the Ohio Civil Rules of Practice (upon which the PUCO discovery rules are based), it is instructive where, as here, Ohio’s rule is similar to the federal rules. Ohio Admin. Code 4901-1-24 allows a protective order to limit discovery to protect against “undue burden and expense.” C.R.26(c) similarly allows a protective order to limit discovery to protect against “undue burden and expense.” Cf. *In the Matter of the Investigation into Perry Nuclear Power Station*, Case No. 85-521-EL-COI, Entry at 14-15 (Mar. 17, 1987), where the Commission opined that a motion for protective order on discovery must be “specific and detailed as to the reasons why providing the responses to matters...will be unduly burdensome.”

<sup>57</sup> *Trabon Engineering Corp. v. Eaton Manufacturing Co.* (N.D. Ohio 1964), 37 F.R.D. 51, 54.

<sup>58</sup> *Roesberg v. Johns-Manville* (D.Pa 1980), 85 F.R.D. 292, 297.

<sup>59</sup> *Id.*, citing *In re Folding Carton Anti-Trust Litigation* (N.D. Ill. 1978), 83 F.R.D. 251, 264.

<sup>60</sup> *Gulf Oil Corp. v. Schlesinger* (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.



treatment, it should expect adequate discovery to be conducted. Ample rights of discovery are afforded parties in PUCO proceedings, by law,<sup>61</sup> by rule<sup>62</sup> and by precedent.<sup>63</sup> DP&L's objection should be overruled. OCC's Motion to Compel should be granted.

- 4. DP&L's objections to each and every discovery request based on the proprietary nature of information requested should be overruled. DP&L failed to bear its burden of showing that any answer responsive to a discovery request involves proprietary information. Moreover, DP&L can execute a protective agreement with OCC which will protect the proprietary nature of its documents, subject to OCC's rights under the agreement.**

The Utility objects to "each and every discovery request to the extent that it seeks information that is proprietary, competitively sensitive or valuable, or constitutes trade secrets."<sup>64</sup> But DP&L has not identified any specific information which it claims is proprietary in nature. Nor has it indicated any reason why such information could not be provided to OCC under the terms of a protective agreement. As the PUCO is well aware, use of protective agreements is common practice where the utility claims some information (that another party seeks in discovery) is proprietary. A protective agreement enables the party seeking discovery to obtain the discovery, but under terms that protect it from being publicly divulged (subject to the terms of the agreement) to the detriment of the utility.

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<sup>61</sup> R.C. 4903.082.

<sup>62</sup> Ohio Admin. Code 4901 -1-16 (scope of discovery is wide—reasonably calculated to lead to the discovery of admissible evidence).

<sup>63</sup> See, e.g., *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 320.

<sup>64</sup> See Exhibit 2 at 2 (DP&L General Objection 4) and 5-62.

Moreover, DP&L's blanket claim that information is proprietary, without identifying which information responsive to the discovery requests is proprietary or why, is inappropriate. Accordingly, OCC's Motion to Compel should be granted.

**5. DP&L's objection that may require OCC to examine or inspect business records in lieu of requiring DP&L to derive the answer should be overruled because DP&L failed to specifically identify the undue burden it would bear for each and every discovery response it objected to on this basis.**

DP&L objects to each and every interrogatory and request for production of document on the basis of "inspection of business records."<sup>65</sup> According to its general objections, DP&L relies upon Ohio Admin. Code 4901-1-19(D). It claims that where the burden of deriving the information from its business records may be the same for OCC as it is for it, DP&L can specify the records from which the answer can be derived and afford OCC the opportunity to examine or inspect such records.

Discovery, however, is not objectionable simply because it seeks information which requires research and compilation of data.<sup>66</sup> It must be shown to be unduly burdensome and oppressive.<sup>67</sup> But DP&L failed to state in its objections the nature of the burden it would be required to undertake. Nor did DP&L point out how it would be compelled to derive the information from its business records in answering OCC's discovery requests. Instead it relied upon unsubstantiated and non-specific claims. In doing so, DP&L did not bear its burden of proving the undue burden it will have to bear

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<sup>65</sup> Exhibit 2 at 2 (General Objections 5) and 5-62.

<sup>66</sup> See, e.g., *Erone Corp. v. Skouras Theatres Corp.* (1958 SD NY), 22 FRD 494, 1 FR Serv.2d 517.

<sup>67</sup> See, e.g., *American Oil Co. v. Pennsylvania Petroleum Products Co.* (1959, DC RI), 23 FRD 680, 2 FR Serv.2d 493.

specifically for each and every data request it objected to. The PUCO should accordingly overrule this objection.

**6. The Motion to Compel should be granted because OCC seeks information that is relevant to this proceeding.**

As explained supra, because the discovery is directed to the Utility's Application, Supplemental Application and Supplemental Reply Comments, all of which are the subject matter of this proceeding, it is relevant. The discovery is reasonably calculated to lead to the discovery of admissible evidence.

**7. DP&L's objection that the information sought in each and every discovery request calls for a narrative answer should be overruled because there is no legitimate basis for such objection. DP&L cites no rule or precedent for such objection. And there is nothing that prevents the Utility from responding to an interrogatory by referring to appropriately responsive documents.**

DP&L objects to each and every OCC discovery request on the basis that every request calls for a narrative answer. DP&L opines that each and every interrogatory can be answered more efficiently by the production of documents or by the taking of depositions.<sup>68</sup> However, there is nothing in the Commission's rules that suggest that discovery seeking a claimed "narrative response" is objectionable. Nor does DP&L cite to any other authority for this proposition. In the absence of authority to attest to the legitimacy of the objection, the PUCO should overrule it. Further, if DP&L can provide an appropriate response by referencing and providing responsive documentation, there is nothing to prevent it from doing so if such response can be fairly represented to be fully responsive.

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<sup>68</sup> See Exhibit 2 at 3 (DP&L General Objection 6) and 5-62.

- 8. DP&L's objection that each and every discovery request is not in DP&L's possession should be overruled because it has failed to bear the burden of proving that is so. Moreover, a corporation can be required to disclose information that is available to it, even if it is in the possession of a separate corporate entity. Additionally, DP&L's objection that the information is already on file at the PUCO is insufficient basis for denying the requested information.**

DP&L objects to each and every OCC discovery request on the basis that the discovery request is not in DP&L's possession or could more easily be obtained through third parties or other sources.<sup>69</sup> The PUCO should overrule this objection.

The PUCO has ruled that objections to data requests on the grounds that the information is publicly available are an insufficient basis for denying the requested information. There, the PUCO found that if discoverable information is in the possession of the utility, the utility should provide it, barring any applicable objections based on privilege or relevance. And DP&L has failed to show that the information is publicly available. Moreover, a corporation can be required to disclose information that is available to it, even if it is in the possession of a separate corporate entity. And DP&L has failed to make a showing that it lacks any specific information requested. For these reasons the Company's objections to discovery on these grounds should be overruled.

- 9. DP&L's objection that each and every discovery request is vague or undefined should be overruled because such an objection is not sufficiently specific to allow OCC or the PUCO to ascertain the claimed objectionable character of the discovery.**

DP&L objects that each and every discovery request is vague or ambiguous.<sup>70</sup> But objections to interrogatories must be specific and not so overly broad as to be

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<sup>69</sup> See Exhibit 2 at 3 (DP&L General Objections 7) and 5-62.

<sup>70</sup> See Exhibit 2 at 3 (DP&L General Objections 9) and 5-62.

meaningless.<sup>71</sup> DP&L's objection is so overly broad it is improper. DP&L has made no meaningful effort to show how its theoretical objections apply to any of the discovery requests. Neither OCC nor the PUCO is able to ascertain which discovery requests are objectionable. Nor can OCC or the PUCO ascertain the objectionable character of the discovery. The PUCO should consider these objections waived.

**10. DP&L's objection that each and every discovery request is in the possession of DP&L's regulatory affiliate is not a valid basis for objection.**

DP&L objects to each and every OCC discovery request on the basis that each and every discovery request seeks information that is not in its possession, but in the possession of DP&L's unregulated affiliate.<sup>72</sup> DP&L does not specify which discovery requests this claim applies to or which unregulated affiliate has possession of the information. Nor does it identify the nature of the information or documents that are not in its possession. But objections to interrogatories must be specific and not so overly broad as to be meaningless. DP&L's objection is so overly broad it is improper. The PUCO should overrule this objection.

Additionally, even if the PUCO were to entertain DP&L's objection, it should nonetheless be overruled. OCC's discovery requests are directed to statements made in DP&L's Application, Supplemental Application, and Supplemental Reply Comments. Thus, one would expect that information upon which the statements were based would be

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<sup>71</sup> See e.g. *Gassaway v. Jarden Corporation*, 292 F.R.D. 676, 679 (explaining that general objections are considered "overly broad and worthless unless the objections are substantiated with detailed explanations") and ruling that where the objecting party has made no meaningful effort to show the application of any such theoretical objections to any request for discovery the objecting party has waived objections and the Court may decline to consider them as objections); *In re : Michalski*, 449 B.R. 273 (U.S. Bankruptcy Ct. N.D. Ohio) (2011) (where objecting party made no attempt to explain how the requests are vague or overbroad, the Court overruled the objection based on ambiguity and overbreadth).

<sup>72</sup> Exhibit 2 at 3 (DP&L General Objections 10), and 5-62.

in DP&L's possession. To the extent that is not the case, the fact that documents may be in the possession of an affiliate or parent does not insulate DP&L from its obligation to provide sufficient responses to appropriate discovery requests. Under Ohio Admin. Code 4901-1-19, interrogatories may elicit "facts, data, or other information *known or readily available* to the party upon whom the interrogatories are served." Certainly, the discovery OCC seeks is known by DP&L or readily available to it. Just because the information may be in the possession of an affiliate does not mean it is not known by DP&L or readily available to DP&L. Indeed, DP&L has made no such claim that the information is not known or not readily available to it.

DP&L has a legal duty to discover and produce readily available information pertaining to its case.<sup>73</sup> In other words, if DP&L has access to the information sought, then it must produce it.<sup>74</sup> Clearly, the information sought was supplied by DP&L to its affiliate, is known by DP&L, and would be readily available to it. It would be inconsistent with the PUCO's discovery rules to allow DP&L to shield the information from discovery by shipping it off to its affiliate.

Moreover, the shielding of affiliate information from discovery runs counter to provisions under S.B. 221<sup>75</sup> and the Ohio Admin. Code<sup>76</sup> which require disclosure of

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<sup>73</sup> See, e.g., *In the Matter of the Complaint of Carpet Color Systems v. Ohio Bell Telephone Co.*, Case No. 85-1076-TP-CSS, Opinion at 22 (May 17, 1988); *General Dynamics Corp. v. Selb. Manufacturing Co.* (1973, CA8), 481 F.2d 1204, cert. den. (1974), 414 U.S. 1162.

<sup>74</sup> See *In the Matter of the Complaint of the Manchester Group, LLC. v. Columbia Gas of Ohio, Inc.*, Case No. 08-360-GA-CSS, Entry at 2 (Oct. 2, 2009)(granting the motion to compel "to the extent Columbia has access" to the relevant information sought in discovery).

<sup>75</sup> See R.C. 4928.145.

<sup>76</sup> Ohio Admin. Code 4901:1-35097.

affiliate information,<sup>77</sup> provided an appropriate discovery request is made. In particular, the PUCO's rules require utilities to provide information with respect to corporate separation (Ohio Admin. Code 4901-35-11, Appendix B, subsection (D)), and permit the PUCO Staff to investigate the operations of the electric utility affiliate, with the affiliates employees, officers, books, and records being made available to them.<sup>78</sup>

For these reasons DP&L's objections to discovery on these grounds should be overruled.

**11. DP&L's objection that each and every discovery request calls for a legal conclusion should be overruled. The claim is false. Additionally, Ohio Admin. Code 4901-1-19 provides that an interrogatory is not objectionable merely because it calls of an opinion or legal conclusion.**

DP&L has objected that OCC's discovery requests call for a legal conclusion.<sup>79</sup>

But a review of OCC's discovery requests clearly shows that this is not the case. The information requested is fundamentally factual in nature and directed to the factual statements in DP&L's Application and Supplemental Application. Furthermore, Rule 4901-1-19 Ohio Admin. Code states that an interrogatory is not objectionable merely because it calls for an opinion, contention, or legal conclusion.<sup>80</sup> Thus, DP&L's claims are without merit and DP&L is required by the PUCO's procedural rules to respond.

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<sup>77</sup> See also *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789 (holding that side agreements between utilities and third parties are discoverable).

<sup>78</sup> See Ohio Admin Code 4901:1-37-07.

<sup>79</sup> OCC Exh. 2 at 3 (General Objection 11) and 5-62.

<sup>80</sup> Accord, Ohio Civ. R. 33B.

**12. DP&L’s objection that each and every discovery request seeks information that DP&L does not know at this time makes no sense since DP&L is in control of all of the information upon which its application and supplemental application are based.**

DP&L objects that all of the discovery requests seek “information that DP&L does not know at this time.” But DP&L’s claims in this respect are—in the least—suspect because OCC’s discovery requests are based on statements made by DP&L in its Application, Supplemental Application, and Supplemental Reply Comments. And most of the questions in this set provide a specific reference to the Supplemental Reply Comments where DP&L makes such statements. For example, INT-117 asks DP&L to identify the “other factors” that contributed to DP&L’s decision to explore the possible sale of its generation assets to a third party, referring to page 3 of DP&L’s Supplemental Reply Comments. INT-134 asks DP&L to define the “environmental liabilities” as used in its Supplemental Reply Comments at page 7, and specifically asks whether they include retrofits or changes that are made in compliance with future legislation. Likewise, virtually all of the questions request factual information regarding statements made in the Application, Supplemental Application, and Supplemental Reply Comments.

While there may be some cases where DP&L does not yet know the answer to the discovery question asked, it has not attempted to limit its objection to those true instances where it does not know the answer. For example, INT-120 asks DP&L to state how it “has, or will . . . determine the minimum price that will allow it to maintain its financial integrity.” While it is understandable that DP&L may not have yet determined how it will identify a minimum price that is acceptable, there are undoubtedly documents that it can identify that will be used for such assessment. DP&L’s responses should be tailored to addressing such claims. But they are not.



OCC would also emphasize that, given DP&L's request for special rate treatment, any claim for such special rate treatment should be able to be supported by actual facts and information. DP&L's response that it does not know any of the information associated with OCC's discovery requests speaks volumes. If there is no support for its claims (because it lacks knowledge of those claims) the special rate treatment requested in the Supplemental Application should be rejected.

**C. OCC Undertook Reasonable Efforts To Resolve The Discovery Dispute.**

As detailed in the attached affidavit OCC took reasonable efforts to resolve the discovery dispute.<sup>81</sup> Upon receipt of DP&L's responses and objections, OCC communicated its position on DP&L's objections to the Utility's counsel. OCC explained why the information needed was relevant. OCC further explained the specific concerns with the Utility's non-responses. This communication was met with a reply that indicated the Utility was not going to supplement its responses. Then the Utility filed a Motion for a Protective Order.

Reasonable efforts to resolve this discovery dispute were undertaken by OCC counsel. Those efforts failed, necessitating this Motion to Compel.

**IV. CONCLUSION**

When utilities file applications to collect even more money from their customers, they should expect under law, rule, and reason that there will be thorough discovery. The PUCO, consistent with its rules and the statutes discussed herein, should grant OCC's Motion to Compel. Granting OCC's Motion will further the interests of consumers. It is

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<sup>81</sup> See also Exhibit 4.

those consumers who would have to pay increased rates if DP&L's many and varied proposals are adopted. And those additional charges, if permitted, could total tens of millions, if not hundreds of millions, of dollars.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Motion to Compel Responses to Discovery by the Office of the Ohio Consumers' Counsel was provided to the persons listed below electronically this 14th day of May, 2014.

/s/ Edmund "Tad" Berger

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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. 13-2420-EL-UNC  
Authority to Transfer or Sell Its       )  
Generation Assets.       )

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**INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED UPON THE DAYTON POWER AND LIGHT COMPANY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**SECOND SET  
(April 11, 2014)**

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The Office of the Ohio Consumers' Counsel in the above-captioned proceeding before the Public Utilities Commission of Ohio submits the following Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response by The Dayton Power and Light Company ("DP&L" or "Company") within the time period provided in the Commission's rules, and no later than any shorter period required by the Public Utilities Commission of Ohio or its authorized representative. An electronic response should be provided to the extent possible to the Office of the Ohio Consumers' Counsel at the following addresses:

Edmund "Tad" Berger, Counsel of Record  
Maureen R. Grady  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
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Additionally, the Company must follow the instructions provided herein in responding to the inquiries. Definitions are provided below that are used in the Office of the Ohio Consumers' Counsel's discovery.

## **DEFINITIONS**

*As used herein the following definitions apply:*

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions

or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. “Communication” shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to,

- telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The “substance” of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
  4. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
  5. “You,” and “Your,” or “Yourself” refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
  6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
  7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.
  8. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
  9. “Identify,” or “the identity of,” or “identified” means as follows:

- A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
- B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
- C. When used in reference to a document state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
- D. When used in reference to a communication, state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof and identity of other persons in the presence of each party thereto;
- E. When used in reference to an act, state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
- F. When used in reference to a place, state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).



10. The terms “PUCO” and “Commission” refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General’s Office), and offices.
11. The term “e.g.” connotes illustration by example, not limitation.
12. “OCC” means the Office of the Ohio Consumers’ Counsel.
13. “DP&L” means The Dayton Power and Light Company.

### **INSTRUCTIONS FOR ANSWERING**

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney,

- consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
    - A. Microsoft Excel worksheet files on compact disk;
    - B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
    - C. ASCII text diskette files; and
    - D. such other magnetic media files as your organization(s) may use.
  7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
  8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2000 through and including the date of your response.
  9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
  10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed

shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

## INTERROGATORIES

INT-114. Please explain how the PJM capacity price for 2016/2017 delivery year of \$59.37 caused DP&L to explore the possible sale of its generation assets to a third party. (Supplemental Reply Comments at 2)

**RESPONSE:**

INT-115. Referring to DP&L's Supplemental Reply Comments at 3, please identify the "changes in market conditions" that caused DP&L to explore the possible sale of its generation assets to a third party.

**RESPONSE:**

INT-116. Please identify **all** "material changes in market conditions" that DP&L is aware of (Supplemental Reply Comments at 3) and that affected its decision to explore the possible sale of its generation assets to a third party.

**RESPONSE:**

INT-117. Referring to DP&L's Supplemental Reply Comments at 3, please identify the "other factors" that contributed to DP&L's decision to explore the possible sale of its generation assets to a third party.

**RESPONSE:**

INT-118. Please identify the price that the generating assets must be purchased at that would allow DP&L to maintain its financial integrity. (Supplemental Reply Comments at 3).

**RESPONSE:**

INT-119. Is there a minimum price for a third party to purchase its assets that is acceptable to DP&L? If so what are the parameters that make up the minimum price?

**RESPONSE:**

INT-120. How has, or will, DP&L determine the minimum price that will allow it to maintain its financial integrity?

**RESPONSE:**

INT-121. Will transferring DP&L's assets at fair market value jeopardize its financial integrity? If so, please explain how.

**RESPONSE:**

INT-122. How will DP&L measure whether the sale of its generating assets to a third party will jeopardize its financial integrity?

**RESPONSE:**

INT-123. Please explain why if DP&L's generation assets are to be transferred to and retained by an affiliate that transfer will not happen "for years." (See Supplemental Reply Comments at 4).

**RESPONSE:**

INT-124. Please identify the affiliate of DP&L that would be transferred the assets if the assets are not transferred to a third-party buyer.

**RESPONSE:**

INT-125. Does DP&L's ability to transfer the assets to an affiliate depend on the continuation of the SSR? If so, please explain why.

**RESPONSE:**

INT-126. If the generation assets are transferred to an affiliate how will DP&L determine the FMV of the units?

**RESPONSE:**

INT-127. If DP&L's generation assets are transferred to and retained by an affiliate, what are the factors that necessitate that "that transfer will not happen for years?" (Supplemental Reply Comments at 4)

**RESPONSE:**

INT-128. Referring to the preceding interrogatory, define “years.”

**RESPONSE:**

INT-129. What price would “allow DP&L to pay off a significant portion” of its outstanding indebtedness of \$876.9 million. (See Supplemental Reply Comments at 5).

**RESPONSE:**

INT-130. Please identify, separately, the amount of generation, transmission, and distribution assets associated with DP&L’s \$876.9 million debt.

**RESPONSE:**

INT-131. Please identify the “current market conditions and expectations” referred to at page 5 of the Supplemental Reply Comments that require the SSR to continue if DP&L is to sell its generation assets to a third party before the Commission-imposed deadline of January 1, 2016.

**RESPONSE:**

INT-132. Has DP&L or DPL Inc. performed an impairment analysis with respect to its generating units in 2013 or 2014? If so when was the analysis conducted and what was the result of the analysis?

**RESPONSE:**

INT-133. Please identify the “regulations being proposed” that would require DP&L to incur costs to remediate its generation facilities for conduct that occurred at those facilities while DP&L owned the assets and they were being used to provide service to Ohio customers. (Supplemental Reply Comments at 7).

**RESPONSE:**

INT-134. Please define “environmental liabilities” as used in DP&L’s Supplemental Reply Comments at 7. Do environmental liabilities include retrofits or changes to generating units that are made in compliance with future legislation?

**RESPONSE:**

INT-135. Please identify, by generating unit, the date when DP&L first became aware that there might be future environmental liabilities associated with its generating assets or the real property on which those generating assets are located.

**RESPONSE:**

INT-136. Please identify the rate recovery DP&L will seek in a separate proceeding for retail rate issues relating to OVEC (Supplemental Reply Comments at 12).

**RESPONSE:**



INT-137. Please identify the “timely process of seeking consent” that DP&L refers to at page 12 of its Supplemental Reply Comments.

**RESPONSE:**

INT-138. Please identify each of the conditions of Section 9.183 of the Amended And Restated Inter-company Power Agreement that can be satisfied by DP&L. For those conditions that cannot be satisfied, please explain why they cannot be satisfied.

**RESPONSE:**

INT-139. Define the “poor market conditions” referred to on page 15 of DP&L’s Supplemental Reply Comments.

**RESPONSE:**

INT-140. Please identify the basis for the statement that the unregulated affiliate will not be able to support any transfer of debt (Supplemental Reply Comments at 15).

**RESPONSE:**

INT-141. Please identify the entity referred to when DP&L states that “[t]he parent’s lack of creditworthiness impedes its ability to support utility-level debt. “ (Supplemental Reply Comments at 15)

**RESPONSE:**

INT-142. Please identify the basis of the statement that “negative retained earnings may be unavoidable, absent a deferral of the separation date.”  
  
(Supplemental Reply Comments at 15).

**RESPONSE:**

INT-143. Please identify the basis of DP&L’s expectation that the anticipated FMV of the generation assets is expected to be adversely impacted by the poor market conditions.

**RESPONSE:**

INT-144. Of the costs identified in the Supplemental Application at ¶9(c) please identify what the actual costs incurred to date are, identifying the date the costs were incurred, the amount of the costs, the category of costs, and whether the costs are generation related or distribution related.

**RESPONSE:**

INT-145. Please identify all communications with the PUCO that pertain to issues raised in this proceeding.

**RESPONSE:**

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

- RPD-48. Referring to the 2013 Form 10 K that was filed, specifically page 142, you state that “[w]e evaluate the potential liability related to environmental matters quarterly and may revise our estimates.” Please provide a copy of all documents that pertain to the quarterly evaluations and any revisions thereto for 2013 and 2014 to date.
- RPD-49. Referring to the information that has been requested in OCC INT-117 , please provide a copy of all documents that pertain to the “other factors” that contributed to DP&L’s decision to explore the possible sale of its generation assets to a third party.
- RPD-50. Referring to the information that has been requested in OCC INT-118, please provide a copy of all documents that pertain to identifying a price that the generating assets must be purchased at to allow DP&L to maintain its financial integrity.
- RPD-51. If the response to OCC INT-121 is affirmative, please provide a copy of all documents that pertain to DP&L’s conclusion, including documents with financial projections and including studies and analysis that has been undertaken by or on behalf of DP&L.

- RPD-52. Referring to the information that has been requested in OCC INT-123, please provide a copy of all documents that pertain to DP&L's conclusion that the transfer will not happen "for years".
- RPD-53. Referring to the information that has been requested in OCC INT-131, please provide a copy of all documents that pertain to the current market conditions and expectations.
- RPD-54. Referring to the information that has been requested in OCC INT-116, please provide a copy of all documents that pertain to the material changes in market conditions that affected its decision to explore the possible sale of its generation assets to a third party.
- RPD-55. Referring to the information that has been requested in OCC INT-127, please provide a copy of all documents that pertain to the delayed transfer of the assets to an affiliate.
- RPD-56. Referring to the information that has been requested in OCC INT-132, please provide a copy of all documents that pertain to any impairment analysis, including studies, workpapers, and memoranda explaining or discussing the impairment analysis.

- RPD-57. Referring to the information that has been requested in OCC INT-119 and 120, please provide a copy of all documents that pertain to developing the minimum price and to how DP&L will determine the minimum price, and how DP&L did determine the minimum price.
- RPD-58. Referring to the information that has been requested in OCC INT-121, please provide a copy of all documents that pertain to how DP&L will measure and does measure whether the sale of its generating assets to a third party will jeopardize its financial integrity.
- RPD-59. Referring to the information that has been requested in OCC INT-126, please provide a copy of all documents that pertain to the determination of the FMV of the units.
- RPD-60. If the response to OCC INT-125 is affirmative, please provide a copy of all documents that pertain to DP&L's ability to transfer its assets depending on the continuation of the SSR.
- RPD-61. Referring to the information that has been requested in OCC INT-136, please provide a copy of all documents that pertain to the rate recovery that will be sought.

- RPD-62. Referring to the information that has been requested in OCC INT-137, please provide a copy of all documents that pertain to the process.
- RPD-63. Referring to the information that has been requested in OCC INT-140, please provide a copy of all documents that pertain to the basis of the statement referenced.
- RPD-64. Referring to the information that has been requested in OCC INT-142, please provide a copy of all documents that pertain to DP&L's expectations of negative retained earnings.
- RPD-65. Referring to the information that has been requested in OCC INT-143, please provide a copy of all documents that pertain to DP&L's expectation.
- RPD-66. Referring to the information that has been requested in OCC INT-7, please provide a copy of all documents that pertain to the information requested.
- RPD-67. Referring to the information that has been requested in OCC INT-12, please provide a copy of all documents that pertain to the claim that incurrence of these liabilities is directly related to rendering of service to standard service offer customers.

- RPD-68. Referring to the information that has been requested in OCC INT-24, please provide a copy of all documents that pertain to such efforts.
- RPD-69. Referring to the information that has been requested in OCC INT-29, please provide a copy of all documents that pertain to the information requested.
- RPD-70. Referring to the information that has been requested in OCC INT-30, please provide a copy of all documents that pertain to the information requested.
- RPD-71. Referring to the information that has been requested in OCC INT-31, please provide a copy of all documents that pertain to the information requested.
- RPD-72. Referring to the information that has been requested in OCC INT-37, please provide a copy of all documents that pertain to the information requested.
- RPD-73. Referring to the information that has been requested in OCC INT-38, please provide a copy of all documents that pertain to the source of the projections.

- RPD-74. Referring to the information that has been requested in OCC INT-41, please provide a copy of all documents that pertain to the information requested.
- RPD-75. Referring to the information that has been requested in OCC INT-45, please provide a copy of all documents that pertain to and confirm the conditions and ability of DP&L to reallocate debt to its non-regulated affiliate.
- RPD-76. Referring to the information that has been requested in OCC INT-46, please provide a copy of all documents that pertain to and confirm the amount of new debt with terms that would preclude DP&L from transferring or selling its generation assets.
- RPD-77. Referring to the information that has been requested in OCC INT-47, please provide a copy of all documents that pertain to the information requested.
- RPD-78. Referring to the information that has been requested in OCC INT-49, please provide a copy of all documents that pertain to the information requested.



- RPD-79. Referring to the information that has been requested in OCC INT-57, please provide a copy of all documents that pertain to the information requested.
- RPD-80. Referring to the information that has been requested in OCC INT-58, please provide a copy of all documents that pertain to the information requested.
- RPD-81. Referring to the information that has been requested in OCC INT-60, please provide a copy of all documents that pertain to the information requested.
- RPD-82. Referring to the information that has been requested in OCC INT-70, please provide a copy of all documents that pertain to the information requested.
- RPD-83. Referring to information that has been requested in OCC INT-95, please provide a copy of all documents that pertain to the information requested.
- RPD-84. If the response to OCC INT-105 is affirmative in any respect, please provide a copy of all documents that pertain to the information requested and reported in your 10K.

- RPD-85. Referring to information that has been requested in OCC INT-112, please provide a copy of all documents that pertain to the information requested.
- RPD-86. Referring to information that has been requested in OCC INT-113, please provide a copy of all documents that pertain to the information requested.
- RPD-87. Referring to information that has been requested in OCC INT-141, please provide a copy of all documents that pertain to the information requested.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these *Interrogatories and Request for Production of Documents Propounded upon the Dayton Power and Light Company, Second Set*, was served on the persons stated below via electronic transmission, this 11th day of April, 2014.

/s/ Maureen R. Grady

Maureen R. Grady  
Assistant Consumers' Counsel

**SERVICE LIST**

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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of : Case No. 13-2420-EL-UNC  
The Dayton Power and Light Company :  
for Authority to Transfer or Sell Its :  
Generation Assets. :

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**THE DAYTON POWER AND LIGHT COMPANY'S  
OBJECTIONS AND RESPONSES TO INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS  
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
(SECOND SET APRIL 11, 2014)**

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The Dayton Power and Light Company ("DP&L") objects and responds to The Office of the Ohio Consumers' Counsel's ("OCC") Interrogatories and Requests for Production of Documents, First Set (April 11, 2014) as follows.

**GENERAL OBJECTIONS**

1. DP&L objects to and declines to respond to each and every discovery request to the extent that it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Ohio Admin. Code § 4901-1-16(B).

2. DP&L objects to and declines to respond to each and every discovery request to the extent that it is harassing, unduly burdensome, oppressive or overbroad. Ohio Admin. Code §§ 4901-1-16(B) and 4901-1-24(A).

3. DP&L objects to each and every discovery request to the extent that it seeks information that is privileged by statute or common law, including privileged communications

between attorney and client or attorney work product. Ohio Admin. Code § 4901-1-16(B). Such material or information shall not be provided, and any inadvertent disclosure of material or information protected by the attorney-client privilege, the attorney work product doctrine or any other privilege or protection from discovery is not intended and should not be construed to constitute a waiver, either generally or specifically, with respect to such information or material or the subject matter thereof.

4. DP&L objects to each and every discovery request to the extent that it seeks information that is proprietary, competitively sensitive or valuable, or constitutes trade secrets. Ohio Admin. Code § 4901-1-24(A).

5. To the extent that interrogatories seek relevant information that may be derived from the business records of DP&L or from an examination or inspection of such records and the burden of deriving the answer is the same for OCC as it is for DP&L, DP&L may specify the records from which the answer may be derived or ascertained and afford OCC the opportunity to examine or inspect such records. Ohio Admin. Code § 4901-1-19(D).

6. DP&L objects to each and every interrogatory that can be answered more efficiently by the production of documents or by the taking of depositions. Under the comparable Ohio Civil Rules, "[a]n interrogatory seeks an admission or it seeks information of major significance in the trial or in the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by rules for depositions." Penn Cent. Transp. Co. v. Armco Steel Corp., 27 Ohio Misc. 76, 77, 272 N.E.2d 877, 878 (Montgomery Cty. 1971). As Penn further noted, interrogatories that ask one to "describe in detail," "state in detail," or "describe in particulars" are "open end invitation[s] without limit on its comprehensive nature

with no guide for the court to determine if the voluminous response is what the party sought in the first place." Id., 272 N.E.2d at 878.

7. DP&L objects to each and every discovery request to the extent that it calls for information that is not in DP&L's current possession, custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code §§ 4901-1-19(C) and 4901-1-20(D). DP&L also objects to each and every discovery request that seeks information that is already on file with the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission. To the extent that each and every discovery request seeks information available in pre-filed testimony, pre-hearing data submissions and other documents that DP&L has filed with the Commission in the pending or previous proceedings, DP&L objects to it. Ohio Admin. Code § 4901-1-16(G).

8. DP&L reserves its right to redact confidential or irrelevant information from documents produced in discovery. All documents that have been redacted will be stamped as such.

9. DP&L objects to each and every discovery request to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.

10. DP&L objects to any discovery request to the extent that it calls for information not in its possession, but in the possession of DP&L's unregulated affiliates.

11. DP&L objects to each and every discovery request to the extent that it calls for a legal conclusion, and thus seeks information that cannot be sponsored by a witness.

12. DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

13. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

**RESPONSES TO INTERROGATORIES**

INT-114. Please explain how the PJM capacity price for 2016/2017 delivery year of \$59.37 caused DP&L to explore the possible sale of its generation assets to a third party. (Supplemental Reply Comments at 2)

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.



INT-115. Referring to DP&L's Supplemental Reply Comments at 3, please identify the "changes in market conditions" that caused DP&L to explore the possible sale of its generation assets to a third party.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

INT-116. Please identify **all** “material changes in market conditions” that DP&L is aware of (Supplemental Reply Comments at 3) and that affected its decision to explore the possible sale of its generation assets to a third party.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

INT-117. Referring to DP&L's Supplemental Reply Comments at 3, please identify the "other factors" that contributed to DP&L's decision to explore the possible sale of its generation assets to a third party.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

INT-118. Please identify the price that the generating assets must be purchased at that would allow DP&L to maintain its financial integrity. (Supplemental Reply Comments at 3).

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-119. Is there a minimum price for a third party to purchase its assets that is acceptable to DP&L? If so what are the parameters that make up the minimum price?

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-120. How has, or will, DP&L determine the minimum price that will allow it to maintain its financial integrity?

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-121. Will transferring DP&L's assets at fair market value jeopardize its financial integrity? If so, please explain how.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-122. How will DP&L measure whether the sale of its generating assets to a third party will jeopardize its financial integrity?

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.



INT-123. Please explain why if DP&L's generation assets are to be transferred to and retained by an affiliate that transfer will not happen "for years." (See Supplemental Reply Comments at 4).

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-124. Please identify the affiliate of DP&L that would be transferred the assets if the assets are not transferred to a third-party buyer.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery requests seeks information that DP&L does not know at this time.

INT-125. Does DP&L's ability to transfer the assets to an affiliate depend on the continuation of the SSR? If so, please explain why.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-126. If the generation assets are transferred to an affiliate how will DP&L determine the FMV of the units?

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-127. If DP&L's generation assets are transferred to and retained by an affiliate, what are the factors that necessitate that "that transfer will not happen for years?" (Supplemental Reply Comments at 4)

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-128. Referring to the preceding interrogatory, define “years.”

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

INT-129. What price would “allow DP&L to pay off a significant portion” of its outstanding indebtedness of \$876.9 million. (See Supplemental Reply Comments at 5).

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-130. Please identify, separately, the amount of generation, transmission, and distribution assets associated with DP&L's \$876.9 million debt.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.



INT-131. Please identify the “current market conditions and expectations” referred to at page 5 of the Supplemental Reply Comments that require the SSR to continue if DP&L is to sell its generation assets to a third party before the Commission-imposed deadline of January 1, 2016.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-132. Has DP&L or DPL Inc. performed an impairment analysis with respect to its generating units in 2013 or 2014? If so when was the analysis conducted and what was the result of the analysis?

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

INT-133. Please identify the “regulations being proposed” that would require DP&L to incur costs to remediate its generation facilities for conduct that occurred at those facilities while DP&L owned the assets and they were being used to provide service to Ohio customers. (Supplemental Reply Comments at 7).

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

INT-134. Please define “environmental liabilities” as used in DP&L’s Supplemental Reply Comments at 7. Do environmental liabilities include retrofits or changes to generating units that are made in compliance with future legislation?

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-135. Please identify, by generating unit, the date when DP&L first became aware that there might be future environmental liabilities associated with its generating assets or the real property on which those generating assets are located.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

INT-136. Please identify the rate recovery DP&L will seek in a separate proceeding for retail rate issues relating to OVEC (Supplemental Reply Comments at 12).

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

INT-137. Please identify the “timely process of seeking consent” that DP&L refers to at page 12 of its Supplemental Reply Comments.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not know at this time.

INT-138. Please identify each of the conditions of Section 9.183 of the Amended And Restated Inter-company Power Agreement that can be satisfied by DP&L. For those conditions that cannot be satisfied, please explain why they cannot be satisfied.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.



INT-139. Define the “poor market conditions” referred to on page 15 of DP&L’s Supplemental Reply Comments.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-140. Please identify the basis for the statement that the unregulated affiliate will not be able to support any transfer of debt (Supplemental Reply Comments at 15).

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-141. Please identify the entity referred to when DP&L states that “[t]he parent’s lack of creditworthiness impedes its ability to support utility-level debt. “  
(Supplemental Reply Comments at 15)

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-142. Please identify the basis of the statement that “negative retained earnings may be unavoidable, absent a deferral of the separation date.” (Supplemental Reply Comments at 15).

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-143. Please identify the basis of DP&L's expectation that the anticipated FMV of the generation assets is expected to be adversely impacted by the poor market conditions.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-144. Of the costs identified in the Supplemental Application at ¶9(c) please identify what the actual costs incurred to date are, identifying the date the costs were incurred, the amount of the costs, the category of costs, and whether the costs are generation related or distribution related.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

INT-145. Please identify all communications with the PUCO that pertain to issues raised in this proceeding.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome.

**RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

RPD-48. Referring to the 2013 Form 10 K that was filed, specifically page 142, you state that “[w]e evaluate the potential liability related to environmental matters quarterly and may revise our estimates.” Please provide a copy of all documents that pertain to the quarterly evaluations and any revisions thereto for 2013 and 2014 to date.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-49. Referring to the information that has been requested in OCC INT-117 , please provide a copy of all documents that pertain to the “other factors” that contributed to DP&L’s decision to explore the possible sale of its generation assets to a third party.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12



(deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-50. Referring to the information that has been requested in OCC INT-118, please provide a copy of all documents that pertain to identifying a price that the generating assets must be purchased at to allow DP&L to maintain its financial integrity.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-51. If the response to OCC INT-121 is affirmative, please provide a copy of all documents that pertain to DP&L's conclusion, including documents with financial projections and including studies and analysis that has been undertaken by or on behalf of DP&L.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-52. Referring to the information that has been requested in OCC INT-123, please provide a copy of all documents that pertain to DP&L's conclusion that the transfer will not happen "for years".

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not

know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-53. Referring to the information that has been requested in OCC INT-131, please provide a copy of all documents that pertain to the current market conditions and expectations.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-54. Referring to the information that has been requested in OCC INT-116, please provide a copy of all documents that pertain to the material changes in market conditions that affected its decision to explore the possible sale of its generation assets to a third party.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-55. Referring to the information that has been requested in OCC INT-127, please provide a copy of all documents that pertain to the delayed transfer of the assets to an affiliate.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the

information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-56. Referring to the information that has been requested in OCC INT-132, please provide a copy of all documents that pertain to any impairment analysis, including studies, workpapers, and memoranda explaining or discussing the impairment analysis.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-57. Referring to the information that has been requested in OCC INT-119 and 120, please provide a copy of all documents that pertain to developing the minimum price and to how DP&L will determine the minimum price, and how DP&L did determine the minimum price.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-58. Referring to the information that has been requested in OCC INT-121, please provide a copy of all documents that pertain to how DP&L will measure and does measure whether the sale of its generating assets to a third party will jeopardize its financial integrity.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In

addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-59. Referring to the information that has been requested in OCC INT-126, please provide a copy of all documents that pertain to the determination of the FMV of the units.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-60. If the response to OCC INT-125 is affirmative, please provide a copy of all documents that pertain to DP&L's ability to transfer its assets depending on the continuation of the SSR.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-61. Referring to the information that has been requested in OCC INT-136, please provide a copy of all documents that pertain to the rate recovery that will be sought.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In



addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-62. Referring to the information that has been requested in OCC INT-137, please provide a copy of all documents that pertain to the process.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-63. Referring to the information that has been requested in OCC INT-140, please provide a copy of all documents that pertain to the basis of the statement referenced.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for

narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-64. Referring to the information that has been requested in OCC INT-142, please provide a copy of all documents that pertain to DP&L's expectations of negative retained earnings.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a

whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-65. Referring to the information that has been requested in OCC INT-143, please provide a copy of all documents that pertain to DP&L's expectation.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-66. Referring to the information that has been requested in OCC INT-7, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or

undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-67. Referring to the information that has been requested in OCC INT-12, please provide a copy of all documents that pertain to the claim that incurrence of these liabilities is directly related to rendering of service to standard service offer customers.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-68. Referring to the information that has been requested in OCC INT-24, please provide a copy of all documents that pertain to such efforts.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-69. Referring to the information that has been requested in OCC INT-29, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the

information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-70. Referring to the information that has been requested in OCC INT-30, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-71. Referring to the information that has been requested in OCC INT-31, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-72. Referring to the information that has been requested in OCC INT-37, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a

whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-73. Referring to the information that has been requested in OCC INT-38, please provide a copy of all documents that pertain to the source of the projections.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-74. Referring to the information that has been requested in OCC INT-41, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not



know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-75. Referring to the information that has been requested in OCC INT-45, please provide a copy of all documents that pertain to and confirm the conditions and ability of DP&L to reallocate debt to its non-regulated affiliate.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-76. Referring to the information that has been requested in OCC INT-46, please provide a copy of all documents that pertain to and confirm the amount of new debt with terms that would preclude DP&L from transferring or selling its generation assets.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-77. Referring to the information that has been requested in OCC INT-47, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's

deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-78. Referring to the information that has been requested in OCC INT-49, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-79. Referring to the information that has been requested in OCC INT-57, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-80. Referring to the information that has been requested in OCC INT-58, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a

whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-81. Referring to the information that has been requested in OCC INT-60, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-82. Referring to the information that has been requested in OCC INT-70, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or

undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-83. Referring to information that has been requested in OCC INT-95, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-84. If the response to OCC INT-105 is affirmative in any respect, please provide a copy of all documents that pertain to the information requested and reported in your 10K.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-85. Referring to information that has been requested in OCC INT-112, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's

deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-86. Referring to information that has been requested in OCC INT-113, please provide a copy of all documents that pertain to the information requested.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

RPD-87. Referring to information that has been requested in OCC INT-141, please provide a copy of all documents that pertain to the information requested.



**RESPONSE:** General Objections Nos. 1 (relevance), 2 (unduly burdensome), 3 (privileged and work product), 4 (proprietary), 5 (inspection of business records), 6 (calls for narrative answer), 7 (not in DP&L's possession or available on PUCO website), 9 (vague or undefined), 10 (possession of DP&L's unregulated affiliate), 11 (calls for a legal conclusion), 12 (deadline for filing comments has already passed), 13 (seeks information that DP&L does not know at this time). DP&L further objects to this discovery request on the ground that OCC's deadline for filing comments has already passed, and there is no hearing set in this matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue. In addition, responding to this discovery request and responding to OCC's discovery requests as a whole would be unduly burdensome. DP&L further objects because this discovery request seeks information that DP&L does not possess at this time.

Respectfully submitted,

s/ Judi L. Sobecki

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Attorneys for The Dayton Power and  
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing The Dayton Power and Light Company's  
Objections and Responses to OCC's Interrogatories and Requests for Production of Documents,  
Second Set (April 11, 2014) has been served via electronic mail upon the following counsel of  
record, this 1st day of May, 2014:

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s/ Jeffrey S. Sharkey  
Jeffrey S. Sharkey

835017.1

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Utility for Authority to Transfer or Sell Its Generation Assets. ) Case No. 13-2420-EL-UNC )

## AFFIDAVIT OF EDMUND "TAD" BERGER

I, Edmund “Tad” Berger, attorney for the Office of the Ohio Consumers’ Counsel (“OCC”) in the above captioned case, being first duly sworn, depose and state that the following efforts have been made to resolve the differences with Dayton Power & Light Utility (“DP&L” or “Utility”) as to the motion to compel responses to OCC discovery: OCC Interrogatories INT-1 through INT-145, and requests for production of documents RPD-48 to RFP-87:

1. OCC submitted its second set of discovery to the Utility on April 11, 2014. OCC's discovery was served on the Utility by electronic message, consistent with Ohio Adm. Code 4901:1-1-05(C)(4).

2. On April 22, 2014, DP&L filed a Motion for Protective Order in which it requested that discovery not be permitted in this proceeding.

3. On May 1, 2014, the Utility served its objections and responses to OCC's second set of discovery by electronic message. DP&L's objections and responses to OCC's discovery requests were uniformly the same in response to interrogatories and in response to requests for production of documents.

4. On May 8, 2014, undersigned counsel for OCC, by e-mail, communicated with counsel for the Utility that the discovery responses were problematic and explained

OCC's concerns and perspective in an effort to address those discovery concerns consistent with Ohio Admin Code 4901-1-23 (Attachment 1).

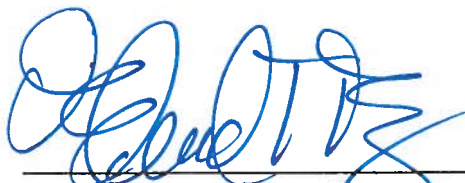
5. On May 9, 2014, DP&L's counsel, Attorney Sharkey, responded to OCC's e-mail, stating that DP&L "will not respond to OCC's second set of discovery requests in the Generation Separation matter," indicating that DP&L is relying on its Motion for Protective Order and "has no obligation to respond to those requests" for the reasons set forth in such motion. (Attachment 2).

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF FRANKLIN )

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and state the following:

I have caused to be prepared the attached written affidavit for OCC in the above referenced docket. This affidavit is true and correct to the best of my knowledge, information and belief.

Further affiant sayeth naught.

  
Edmund "Tad" Berger, Affiant

Subscribed and sworn to before me this 14th day of May, 2014.

  
Notary Public



Debra Jo Bingham, Notary Public  
Union County, State of Ohio  
My Commission Expires June 13, 2015

**Berger, Edmund**

---

**From:** Berger, Edmund  
**Sent:** Thursday, May 08, 2014 4:27 PM  
**To:** 'Sharkey, Jeffrey S.'  
**Cc:** Grady, Maureen; 'Seabold, Teri'  
**Subject:** DP&L Sale or Transfer of Generation Assets - 13-2420-EL-UNC - DP&L's Objections and Responses to OCC's Second Set of Discovery

Hi Jeff – The e-mail below will look familiar since it is very much like the e-mail I sent you in connection with DP&L's objections and responses to OCC's First Set of Discovery Requests in this case. I suspect your response to this e-mail will be similar to or the same as the one you sent us on April 22, 2014 in this proceeding. Would you please respond by close of business tomorrow, May 9, 2014?

Specifically, I am writing in response to your objections/responses to OCC's Second Set of Discovery sent to us electronically last week in Case No. 13-2420-EL-UNC. As per O.A.C. 4901-1-23, please consider this communication an initial effort to resolve our differences regarding the requested discovery.

Your objections/responses are very problematic. We are certainly entitled to discovery under the PUCO's rules. As you know, under O.A.C. 4901-1-17, discovery may begin immediately after a proceeding is commenced. Further, the PUCO has never issued an order closing discovery.

Our questions are, for the most part, directed to specific statements in your filings and, in particular, your Supplemental Reply Comments and thus any claim of irrelevance is without merit. Further, many of your objections have no bearing on the information requested. For example, you object that a legal conclusion is asked for when questions are directed specifically at factual claims in your application or supplemental application. You also claim lack of possession of documents when the question is seeking an explanation of a factual claim in DP&L's application. You claim lack of knowledge regarding your own statements in the application and supplemental application. These generalized objections are improper.

Similarly, your privilege claims lack merit as they do not relate to any specific document claimed to be privileged and many of the answers can certainly be provided without providing documents claimed to be privileged. Further, a privilege log is required as per these requests if any document is claimed to be privileged. I would ask that a privilege log be provided promptly.

In light of the broad sweep of your objections and lack of specificity to any particular discovery request, it is difficult for me to see a reasonable means of resolving our differences regarding these requests in the absence of any substantive response to these requests. I would ask that DP&L provide a substantive response and privilege log to these requests immediately so we can determine whether there is a reasonable basis for resolution of our differences. If DP&L is not able or willing to provide any substantive response and intends not to provide any substantive responses, please advise and we will file a motion to compel as per O.A.C. 4901-1-23. Further, please advise whether you see any reasonable means of resolving our differences such that we can obtain the information we are seeking.

Thank you. Tad Berger

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PROHIBITED. IF YOU ARE NOT, OR BELIEVE YOU ARE NOT, THE INTENDED RECIPIENT OF THIS COMMUNICATION, DO NOT READ IT. PLEASE REPLY TO THE SENDER ONLY, AND STATE THAT YOU HAVE RECEIVED THIS MESSAGE. THEN IMMEDIATELY DELETE THIS COMMUNICATION AND ALL COPIES OF THIS COMMUNICATION. THANK YOU.

Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**Berger, Edmund**

---

**From:** Sharkey, Jeffrey S. <JSharkey@ficlaw.com>  
**Sent:** Friday, May 09, 2014 10:01 AM  
**To:** Berger, Edmund  
**Cc:** Grady, Maureen; Judi L Sobecki; Dona R Seger-Lawson; Faruki, Charles J.  
**Subject:** RE: DP&L 4th Amended Corp Sep Plan - 13-2442-EL-UNC - DP&L's Objections and Responses to OCC's First Set of Discovery [IWOV-DMS.FID87283]

Tad: DP&L will not respond to OCC's first set of discovery requests in the Corporate Separation matter, and will not respond to OCC's second set of discovery requests in the Generation Separation matter, the latter of which are already the subject of DP&L's motion for a protective order that has been filed with the Commission. DP&L believes that it has no obligation to respond to those requests for the same reasons that are already identified in the motion for a protective order that DP&L filed. Jeff.

---

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Wednesday, May 07, 2014 2:57 PM  
**To:** Sharkey, Jeffrey S.  
**Cc:** Grady, Maureen; Seabold, Teri  
**Subject:** DP&L 4th Amended Corp Sep Plan - 13-2442-EL-UNC - DP&L's Objections and Responses to OCC's First Set of Discovery

Hi Jeff – The e-mail below will look familiar since it is very much like the e-mail I sent you in connection with DP&L's objections and responses to OCC's First Set of Discovery Requests in Case No. 13-2420-EL-UNC. However, this e-mail concerns your objections and responses to our first set of discovery requests in your corporate separation plan proceeding at 13-2442-EL-UNC. I suspect your response to this e-mail will be similar to or the same as the one you sent us on April 22, 2014 in the Sale/Transfer proceeding. Would you please respond by close of business tomorrow, May 8, 2014?

Specifically, I am writing in response to your objections/responses to OCC's First Set of Discovery sent to us electronically last week in Case No. 13-2420-EL-UNC. As per O.A.C. 4901-1-23, please consider this communication an initial effort to resolve our differences regarding the requested discovery.

Your objections/responses are very problematic. We are certainly entitled to discovery under the PUCO's rules. As you know, under O.A.C. 4901-1-17, discovery may begin immediately after a proceeding is commenced. Further, the PUCO has never issued an order closing discovery.

Our questions are, for the most part, directed to specific statements in your filing and thus any claim of irrelevance is without merit. Further, many of your objections have no bearing on the information requested. For example, you object that a legal conclusion is asked for when questions are directed specifically at factual claims in your application or supplemental application. You also claim lack of possession of documents when the question is seeking an explanation of a factual claim in DP&L's application. You claim lack of knowledge regarding your own statements in the application and supplemental application. These generalized objections are improper.

Similarly, your privilege claims lack merit as they do not relate to any specific document claimed to be privileged and many of the answers can certainly be provided without providing documents claimed to be privileged. Further, a privilege log is required as per these requests if any document is claimed to be privileged. I would ask that a privilege log be provided promptly.

In light of the broad sweep of your objections and lack of specificity to any particular discovery request, it is difficult for me to see a reasonable means of resolving our differences regarding these requests in the absence of any

substantive response to these requests. I would ask that DP&L provide a substantive response and privilege log to these requests immediately so we can determine whether there is a reasonable basis for resolution of our differences. If DP&L is not able or willing to provide any substantive response and intends not to provide any substantive responses, please advise and we will file a motion to compel as per O.A.C 4901-1-23. Further, please advise whether you see any reasonable means of resolving our differences such that we can obtain the information we are seeking.

Thank you. Tad Berger

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