

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF THE
DAYTON POWER AND LIGHT COMPANY TO
ESTABLISH A STANDARD SERVICE OFFER IN
THE FORM OF AN ELECTRIC SECURITY PLAN.

CASE NO. 16-395-EL-SSO

IN THE MATTER OF THE APPLICATION OF THE
DAYTON POWER AND LIGHT COMPANY FOR
APPROVAL OF REVISED TARIFFS.

CASE NO. 16-396-EL-ATA

IN THE MATTER OF THE APPLICATION OF THE
DAYTON POWER AND LIGHT COMPANY FOR
APPROVAL OF CERTAIN ACCOUNTING
AUTHORITY.

CASE NO. 16-397-EL-AAM

ENTRY

Entered in the Journal on December 19, 2016

{¶ 1} The Dayton Power and Light Company (DP&L) is a public utility as defined under R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} On February 22, 2016, DP&L filed an application for a standard service offer pursuant to R.C. 4928.141. DP&L's application is for an electric security plan (ESP) in accordance with R.C. 4928.143. Additionally, DP&L filed accompanying applications for approval of revised tariffs and for approval of certain accounting authority. In its application, DP&L asserts that the proposed ESP is designed to promote economic growth and stability in the state of Ohio.

{¶ 3} On August 30, 2016, Industrial Energy Users – Ohio (IEU-Ohio) filed a motion to compel and memorandum in support for DP&L to provide IEU-Ohio with the documents and information related to impairment analyses. IEU-Ohio asserts that the requests are reasonably calculated to lead to the discovery of admissible evidence, that claims of confidentiality and non-disclosure clauses do not make documents non-discoverable, that the documents are within DP&L's control, and the documents are required in the ordinary course of business. IEU-Ohio argues that DP&L should be compelled to provide the impairment analyses to IEU-Ohio.

{¶ 4} Thereafter, on September 7, 2016, DP&L filed a memorandum contra to IEU-Ohio's motion to compel. DP&L asserts that the Commission should deny the motion to compel because the documents at issue are AES documents not subject to discovery, the documents contain privileged information, several of the documents were prepared by Deloitte, and the documents are not relevant.

{¶ 5} Subsequently, on September 12, 2016, IEU-Ohio filed its reply reiterating its arguments. However, on December 7, 2016, IEU-Ohio filed a correspondence indicating that the parties have worked extensively to resolve the dispute and that the only remaining issue is that the impairment analyses-related documents were created by Deloitte. IEU-Ohio represents that DP&L has waived many of its objections, and has indicated that it is willing to produce the documents to IEU-Ohio, but is currently under a contractual obligation with Deloitte not to disclose the documents. Attached to the correspondence are the proposed terms and conditions under which Deloitte would agree to provide the documents to IEU-Ohio. However, IEU-Ohio refuses to agree to those terms and conditions, as they could prohibit IEU-Ohio from disclosing the documents or their information to anyone but DP&L and Deloitte, which would effectively prohibit IEU-Ohio from using the documents or the information at hearing.

{¶ 6} The attorney examiner notes that IEU-Ohio's motion to compel was filed in an effort to have DP&L provide the requested impairment analyses to IEU-Ohio. However, pursuant to Ohio Adm. Code 4901-1-19(G), before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources. In this case, based upon DP&L's contractual agreement with Deloitte, DP&L has demonstrated that the impairment analyses may not be reasonably available from DP&L, even though the documents and information are in its control. Accordingly, the attorney examiner finds that IEU-Ohio should pursue all appropriate means to obtain the requested impairment analyses directly from Deloitte. Thereafter, once IEU-Ohio has pursued all appropriate means to obtain the impairment analyses from Deloitte, the attorney examiner will reconsider IEU-Ohio's motion to compel.

{¶ 7} It is, therefore,

{¶ 8} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Bryce McKenney

By: Bryce A. McKenney
Attorney Examiner

SEF/sc

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

Summary: Attorney Examiner Entry regarding IEU-Ohio's motion to compel. - electronically filed by Sandra Coffey on behalf of Bryce McKenney, Attorney Examiner, Public Utilities Commission of Ohio