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December 7, 2016

Bryce McKenney
Gregory Price
Attorney Examiners
Legal Department
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus OH 43215

RE: In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, PUCO Case Nos. 16-395-EL-SSO, *et al.*

Dear Attorney Examiners Price and McKenney,

As you are aware, Industrial Energy Users-Ohio (“IEU-Ohio”) has a pending Motion to Compel in The Dayton Power and Light Company’s (“DP&L”) pending electric security plan (“ESP”) (Case Nos. 16-395-EL-SSO, *et al.*). IEU-Ohio’s Motion to Compel sought the production of DP&L’s impairment analyses. IEU-Ohio and DP&L have worked extensively to resolve the parties’ respective issues and DP&L has produced its internal documents related to the impairment analyses. The only issue that remains with respect to IEU-Ohio’s Motion to Compel involves the impairment analyses-related documents created by its outside consultant, Deloitte.

Based on representations from DP&L’s counsel, DP&L has waived all of its objections to the disclosure of the Deloitte documents except confidentiality. DP&L’s counsel has represented that DP&L is willing to produce these documents to IEU-Ohio but is currently under a contractual obligation with Deloitte to not disclose the documents. Deloitte has provided IEU-Ohio, through counsel for DP&L, with two letters that propose terms and conditions upon which Deloitte would allow DP&L to release the documents to IEU-Ohio (the letters contain the same terms and conditions). Among other issues with Deloitte’s proposal is that it would prohibit IEU-Ohio from disclosing the documents or the information in the documents to anyone but DP&L and Deloitte. Thus, under Deloitte’s proposed conditions of release, IEU-Ohio would be prohibited from using these documents or the information contained therein at the hearing in this matter.

IEU-Ohio twice conveyed its disagreement with the terms proposed by Deloitte, but to date has not satisfactorily resolved the issue with DP&L and Deloitte. IEU-Ohio has proposed to treat the Deloitte-related documents as confidential (if so designated by DP&L) pursuant to the protective agreement that IEU-Ohio and DP&L have entered into in this proceeding. IEU-Ohio is unaware of any uniqueness as to the Deloitte-related documents that would render the existing protective

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agreement unsatisfactory to protect the confidential nature of the documents. The protective agreement between DP&L and IEU-Ohio (Attachment C) is attached to this letter as are the two letters from Deloitte (see Attachments A and B).

As briefed in IEU-Ohio's Motion to Compel and IEU-Ohio's Reply in Support of the Motion to Compel, the Commission has the authority to order DP&L to produce the documents to IEU-Ohio irrespective of any private contractual obligation DP&L might have with Deloitte (Motion to Compel at 9-12, Reply at 4-5). Any issue with the confidentiality of these documents can be addressed within the framework of the protective agreement that IEU-Ohio and DP&L have entered into in this proceeding.

This discovery dispute that is the subject of IEU-Ohio's Motion to Compel dates back to IEU-Ohio's fourth set of discovery in this matter, which was served upon DP&L on May 31, 2016. In the six months that have passed, IEU-Ohio has expended considerable efforts to try to resolve the discovery issues both before and after IEU-Ohio filed its Motion to Compel, but IEU-Ohio's efforts have been unsuccessful in completely resolving the matter.

At the October 4, 2016 prehearing conference before Attorney Examiner McKenney, counsel for IEU-Ohio indicated that it would inform you if the issues underlying the Motion to Compel could not be resolved. Accordingly, IEU-Ohio is hereby informing you of the unresolved issue underlying the Motion to Compel and therefore requests that you take up consideration of IEU-Ohio's Motion to Compel and grant the Motion. Given that the only issue that remains is the disclosure restriction between DP&L and Deloitte, IEU-Ohio believes that the Commission can grant the Motion to Compel without the need for a prehearing conference on the Motion.

Sincerely,

/s/ Matthew R. Pritchard
Matthew R. Pritchard
Counsel for IEU-Ohio

MRP:dr
Attachments

cc: Parties of Record (w/Attachments)



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Business Analytics LLP**
191 Peachtree Street, Suite 2000
Atlanta, GA 30303-1749
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November 28, 2016

Industrial Energy Users - Ohio
c/o Frank P. Darr
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215

Dear Mr. Darr:

As you are aware, pursuant to a statement of work (the "Engagement Agreement"), dated June 30, 2016, under the Master Services Agreement between Deloitte LLP, for and on behalf of its function-specific subsidiaries, and AES Arlington Services, LLC, dated July 7, 2010, as Amended, Deloitte Advisory¹ ("Advisor" or "we" or "our") was engaged by AES U.S. Services, LLC ("Client") to provide certain valuation services related to certain assets of Dayton Power & Light (the "Engagement") solely for Client. In connection with the Engagement, Advisor has prepared a report (the "Materials") solely for Client's internal use.

Client has requested that it be permitted to provide to Industrial Energy Users - Ohio (the "Recipient") one paper copy or one portable document format copy of the Materials solely for the Recipient's informational purposes in connection with Dayton Power & Light's pending Electric Security Plan case before the Public Utilities Commission of Ohio (the "Project"). In consideration of Advisor permitting Client to provide the Recipient with one paper copy or one portable document format copy of the Materials, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Recipient, intending to be legally bound, is executing and delivering to Advisor this letter.

ACKNOWLEDGMENTS AND AGREEMENTS

The Recipient specifically acknowledges and agrees to the following:

- The Materials, or any other information or documents, whether in writing or otherwise, made or prepared by Advisor relating to Client or the Project (collectively, the "Information"), are being provided to the Recipient solely for its information and cannot and shall not be relied upon by the Recipient. The Recipient has its own counsel and advisors in connection with any engagements, transactions, or matters into which it may enter or otherwise involving Client or the Project. The

¹ As used in this letter, "Deloitte Advisory" means Deloitte Transactions and Business Analytics LLP.

Recipient agrees that access to the Materials is not a substitute for the Recipient undertaking appropriate inquiries and procedures in relation to any such engagements, transactions, or matters.

- Client is solely responsible for providing accurate and complete information requested by Advisor, and Advisor has no responsibility for the accuracy or completeness of the information provided by, or on behalf of, Client, even if Advisor had reason to know or should have known of such incompleteness or inaccuracy.
- Advisor's services for Client were conducted in accordance with the Statement on Standards for Consulting Services established by the American Institute of Certified Public Accountants (AICPA). Advisor's use of its professional judgment for the purpose of the Engagement may be assessed differently by the Recipient for its objectives. The procedures that Advisor has performed are restricted to those that Advisor considers appropriate under such consulting standards. The Materials and the Information will not extend to any financial statements of Client, taken as a whole, for any date or period. The performance of the services under the Engagement Agreement, including, without limitation, the preparation of the Materials, did not and does not constitute an audit conducted in accordance with generally accepted auditing standards, an examination of or any other form of assurance with respect to internal controls, or other attestation or review services in accordance with standards or rules established by the AICPA, the Public Company Accounting Oversight Board, or other regulatory body. None of Advisor, the Materials, or the Information expresses or will express an attest opinion or any other form of attest assurance with respect to any matters as a result of the performance of the Engagement. In addition, none of Advisor, the Materials, or the Information have made or will make any representation or warranty and have not provided and will not provide any assurance that Client's disclosure controls and procedures or the internal controls and procedures for financial reporting are compliant with the certification requirements and internal control reporting requirement of the Sarbanes-Oxley Act of 2002 or any other standards or rules, including, without limitation, Sections 302 and 404 of the Sarbanes-Oxley Act of 2002. The Recipient is not a third-party beneficiary of the Engagement and has no rights thereunder.
- The Materials and the Information do not address all matters of which Advisor is or may become aware, or all communications, whether in writing or otherwise, made by Advisor to Client or to any other person or entity, in connection with Client or otherwise, whether or not such matters or communications might be considered material by the Recipient.
- Advisor has no responsibility to advise the Recipient of other services or procedures that might be performed and makes no representation as to the sufficiency or appropriateness of the Materials and the Information for the purposes of the Recipient. In addition, Advisor has no responsibility for updating the Materials or the Information or performing any additional services or procedures.
- The Recipient understands and agrees that the Materials were prepared solely at the direction of Client and may not include all procedures necessary for the Recipient's purpose. Advisor has not been engaged to detect error or fraud, and none of the Materials or the Information may disclose errors or fraud should they exist.
- Client may have participated in the preparation of the Materials and the Information and such participation may have resulted in the addition, modification, or deletion of information that might be considered material by the Recipient.

- The Recipient also acknowledges that Advisor and its affiliates and related entities have provided, are currently providing, and may in the future provide professional services, including services in connection with the Project, to Client or its affiliates, and the Recipient agrees that Advisor and its personnel shall have no responsibility to the Recipient relating to such services nor any responsibility to use or disclose information that Advisor possesses by reason of such services or otherwise, whether or not such information might be considered material by the Recipient.

NO RIGHTS AS A RESULT OF ACCESS

The Recipient acknowledges and agrees that the Recipient does not acquire any rights as a result of access to the Materials or the Information and Advisor does not assume any duties or obligations as a result of access to the Materials or the Information. The Recipient agrees that Advisor is not, by means of permitting Client to provide the Recipient with a copy of the Materials or the Information, rendering accounting, financial, investment, legal, tax, or other professional advice or services to, or acting as a fiduciary, agent, or in any other capacity with respect to, the Recipient. The Materials and the Information are not a substitute for such professional advice or services, nor should they be used as a basis for any decision or action that may affect the Recipient or its business.

The Recipient agrees that (except to the extent required by a valid subpoena, an order of a court of competent jurisdiction, a regulatory authority asserting jurisdiction over the business or financial affairs of the Recipient, or other legal process; provided that the Recipient, to the extent permitted by applicable law or regulation, provides Advisor with prior written notice of such requirement) the Materials and the Information will not be used by, or disclosed to, nor will reference to Advisor in connection with the Project, the Materials, or the Information be made to, anyone who is not a director, officer, or employee of Client or the Recipient using the Materials and the Information for informational purposes solely in their capacity as such.

RELEASE AND INDEMNIFICATION

The Recipient (1) releases Advisor and its personnel from all claims, liabilities, and expenses relating to or arising out of the services provided by Advisor to Client in connection with the Engagement, the Materials and the Information and the access to or use of the Materials or Information by the Recipient or any other person or entity authorized hereunder and any assertion of reliance in relation thereto; (2) indemnifies and agrees to hold harmless Advisor and its personnel from all claims, liabilities, and expenses relating to a breach or any assertion of reliance by the Recipient or any of its personnel of any provision of this letter, including, without limitation, the restrictions on use and distribution of the Materials or the Information; (3) covenants not to sue, assert, or seek to impose any liability on Advisor or its personnel concerning any claim, cause of action, or other matter released or for which indemnification or a covenant to hold harmless is provided herein; and (4) covenants not to assert reliance in any circumstance or manner upon the Materials or the Information.

The release, indemnification, and covenant provisions of this letter will apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise, and in no event will Advisor or its personnel be liable for any loss of use, data, goodwill, revenues, or profits (whether or not deemed to constitute a direct claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense. In circumstances where all or any portion of the provisions of this section of this letter are unavailable, the aggregate liability of Advisor and its personnel for any claims, liabilities, or expenses relating to any matter relating to the Project, the services provided by Advisor for Client in connection with any such matters, the Engagement, the Materials, the Information, or the access to or use of the Materials or the Information by the Recipient or any other person or entity authorized hereunder

shall not exceed an amount that is proportional to the relative fault that the conduct of Advisor and its personnel bears to all other conduct giving rise to such claims, liabilities, or expenses; provided, however, that in no event shall the aggregate liability therefor of Advisor and its personnel exceed the fees paid to Advisor by Client under the Engagement Agreement with respect to the Engagement. The agreements and undertakings of the Recipient contained in this letter, such as those pertaining to restrictions on the use and distribution of the Materials or the Information, release from liability, indemnification, and covenants, will survive delivery of the Materials and the Information to the Recipient.

OTHER

If any provision of this letter is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this letter.

This letter constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all other oral or written representations, understandings, or agreements relating to such subject matter and may not be amended except by written agreement signed by the parties.

The Recipient acknowledges and agrees that Advisor will suffer irreparable damage for which money damages will not be a sufficient remedy in the event of a breach of any provision of this letter. Advisor shall be entitled to specific performance and injunctive relief as remedies for any breach or threatened breach of any provision of this letter, which remedies shall not be deemed to be exclusive remedies for such breach or threatened breach by the Recipient, but shall be in addition to all other remedies available to Advisor at law or in equity.

The Recipient may not assign, transfer, or delegate any of its rights or obligations hereunder (including, without limitation, interests or claims relating to this letter or any of the engagements contemplated hereby) by operation of law or otherwise without the prior written consent of Advisor.

ADVISOR AND THE RECIPIENT HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER IN CONTRACT, STATUTE, TORT (SUCH AS NEGLIGENCE), OR OTHERWISE) RELATING TO THIS LETTER.

For purposes of this letter, "Advisor" shall mean Deloitte Transactions and Business Analytics LLP and its subsidiaries; to the extent that, as a subcontractor, they have provided any of the services under or in connection with the Engagement, the member firms of Deloitte Touche Tohmatsu Limited, and the affiliates of Deloitte Transactions and Business Analytics LLP and such member firms; and in all cases any successor or assignee; provided, however, that for purposes of the last Acknowledgments and Agreements set forth above, "Advisor" shall mean Deloitte Transactions and Business Analytics LLP, the member firms of Deloitte Touche Tohmatsu Limited, and the affiliates of Deloitte Transactions and Business Analytics LLP and such member firms.

This letter and all matters arising under or relating hereto (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to its conflicts of law principles), and any court of the State of New York or any federal court of the United States, in each case located in New York County, the State of New York, shall have exclusive jurisdiction over any controversy or claim arising out of or relating to this letter.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Very truly yours,

Deloitte Transactions and Business Analytics LLP

Deloitte Transactions and Business Analytics LLP

By: Keith Adams

Accepted and Agreed to this ____ day of _____, 20__:

Industrial Energy Users - Ohio

By: _____

Printed

Name: _____

Title: _____

Date: _____



**Deloitte Transactions and
Business Analytics LLP**
191 Peachtree Street, Suite 2000
Atlanta, GA 30303-1749
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November 28, 2016

Industrial Energy Users - Ohio
c/o Frank P. Darr
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215

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As you are aware, pursuant to a statement of work (the "Engagement Agreement"), dated December 13, 2013, under the Master Services Agreement between Deloitte LLP, for and on behalf of its function-specific subsidiaries, and AES Arlington Services, LLC, dated July 7, 2010, as Amended, Deloitte Advisory¹ ("Advisor" or "we" or "our") was engaged by AES Corporation ("Client") to provide certain valuation services related to certain assets of Dayton Power & Light (the "Engagement") solely for Client. In connection with the Engagement, Advisor has prepared a report (the "Materials") solely for Client's internal use.

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The Recipient agrees that (except to the extent required by a valid subpoena, an order of a court of competent jurisdiction, a regulatory authority asserting jurisdiction over the business or financial affairs of the Recipient, or other legal process; provided that the Recipient, to the extent permitted by applicable law or regulation, provides Advisor with prior written notice of such requirement) the Materials and the Information will not be used by, or disclosed to, nor will reference to Advisor in connection with the Project, the Materials, or the Information be made to, anyone who is not a director, officer, or employee of Client or the Recipient using the Materials and the Information for informational purposes solely in their capacity as such.

RELEASE AND INDEMNIFICATION

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The release, indemnification, and covenant provisions of this letter will apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise, and in no event will Advisor or its personnel be liable for any loss of use, data, goodwill, revenues, or profits (whether or not deemed to constitute a direct claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense. In circumstances where all or any portion of the provisions of this section of this letter are unavailable, the aggregate liability of Advisor and its personnel for any claims, liabilities, or expenses relating to any matter relating to the Project, the services provided by Advisor for Client in connection with any such matters, the Engagement, the Materials, the Information, or the access to or use of the Materials or the Information by the Recipient or any other person or entity authorized hereunder

shall not exceed an amount that is proportional to the relative fault that the conduct of Advisor and its personnel bears to all other conduct giving rise to such claims, liabilities, or expenses; provided, however, that in no event shall the aggregate liability therefor of Advisor and its personnel exceed the fees paid to Advisor by Client under the Engagement Agreement with respect to the Engagement. The agreements and undertakings of the Recipient contained in this letter, such as those pertaining to restrictions on the use and distribution of the Materials or the Information, release from liability, indemnification, and covenants, will survive delivery of the Materials and the Information to the Recipient.

OTHER

If any provision of this letter is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this letter.

This letter constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all other oral or written representations, understandings, or agreements relating to such subject matter and may not be amended except by written agreement signed by the parties.

The Recipient acknowledges and agrees that Advisor will suffer irreparable damage for which money damages will not be a sufficient remedy in the event of a breach of any provision of this letter. Advisor shall be entitled to specific performance and injunctive relief as remedies for any breach or threatened breach of any provision of this letter, which remedies shall not be deemed to be exclusive remedies for such breach or threatened breach by the Recipient, but shall be in addition to all other remedies available to Advisor at law or in equity.

The Recipient may not assign, transfer, or delegate any of its rights or obligations hereunder (including, without limitation, interests or claims relating to this letter or any of the engagements contemplated hereby) by operation of law or otherwise without the prior written consent of Advisor.

ADVISOR AND THE RECIPIENT HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER IN CONTRACT, STATUTE, TORT (SUCH AS NEGLIGENCE), OR OTHERWISE) RELATING TO THIS LETTER.

For purposes of this letter, "Advisor" shall mean Deloitte Transactions and Business Analytics LLP and its subsidiaries; to the extent that, as a subcontractor, they have provided any of the services under or in connection with the Engagement, the member firms of Deloitte Touche Tohmatsu Limited, and the affiliates of Deloitte Transactions and Business Analytics LLP and such member firms; and in all cases any successor or assignee; provided, however, that for purposes of the last Acknowledgments and Agreements set forth above, "Advisor" shall mean Deloitte Transactions and Business Analytics LLP, the member firms of Deloitte Touche Tohmatsu Limited, and the affiliates of Deloitte Transactions and Business Analytics LLP and such member firms.

This letter and all matters arising under or relating hereto (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to its conflicts of law principles), and any court of the State of New York or any federal court of the United States, in each case located in New York County, the State of New York, shall have exclusive jurisdiction over any controversy or claim arising out of or relating to this letter.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Very truly yours,

Deloitte Transactions and Business Analytics LLP

Deloitte Transactions and Business Analytics LLP

By: Keith Adams

Accepted and Agreed to this ____ day of _____, 20__:

Industrial Energy Users - Ohio

By: _____

Printed

Name: _____

Title: _____

Date: _____

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	:	Case No. 16-0395-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 16-0396-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13	:	Case No. 16-0937-EL-AAM

STIPULATED PROTECTIVE AGREEMENT

WHEREAS, the Stipulating Parties recognize that, pursuant to discovery or otherwise during the course of this proceeding, they may be required to disclose confidential information.

WHEREAS, the Stipulating Parties have, through counsel, stipulated to this Stipulated Protective Agreement ("Agreement") in accordance with Ohio Admin. Code § 4901-1-24 to prevent unnecessary disclosure or dissemination of such confidential information.

THEREFORE, IT IS AGREED that the following provisions of this Agreement shall control the disclosure, dissemination, and use of confidential information in this proceeding:

1. This Agreement shall apply to the Stipulating Parties. A party to the litigation may become a Stipulating Party by signing this Stipulated Protective Agreement, or by completing and signing the form attached as Exhibit A.

2. This Agreement shall apply to all information, documents and things subject to discovery in this action, including without limitation, testimony adduced at depositions upon oral examination pursuant to Ohio Admin. Code § 4901-1-21, answers to interrogatories pursuant to Ohio Admin. Code § 4901-1-19, documents and things produced pursuant to Ohio Admin. Code § 4901-1-20, and answers to requests for admission pursuant to Ohio Admin. Code § 4901-1-22.

3. A Stipulating Party may designate information or documents produced, used or disclosed in connection with this proceeding as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" and subject to the protections and requirements of this Agreement, if so designated in writing, or orally if recorded as part of a deposition, pursuant to the terms of this Agreement.

- a. Information and documents that a Stipulating Party in good faith believes contain or refer to information that is not generally available to or accessible by the general public, or that is to be kept confidential due to preexisting obligations, or that is otherwise confidential, may be designated as "CONFIDENTIAL."
- b. Information and documents that a Stipulating Party in good faith believes contain or refer to trade secrets or other confidential research, development, business, or financial information, or other confidential commercial information, and that, if disclosed to suppliers, competitors or customers, would tend to damage the Stipulating Party's competitive

position may be designated as "CONFIDENTIAL -ATTORNEYS' EYES ONLY."

- c. Information and documents that a Stipulating Party in good faith believes constitutes, contains, or refers to proprietary technology or information owned or developed by the producing party which has not previously been provided to the opposing party may be designated as "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY."

4. Any information or document designated as "CONFIDENTIAL" shall be used by the receiving Stipulating Party solely in connection with this proceeding and shall not be disclosed to anyone other than the following persons:

- a. Corporate officers or employees or volunteers who are working on the matter of a receiving Stipulating Party, and in-house counsel of a receiving Stipulating Party, provided that:
 - 1. they sign a Declaration in the form of Exhibit B, attached;
 - 2. the disclosure is necessary to the prosecution or defense of this action; and
 - 3. the information is maintained in separate and identifiable files, access to which is restricted to the foregoing persons;
- b. The Commission, the Attorney Examiner(s) assigned to this matter, and Commission Staff provided the information or document is filed under seal;

- c. Counsel of record for the Stipulating Parties and employees of such, including attorneys, paralegals, secretaries, and clerks to whom it is necessary that the material be shown for purposes of this litigation;
- d. Actual independent technical experts of the Stipulating Parties who have signed a Declaration in the form of Exhibit B, attached;
- e. Document contractors, exhibit contractors, and graphic art contractors of the Stipulating Parties to whom it is necessary that the material be shown for purposes of this litigation, and who have signed a Declaration in the form of Exhibit B, attached;
- f. Persons testifying in deposition to the extent the "CONFIDENTIAL" document or information was authored by or addressed to the person testifying or such person is established as knowledgeable of such information or contents of the document prior to disclosing the information or document; and
- g. Court reporters.

5. Any information or document designated as "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall be used by the receiving Stipulating Party solely in connection with this proceeding and shall not be disclosed to anyone other than:

- a. The Commission, the Attorney Examiner(s) assigned to this matter, and Commission Staff provided the information or document is filed under seal;

- b. Counsel of record for the Stipulating Parties and employees of such, including attorneys, paralegals, secretaries, and clerks to whom it is necessary that the material be shown for purposes of this litigation;
- c. Actual independent technical experts of the Stipulating Parties who have signed a Declaration in the form of Exhibit B, attached;
- d. Document contractors, exhibit contractors, and graphic art contractors of the Stipulating Parties to whom it is necessary that the material be shown for purposes of this litigation, and who have signed a Declaration in the form of Exhibit B, attached;
- e. Persons testifying in deposition to the extent the "CONFIDENTIAL - ATTORNEYS' EYES ONLY" document or information was authored by or addressed to the person testifying or such person is established as knowledgeable of such information or contents of the document prior to disclosing the information or document; and
- f. Court reporters.

6. Any information or document designated as "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" shall be used by the receiving Stipulating Party solely in connection with this proceeding and shall not be disclosed to anyone other than:

- a. The Commission, the Attorney Examiner(s) assigned to this matter, and Commission Staff provided the information or document is filed under seal;

- b. Outside counsel of record for the Stipulating Parties and employees of such, including attorneys, paralegals, secretaries, and clerks to whom it is necessary that the material be shown for purposes of this litigation;
- c. Actual independent technical experts of the Stipulating Parties who have signed a Declaration in the form of Exhibit B, attached;
- d. Document contractors, exhibit contractors, and graphic art contractors of the Stipulating Parties to whom it is necessary that the material be shown for purposes of this litigation, and who have signed a Declaration in the form of Exhibit B, attached;
- e. Persons testifying in deposition to the extent the "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" document or information was authored by or addressed to the person testifying or such person is established as knowledgeable of such information or contents of the document prior to disclosing the information or document; and
- f. Court reporters.

7. To be protected by this Agreement, a document shall be marked "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY." In the case of documents that are inspected before copies of those documents are requested or produced, those documents and their contents shall be treated as "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" until copies of those documents are provided, at which time the documents shall be

treated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" if so designated.

8. Information conveyed or discussed in testimony at a deposition shall be subject to this Agreement, provided that it is designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" orally or in writing either at the time of the deposition or after receipt by the Stipulating Parties of the transcript.

- a. For such time as any information or documents designated "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" are disclosed in a deposition, the Stipulating Party whose information or documents are to be disclosed shall have the right to exclude from attendance at the deposition any person who is not entitled to receive such information or documents pursuant to this Agreement.
- b. In the event that a Stipulating Party believes that "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" information will be disclosed during a deposition, counsel for the Stipulating Party may designate on the record that all or specific portions of the deposition transcript, and the information contained therein, is to be treated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY";

or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY."

- c. A Stipulating Party shall have thirty (30) days after receiving a copy of the deposition transcript in which to designate all or specific portions of the transcript as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY," as appropriate. If, within such thirty (30) days, no Stipulating Party designates in writing certain portions of the transcript as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY," any Stipulating Party shall be permitted to use such portions of the transcript and the information contained therein with no restrictions of confidentiality.
- d. Nothing in this Agreement shall be construed to restrict the use or disclosure of "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" information or documents at a hearing in this matter; provided, however, that the use or disclosure of "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" information or documents at a hearing in this matter shall be addressed by this Commission at the appropriate time.

9. The failure of a Stipulating Party to designate information or documents as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" in accordance with this Agreement, and the failure to object to such a designation, shall not preclude a Stipulating Party at a later time from subsequently designating or objecting to the designation of such information or documents as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY." The Stipulating Parties understand and acknowledge that a Stipulating Party's failure to designate information or documents as either "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" at or within the time specified in this Agreement relieves the other Stipulating Party of any obligation of confidentiality until the designation is actually made. If material is appropriately designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" after the material was initially produced, then the receiving Stipulating Party, on notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this protective Agreement.

10. Nothing shall be designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" if it is information that:

- a. is in the public domain at the time of disclosure;

- b. becomes part of the public domain other than through the actions of any of the other Stipulating Parties;
- c. was in the rightful and lawful possession of the receiving Stipulating Party at the time of disclosure; or
- d. is lawfully received by the receiving Stipulating Party at a later date from a party without restriction as to disclosure, provided such party has the right to make the disclosure to the receiving Stipulating Party.

11. The counsel of record shall retain the original, executed Declarations in the form of Exhibit B that have been executed by that Stipulating Party, its experts, and contractors, pursuant to Paragraphs 4, 5, and 6 above.

12. Unless otherwise required by the Commission, whenever a Stipulating Party intends to file with the Commission any document (including prefiled testimony) designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY," the Stipulating Party filing such document shall:

- a. file under seal with the Commission any such document designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY";
- b. file under seal with the Commission any document (including prefiled testimony) that contains or is based in any part on any

"CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY";
or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY"
information or document that was obtained from any Stipulating Party;
and

- c. at the same time that documents are filed under seal, file a motion for protective order, reciting the facts that the documents are confidential, that they were produced pursuant to a Stipulated Protective Agreement, and that the Agreement requires that the documents be filed under seal.

13. Unless otherwise agreed in writing by the Stipulating Party that produced the documents, within one hundred twenty (120) days after the conclusion of the matter, including all appeals therefrom, all documents designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY," all copies of documents designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY," and all excerpts therefrom in the possession, custody or control of the Stipulating Parties, and their experts, investigators, advisors, or consultants shall be destroyed or returned to counsel for the producing Stipulating Party. Counsel may keep one copy of such information in their file.

14. The Commission shall have jurisdiction over the Stipulating Parties for the purpose of ensuring compliance with this Agreement and granting such amendments, modifications, and additions to this Agreement and such other and further relief as may be

necessary. This Agreement shall survive the final disposition of this proceeding, by judgment, dismissal, settlement, or otherwise.

15. If a producing Stipulating Party produces a document designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY," and a receiving Stipulating Party believes that the document is not entitled to such designation under this Agreement, then the receiving Stipulating Party may object to that designation by giving notice of that objection to the producing Stipulating Party. If the producing Stipulating Party does not file a motion for protective order within 10 business days of receiving such notice, then the document shall not be subject to the protections and requirements of this Agreement.

16. If a receiving Stipulating Party is required to disclose any document or information designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" pursuant to any law, regulation, subpoena, order or rule of any governmental authority, the receiving Stipulating Party shall give advance written notice of at least 10 business days of any such requested disclosure in writing to the counsel of the producing Stipulating Party to afford that producing Stipulating Party the opportunity to seek legal protection from the disclosure of such information or documents.

17. In the event that anyone violates or threatens to violate the terms of this Agreement, the aggrieved Stipulating Party may apply immediately to obtain injunctive relief against any such violation or threatened violation, and in the event the aggrieved Stipulating

Party shall do so, the respondent shall not employ as a defense that the aggrieved Stipulating Party possesses an adequate remedy at law.

18. The inadvertent production or disclosure during discovery of an attorney-client privileged, work product, or other protected document or information ("Protected Material") shall not be deemed a waiver of privilege, work product, or other protection or immunity from discovery by the producing Stipulating Party. Upon notice by the producing Stipulating Party that Protected Material was produced or disclosed, all recipients of the Protected Material shall not use it (or information in it) in any litigation, not permit it to be copied, distributed or otherwise disclosed to any other person until the matter of its production or disclosure is resolved either amicably by the parties, or by order of the Commission.

19. This Agreement shall not be construed as a waiver by any Stipulating Party of objection to discovery on grounds other than the confidentiality of discovery sought.

20. Nothing in the foregoing provisions of this Agreement shall be deemed to preclude a Stipulating Party from seeking and obtaining, on an appropriate showing, additional protection with respect to the confidentiality of documents or other discovery material or relief from this Agreement with respect to particular material designated as containing "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY" information.

21. This Agreement shall be without prejudice to the right of any Stipulating Party to have determined by motion, at any time, whether any documents or information has been improperly designated as "CONFIDENTIAL"; "CONFIDENTIAL - ATTORNEYS' EYES ONLY"; or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY," in which

event, the Stipulating Party contesting the assertion of confidentiality shall have the burden of establishing the non-confidentiality of the documents or information.

AGREED:

THE DAYTON POWER AND LIGHT
COMPANY

By:

Martin A. Foos

Printed Name:

Martin A. Foos

Intervening Party: IEU - Ohio

By:

Frank P. Dark

Printed Name:

FRANK P DARK

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Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

Summary: Correspondence --IEU-Ohio Letter to Attorney Examiners Regarding Pending Motion to Compel electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio