

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 13-2442-EL-UNC
Authority to Amend its Corporate)
Separation Plan.)

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

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May 21, 2014

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In this case, the Dayton Power & Light Company's ("DP&L" or "Utility") proposes revisions to its corporate separation plan that may impact the rates that customers pay for their electric service and retail sales of generation in the competitive market. In order to advocate for the interests of the residential customers of DP&L, the Office of the Ohio Consumers' Counsel ("OCC") seeks answers from the Utility about its proposed revisions. The proposed corporate separation plan is currently pending before the Public Utilities Commission ("PUCO" or "Commission").

OCC, on behalf of the residential utility consumers of DP&L, moves¹ 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 First Set of Interrogatories. Specifically, OCC moves to compel responses to Interrogatories Nos. INT-1 through INT-16 and requests for production of documents RPD-1 to RPD-14. These discovery requests are attached to this pleading as OCC Exhibit 1.

¹ See Ohio Adm. Code 4901-1-12 and 4901-1-23.

As explained in the attached Memorandum in Support, DP&L objected to each 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.² DP&L objects to OCC discovery, in part, because the "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."³ DP&L maintains that responding to OCC's discovery requests "would thus be irrelevant and unduly burdensome."⁴ 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.

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.⁵ 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

² 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.

³ Exhibit 2 at 1, 4 (General Objections 1, 12) and pp. 5-29 (each individual discovery response).

⁴ *Id.*

⁵ R.C. 4903.082 and Ohio Adm. Code 4901-1-16(B).

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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**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.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

When DP&L filed its Application in this proceeding, it proposed revisions to its corporate separation plan that could impact the rates that customers pay to the Utility and retail sales of generation in the competitive market.⁶ In the Attorney Examiner’s Entry of February 25, 2014, after receipt of Comments and Reply Comments, the Attorney Examiner found that the parties “provided sufficient reason in their comments to warrant further consideration of the application by the Commission” and suspended DP&L’s application for further review.

A number of parties filed comments on February 4, 2014, including the PUCO Staff, IEU-Ohio, and OCC. These parties all commented in regard to DP&L failing to file its AES US Services (DP&L’s new affiliated service corporation) Cost Alignment and Allocation Manual (“CAAM”). Because that Manual has not been available for review, it has impeded OCC’s (and others) review of DP&L’s proposed corporate separation plan. OCC further commented regarding its concerns that if the Cost Alignment and Allocation Manual does not properly allocate costs between DP&L

⁶ DP&L Application (December 30, 2013); OCC Comments (February 4, 2014).

affiliates, then DP&L's CRES affiliates may gain an unfair competitive advantage and be improperly subsidized by regulated services.⁷ And regulated utility customers could subsidize competitive services, paying higher distribution rates. Furthermore, subsidization would result in a less competitive retail generation market.⁸

Additionally, OCC commented that DP&L's anticipated structural separation requires careful scrutiny of any cost shifting between the generation and transmission and distribution portions of DP&L's operations. It is essential that DP&L's books be maintained in a transparent fashion. This corporate separation proceeding should address the need for such transparency and the prevention of cost shifting.

Following the filing of its Comments and Reply Comments and the Attorney Examiner's finding that further review should be given to DP&L's application, on April 9, 2014, OCC served its first set of discovery on DP&L.⁹ DP&L did not provide one substantive response to the 16 interrogatories and 14 requests for production of documents ("RPs") contained in OCC's first set of discovery. Instead, DP&L objected to each and every one of OCC's interrogatories.¹⁰ Similarly, DP&L objected to each and every one of OCC's 14 Requests for Production of Documents.¹¹

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,

⁷ OCC Comments at 4, 6-8 (February 4, 2014).

⁸ *Id.*

⁹ Exhibit 1.

¹⁰ Exhibit 2, pp. 5-20.

¹¹ *Id.* at 16-29.

DP&L cannot rely upon its flawed position that because there is no hearing set in this matter, “the information sought is thus irrelevant to and unnecessary to resolve any pending issue.”¹²

DP&L’s position is flatly contradicted by Ohio Admin. Code 4901-1-17(A), which provides that “discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible.” Although a scheduled hearing is not required to allow any party to perform discovery, OCC notes that R.C. 4928.17(B) provides that the PUCO “shall afford a hearing upon those aspects of the plan that the commission determines reasonably require a hearing.” Although the PUCO has not yet made this determination, it has recognized that further consideration of the plan is warranted. 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.

¹² See Exhibit 2, pp. 4-29.

The OCC has detailed in the attached affidavit,¹³ 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.”¹⁴ DP&L has indicated that it intends to stand on its objections.¹⁵

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 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,¹⁶ 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

¹³ Exhibit 3.

¹⁴ See Exhibit 3, Attachment 2.

¹⁵ *Id.*

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

commenced.”¹⁷ 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 discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.¹⁸

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.”

¹⁷ 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.”).

¹⁸ *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.

OCC's right to discovery is assured by law, rule and Supreme Court precedent.¹⁹ 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 application filing. It addresses the following issues:

- Complaints, investigation, training, auditing, reporting, whistleblower protections, other procedures, and corrective actions related to compliance with Corporate Separation Rules and Code of Conduct [4th Amended Plan at 8-10, 14-15, 17-18, 19-30.] (OCC INT-1-1, 2, 3, 4, 16) (OCC RPD-1, 2, 3, 4, 5)
- Billing rates and payment terms for affiliated services and materials and supplies between DP&L and its affiliates [4th Amended Plan at 5-7, 10-14, 19-30] (OCC INT-1-5 to OCC-INT-11) (OCC RPD-8, 11)
- Knowledge of any preference or advantage being extended by DP&L to its affiliates [4th Amended Plan at 17-18, 19-30] (OCC INT-12) (OCC-RPD-35-37)

¹⁹ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789.

- Sharing of Employees [4th Amended Plan at 6, 8-10, 16-17, 19-30)]
(OCC INT- 13, 14) (OCC-RPD-12)
- DP&L's and AES US Services' Cost Allocation Manuals and other agreements between DP&L and affiliates [4th Amended Plan at 7, 10-14, 19-30)]
(OCC RPD- 6, 7, 9, 10)
- Analysis of economic feasibility and prudence of CRES or affiliates satisfying needs through their own employees, facilities, equipment and other resources.
[4th Amended Plan at 6, 8-10, 16-17, 19-30]
(OCC-RPD-14)

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.²⁰ 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."²¹ Under this broad discovery test, OCC's discovery—which seeks information on essential issues in the case—is clearly relevant. The

²⁰ *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).

²¹ *Tschantz v. Ferguson* (1994), 97 Ohio App.3d 693, 715 (citation omitted).

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.**

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 matter; the information sought is thus irrelevant to and unnecessary to resolve any pending issue."²² DP&L is wrong.

The PUCO has not in any way limited the discovery rights of the parties in this matter. Under the law, the parties are afforded rights to ample discovery.²³ Under the PUCO's rules²⁴ discovery may begin once a proceeding has commenced. This proceeding commenced when DP&L filed its initial application -- December 30, 2013.

DP&L's claim that the PUCO rules do not provide for discovery unless and until a hearing is 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

²² See Exhibit 2, pp. 4-29.

²³ See R.C. 4903.082.

²⁴ Ohio Admin. Code 4901:1-17 (A).

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. 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.²⁵

Discovery is a necessary part of the analysis that OCC and all parties must undertake in order to evaluate the Utility's proposed revisions to its corporate separation plan. The discovery process will aid the 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.²⁶ 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.

²⁵ 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).

²⁶ 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...").

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."²⁷ 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 confidentiality.²⁸ 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.²⁹ DP&L did not.

²⁷ See Exhibit 2 at 1-2, 5-29.

²⁸ See e.g., Notes to Decision of Ohio Civ. R. 26 citing *Frank W. Schjaefer, 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.).

²⁹ 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).

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.³⁰ 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.³¹ 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.”³² The privilege must be proven document by document, with the demonstration typically being made with a privilege log.³³ Thus, a separate claim must be raised in response to each request for disclosure.³⁴

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.³⁵ 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.³⁶ Upon a showing of all of these requirements, the burden shifts to the opposing party to show “good cause” for

³⁰ *Herbert v. Lando*, 441 U.S. 153, 175, 99 S.Ct. 1635, 1648; *In re Allen*, 106 F.3d 582, 600 (4th Cir. 1997), cert. denied, 522 U.S. 1047 (1998).

³¹ *In re: Guardianship of Marcia S. Clark*, 2009-Ohio-6577 at ¶8.

³² Sec. 5.02[8], 4 Weinstein’s Federal Evidence, Chapter 503, Lawyer-Client Privilege (Matthew Bender 2d ed.).

³³ *United States v. Rockwell*, 897 F.2d 1255 (3rd Cir. 1990).

³⁴ Sec. 5.02[11a], 4 Weinstein’s Federal Evidence, Chapter 503, Lawyer-Client Privilege.

³⁵ *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, 166.

³⁶ See Ohio Civ. R. 26(B)(3) (2008).

obtaining such documents.³⁷ 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.³⁸

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 is privileged in some respect. DP&L's blanket assertion of privilege is insufficient to meet this burden.³⁹

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."

³⁷ Ohio Civ. R. 26(B)(3).

³⁸ 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.

³⁹ *Hitachi Medical Systems America, Inc. v. Branch*, 2010 U.S. District, Lexis 1597 at 7 (N.D. Ohio) (Sept. 24, 2010).

DP&L was asked by OCC to produce a privilege log, but declined to do so.⁴⁰ 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.⁴¹ 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.⁴² Then the PUCO is required to follow up with an *in camera* inspection of each document identified as privileged.⁴³ Such a practice is in line with the Ohio Supreme Court dictates in *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, 167.

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.”⁴⁴ DP&L also objected to “responding to OCC’s discovery requests as a whole” on grounds that it “would be unduly burdensome.”⁴⁵

⁴⁰ See Exhibit 3.

⁴¹ 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).

⁴² *Id.* at ¶18.

⁴³ 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).

⁴⁴ See Exhibit 2, General Objection (2).

⁴⁵ 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.

This is a case where DP&L has presented a lengthy corporate separation plan with significant revisions, including an entirely new relationship with AES US Services, LLC. The corporate separation revisions are proposed at a time when DP&L has been ordered to divest its generating assets, which will increase the need for transparency of all affiliate transactions. Transparency is needed to prevent unfair competitive advantages and to prevent improper subsidies. The changes approved in this proceeding could impact the rates customers pay in the retail generation market and the rates customers pay as part of DP&L's regulated services. Given the potential significance of these changes, DP&L should be extremely limited in what it would describe to the PUCO as its "burden" in answering questions. Reasonable discovery is necessary to understand and assess DP&L's proposed revisions to its corporate separation plan and their potential impact on the competitive market and customer rates.

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 information that would be required to comply with the discovery). Federal case law⁴⁶ 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

⁴⁶ 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."

rules.⁴⁷ In objecting, the party must submit affidavits or offer evidence revealing the nature of the burden.⁴⁸ General objections without specific support may result in waiver of the objection.⁴⁹

Here, the Utility has merely alleged that responding to each and every discovery request is unduly burdensome. Such unsubstantiated assertions fail 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 support⁵⁰ 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 approval of a corporate separation plan that modifies the terms and conditions of DP&L’s relationships with its affiliates. DP&L bears the burden of proving its application meets the public interest provisions of R.C. 4928.17. Given the potential for customer rates to be impacted as a result of DP&L’s proposed revisions, it should expect adequate discovery to be conducted. Ample rights of discovery are afforded parties in PUCO proceedings, by law,⁵¹ by rule⁵² and by precedent.⁵³ DP&L’s objection should be overruled. OCC’s Motion to Compel should be granted.

⁴⁷ *Trabon Engineering Corp. v. Eaton Manufacturing Co.* (N.D. Ohio 1964), 37 F.R.D. 51, 54.

⁴⁸ *Roesberg v. Johns-Manville* (D.Pa 1980), 85 F.R.D. 292, 297.

⁴⁹ *Id.*, citing *In re Folding Carton Anti-Trust Litigation* (N.D. Ill. 1978), 83 F.R.D. 251, 264.

⁵⁰ *Gulf Oil Corp. v. Schlesinger* (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.

⁵¹ R.C. 4903.082.

⁵² Ohio Admin. Code 4901 -1-16 (scope of discovery is wide—reasonably calculated to lead to the discovery of admissible evidence).

⁵³ See, e.g., *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 320.

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.”⁵⁴ 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.

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.

⁵⁴ See DP&L General Objection 4.

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."⁵⁵ 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.⁵⁶ It must be shown to be unduly burdensome and oppressive.⁵⁷ 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 specifically for each and every data request it objected to. The PUCO should accordingly overrule this objection.

⁵⁵ DP&L General Objection 5.

⁵⁶ See, e.g., *Erone Corp. v. Skouras Theatres Corp.* (1958 SD NY), 22 FRD 494, 1 FR Serv.2d 517.

⁵⁷ See, e.g., *American Oil Co. v. Pennsylvania Petroleum Products Co.* (1959, DC RI), 23 FRD 680, 2 FR Serv.2d 493.

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, which is the subject matter of this proceeding, it is relevant. The discovery is reasonably calculated to lead to the discovery of admissible evidence, consistent with the scope of discovery established under the PUCO's rules.⁵⁸

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.⁵⁹ However, there is nothing in the Commission's rules that suggests 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.

⁵⁸ Ohio Admin. Code 4901-1-16(B).

⁵⁹ See DP&L General Objection 6, Exhibit 2.

- 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.⁶⁰ 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.⁶¹ 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.⁶² 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.

⁶⁰ See DP&L General Objections 7, Exhibit 2.

⁶¹ *In the Matter of the Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services*, Case No. 96-1310-TP-COI, Entry at ¶40 (June 1, 2001).

⁶² *Fireman's Mutual Ins. Co. v. Erie-Lackawanna R. Co.* (1964, ND Ohio), 35 FRD 297, 8 FR Serv 2d 33.21, Case 4.

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.⁶³ But objections to interrogatories must be specific and not so overly broad as to be meaningless.⁶⁴ 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.⁶⁵ 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

⁶³ See DP&L General Objections 9, Exhibit 2.

⁶⁴ 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).

⁶⁵ DP&L General Objections 10, Exhibit 2.

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. Thus, one would expect that information upon which the statements were based would be 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.⁶⁶ In other words, if DP&L has access to the information sought, then it must produce it.⁶⁷ 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

⁶⁶ 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.

⁶⁷ 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).

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. 221⁶⁸ and the Ohio Admin. Code⁶⁹ which require disclosure of affiliate information,⁷⁰ 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.⁷¹

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.⁷² 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. Furthermore, Rule 4901-1-19 Ohio Admin. Code

⁶⁸ See R.C. 4928.145.

⁶⁹ Ohio Admin. Code 4901:1-35097.

⁷⁰ 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).

⁷¹ See Ohio Admin Code 4901:1-37-07.

⁷² DP&L General Objections 11.

states that an interrogatory is not objectionable merely because it calls for an opinion, contention, or legal conclusion.⁷³ Thus, DP&L's claims are without merit and DP&L is required by the PUCO's procedural rules to respond.

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 is based.

DP&L objects that all of the discovery requests seek "information that DP&L does not know at this time."⁷⁴ 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. Indeed, some of the questions provide a specific reference to the Application. For example, INT-4 asks DP&L to identify any corrective actions that DP&L "has taken in the last 5 years as per the compliance procedures on page 18 of the 4th Amended Corporate Separation Plan or previous corporate separation plans." INT-13 refers to page 6 of the 4th Amended Corporate Separation Plan in inquiring about shared employees. All of the questions clearly relate to the scope of this proceeding in addressing issues related to DP&L's corporate separation rules, Code of Conduct, and its relationships with its affiliates.

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.⁷⁵ Upon receipt of DP&L's responses and objections, OCC communicated its position on DP&L's objections to the Utility's counsel. OCC

⁷³ Accord, Ohio Civ. R. 33B.

⁷⁴ DP&L General Objections 13, Exhibit 2 and pp. 5-29.

⁷⁵ See also Exhibit 4.

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.

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 pertaining to corporate separation requirements that can impact both the competitive market and retail rates, 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 those consumers who would be adversely affected if DP&L's proposed revisions to its corporate separation plan are adopted without thorough review.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Edmund "Tad" Berger
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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 21st day of May, 2014.

/s/ Edmund "Tad" Berger

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. 13-2442-EL-UNC
Authority to Amend Its Corporate)	
Separation Plan.)	

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

**FIRST SET
(April 9, 2014)**

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
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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-1. Please identify all auditing processes that DP&L has in place currently to ensure compliance with the corporate separation rules and Code of Conduct.

RESPONSE:

INT-2. Please identify any investigations and audits, both internal and external, of DP&L's corporate separation rules and Code of Conduct that have been conducted over the past 5 years.

RESPONSE:

INT-3. Does DP&L have in place any whistle-blower protections for employees reporting violations of corporate separation rules or the Code of Conduct? If so, please identify such protections.

RESPONSE:

INT-4. Please identify any corrective action, including disciplinary action, that DP&L has taken in the last 5 years as per the compliance procedures on page 18 of the 4th Amended Corporate Separation Plan or previous corporate separation plans.

RESPONSE:

INT-5. To the extent not included in the agreements between DP&L and its affiliated entities, please identify billing rates and payment terms for affiliated services and materials and supplies that will be charged by DP&L to its affiliated entities.

RESPONSE:

INT-6. To the extent not included in the agreements between DP&L and its affiliated entities, please identify billing rates and payment terms for affiliated services and materials and supplies that will be charged to DP&L by its affiliated entities.

RESPONSE:

INT-7. Are the billing rates and payment terms that are charged by DP&L the same as those charged to DP&L by its affiliates for the same or similar services and materials and supplies? If not, please explain why not.

RESPONSE:

INT-8. To the extent not included in the agreements between AES US Services and its affiliated entities, please provide billing rates and payment terms for affiliated services and materials and supplies that will be charged by AES US Services to its affiliated entities.

RESPONSE:

INT-9. To the extent not included in the agreements between AES US Services and its affiliated entities, please provide billing rates and payment terms for affiliated services and materials and supplies that will be charged to AES US Services by its affiliated entities.

RESPONSE:

INT-10. Are the billing rates and payment terms charged by AES US Services for affiliated services and materials and supplies the same to each of AES US Services' affiliated entities? If not, please explain why not.

RESPONSE:

INT-11. Are the billing rates and payment terms that any affiliated entity may charge AES US Services for affiliated services and materials and supplies the same? If not, please explain why not.

RESPONSE:

INT-12. In the last 5 years, is DP&L aware of any preference or advantage being extended by DP&L to any of its CRES affiliates or an affiliate providing a non-electric retail product or service? If so, please provide details of any preference or advantage so extended. If a determination was made that the preference or advantage extended was not "undue," please provide any documentation of such determination.

RESPONSE:

INT-13. Referring to page 6 of the 4th Amended Corporate Separation Plan, does any employee of DP&L have another employer that is an affiliated entity? If so, please identify such employees and indicate who their employers are.

RESPONSE:

INT-14. Please identify all persons employed by DP&L and/or an affiliate that provide services to both DP&L and an affiliate. Please identify the affiliate(s) to whom the employee provides service, identify the department at each (DP&L and affiliate) where the employee provides services, and identify the services provided by the employee to each.

RESPONSE:

INT-15. Referring to page 10 of the 4th Amended Corporate Separation Plan, please identify all instances where the disclaimer discussed and quoted on this page has been utilized.

RESPONSE:

INT-16. Please identify all procedures implemented to date to ensure adherence to DP&L's Code of Conduct.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

- RPD-1. Please provide all documents relating to investigations and audits of corporate separation rules and Code of Conduct over the last five years.
- RPD-2. Please provide all training documents in DP&L's possession for current training of DP&L and/or affiliate employees as to corporate separation rules, Code of Conduct requirements, procedures, and compliance, and DP&L's Cost Allocation and AES US Services Cost Alignment and Allocation Manual requirements and compliance.
- RPD-3. Please provide DP&L's web-based program for training employees described on pages 17-18 of the 4th Amended Corporate Separation Plan.
- RPD-4. Please provide any documents relating to corrective actions that DP&L has taken in the past five years.
- RPD-5. Please provide any reports prepared by the General Counsel over the past five years of possible violations of the Code of Conduct.
- RPD-6. Please provide DP&L's Cost Allocation Manual currently in effect.
- RPD-7. Please provide a copy of any and all agreements between DP&L and its affiliates.

- RPD-8. To the extent that billing rates and payment terms applicable to services and materials and supplies provided between DP&L and its affiliates are included in documents other than agreements, please provide such documents.
- RPD-9. Please provide the AES US Services Cost Alignment and Allocation Manual.
- RPD-10. Please provide a copy of any and all agreements between AES US Services and any affiliated entities.
- RPD-11. To the extent that billing rates and payment terms applicable to services and materials and supplies provided between AES US Services and its affiliates are included in documents other than agreements, please provide such documents.
- RPD-12. Please provide all shared employee job descriptions.
- RPD-13. Please provide all complaints registered or received by the Company in the past five years concerning corporate separation rules or the Code of Conduct, as well as DP&L's "written statement of the complaint" as detailed on page 14 of the 4th Amended Corporate Separation Plan, communications regarding any preliminary investigation regarding the complaint, and any other documents relating to the complaint.

RPD-14. Referring to page 6 of the 4th Amended Corporate Separation Plan, please provide any analysis of economic feasibility and prudence that has been prepared in the past five years with respect to CRES or affiliates that provide non-electric retail products or services satisfying their own respective needs through their own employees, facilities, equipment and other assets and resources.

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, First Set*, was served on the persons stated below via electronic transmission, this 9st day of April, 2014.

/s/ Edmund "Tad" Berger

Edmund "Tad" Berger
Assistant Consumers' Counsel

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of : Case No. 13-2442-EL-UNC
The Dayton Power and Light Company :
for Authority to Amend Its Corporate :
Separation Plan. :

**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
(FIRST SET APRIL 9, 2014)**

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 9, 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-1. Please identify all auditing processes that DP&L has in place currently to ensure compliance with the corporate separation rules and Code of Conduct.

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), 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-2. Please identify any investigations and audits, both internal and external, of DP&L's corporate separation rules and Code of Conduct that have been conducted over the past 5 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-3. Does DP&L have in place any whistle-blower protections for employees reporting violations of corporate separation rules or the Code of Conduct? If so, please identify such protections.

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-4. Please identify any corrective action, including disciplinary action, that DP&L has taken in the last 5 years as per the compliance procedures on page 18 of the 4th Amended Corporate Separation Plan or previous corporate separation plans.

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-5. To the extent not included in the agreements between DP&L and its affiliated entities, please identify billing rates and payment terms for affiliated services and materials and supplies that will be charged by DP&L to its affiliated entities.

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-6. To the extent not included in the agreements between DP&L and its affiliated entities, please identify billing rates and payment terms for affiliated services and materials and supplies that will be charged to DP&L by its affiliated entities.

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-7. Are the billing rates and payment terms that are charged by DP&L the same as those charged to DP&L by its affiliates for the same or similar services and materials and supplies? If not, please explain why not.

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-8. To the extent not included in the agreements between AES US Services and its affiliated entities, please provide billing rates and payment terms for affiliated services and materials and supplies that will be charged by AES US Services to its affiliated entities.

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-9. To the extent not included in the agreements between AES US Services and its affiliated entities, please provide billing rates and payment terms for affiliated services and materials and supplies that will be charged to AES US Services by its affiliated entities.

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-10. Are the billing rates and payment terms charged by AES US Services for affiliated services and materials and supplies the same to each of AES US Services' affiliated entities? If not, please explain why not.

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-11. Are the billing rates and payment terms that any affiliated entity may charge AES US Services for affiliated services and materials and supplies the same? If not, please explain why not.

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-12. In the last 5 years, is DP&L aware of any preference or advantage being extended by DP&L to any of its CRES affiliates or an affiliate providing a non-electric retail product or service? If so, please provide details of any preference or advantage so extended. If a determination was made that the preference or advantage extended was not “undue,” please provide any documentation of such determination.

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-13. Referring to page 6 of the 4th Amended Corporate Separation Plan, does any employee of DP&L have another employer that is an affiliated entity? If so, please identify such employees and indicate who their employers are.

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-14. Please identify all persons employed by DP&L and/or an affiliate that provide services to both DP&L and an affiliate. Please identify the affiliate(s) to whom the employee provides service, identify the department at each (DP&L and affiliate) where the employee provides services, and identify the services provided by the employee to each.

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-15. Referring to page 10 of the 4th Amended Corporate Separation Plan, please identify all instances where the disclaimer discussed and quoted on this page has been utilized.

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INT-16. Please identify all procedures implemented to date to ensure adherence to DP&L's Code of Conduct.

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.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

RPD-1. Please provide all documents relating to investigations and audits of corporate separation rules and Code of Conduct over the last five 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-2. Please provide all training documents in DP&L's possession for current training of DP&L and/or affiliate employees as to corporate separation rules, Code of Conduct requirements, procedures, and compliance, and DP&L's Cost Allocation and AES US Services Cost Alignment and Allocation Manual requirements and compliance.

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),

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RPD-3. Please provide DP&L's web-based program for training employees described on pages 17-18 of the 4th Amended Corporate Separation Plan.

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-4. Please provide any documents relating to corrective actions that DP&L has taken in the past five 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-5. Please provide any reports prepared by the General Counsel over the past five years of possible violations of the Code of Conduct.

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-6. Please provide DP&L's Cost Allocation Manual currently in effect.

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-7. Please provide a copy of any and all agreements between DP&L and its affiliates.

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-8. To the extent that billing rates and payment terms applicable to services and materials and supplies provided between DP&L and its affiliates are included in documents other than agreements, please provide such documents.

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-9. Please provide the AES US Services Cost Alignment and Allocation Manual.

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-10. Please provide a copy of any and all agreements between AES US Services and any affiliated entities.

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-11. To the extent that billing rates and payment terms applicable to services and materials and supplies provided between AES US Services and its affiliates are included in documents other than agreements, please provide such documents.

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-12. Please provide all shared employee job descriptions.

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-13. Please provide all complaints registered or received by the Company in the past five years concerning corporate separation rules or the Code of Conduct, as well as DP&L's "written statement of the complaint" as detailed on page 14 of the 4th Amended Corporate Separation Plan, communications regarding any preliminary investigation regarding the complaint, and any other documents relating to the complaint.

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-14. Referring to page 6 of the 4th Amended Corporate Separation Plan, please provide any analysis of economic feasibility and prudence that has been prepared in the past five years with respect to CRES or affiliates that provide non-electric retail products or services satisfying their own respective needs through their own employees, facilities, equipment and other assets and resources.

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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s/ Jeffrey S. Sharkey

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Telecopier: (937) 227-3717
Email: cfaruki@ficlaw.com

Attorneys for The Dayton Power and
Light Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's
Objections and Responses to OCC's Interrogatories and Requests for Production of Documents,
First Set (April 9, 2014) [Corporate Separation] has been served via electronic mail upon the
following counsel of record, this 29th day of April, 2014:

Edmund "Tad" Berger, Esq., (Counsel of Record)
Maureen R. Grady, Esq.
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Attorney for Direct Energy Services, LLC
and Direct Energy Business, LLC

s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 13-2442-EL-UNC
Authority to Amend its Corporate)	
Separation Plan.)	

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-16, and requests for production of documents RPD-1 to RFP-14:

1. OCC submitted its first set of discovery to the Utility on April 9, 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 29, 2014, DP&L served its objections and responses to OCC’s first 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.
3. On May 7, 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).

4. 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 first set of discovery requests in the Corporate Separation matter." (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 21st 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: 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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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

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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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Edmund "Tad" Berger
Assistant Consumers' Counsel
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(614) 466-1292

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in

Case No(s). 13-2442-EL-UNC

Summary: Motion Motion to Compel Responses to Discovery by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Berger, Tad Mr.