

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the     )  
Dayton Power and Light Company for     )  
an Increase in Electric Distribution     )  
Rates.     )

Case No. 15-1830-EL-AIR

In the Matter of the Application of the     )  
Dayton Power and Light Company for     )  
Approval to Change Accounting     )  
Methods.     )

Case No. 15-1831-EL-AAM

In the Matter of the Application of the     )  
Dayton Power and Light Company for     )  
Tariff Approval.     )

Case No. 15-1832-EL-ATA

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

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Despite the Public Utilities Commission of Ohio's ("PUCO") broad discovery rules, the Dayton Power and Light Company ("DP&L") refuses to produce documents that are plainly relevant and for which DP&L has no valid objection. In this case, the PUCO ordered its Staff to issue a request for proposal (the "RFP") for a third party to audit DP&L's rate base.<sup>1</sup> The PUCO ordered the third-party auditor to provide to the PUCO Staff both a draft audit report and a final audit report.<sup>2</sup> OCC seeks to discover these drafts and other documents related to them.<sup>3</sup>

DP&L admits that it has in its possession draft copies of the audit report. But it nonetheless refuses to produce the documents because, according to DP&L, the PUCO did not

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<sup>1</sup> Entry (Mar. 22, 2017).

<sup>2</sup> *Id.* at RFP at 4.

<sup>3</sup> See Affidavit of Christopher Healey in Support of Motion to Compel (the "Healey Aff.") at Exhibit 1 (attaching copies of OCC requests for production of documents ("RPD") 300 and 301, which are the discovery requests at issue in this motion to compel).

order DP&L to produce the documents in advance of the Office of the Ohio Consumers' Counsel ("OCC") requesting them. According to DP&L, because the order requiring the audit does not explicitly state that documents related to the audit report are discoverable, DP&L is allowed to ignore the PUCO's otherwise applicable discovery rules.

The PUCO should reject DP&L's attempt to create a new rule that says that utilities do not have to respond to discovery requests unless and until there is a PUCO order in the case identifying the precise documents that the utility must produce. A rule like this would be an administrative nightmare and entirely unworkable. Effectively, it would halt all discovery in all cases, and discovery would only be produced via motion to compel. Surely this is not what the PUCO envisioned when it enacted rules that are "intended to minimize commission intervention in the discovery process."<sup>4</sup>

The PUCO should reject DP&L's objections to OCC's discovery requests and should order DP&L to produce all relevant documents immediately. It is DP&L's own conduct—failing to file a rate case for 24 years or to keep accurate records during that time—that has caused the delay in moving forward with this case (and the need for the audit in the first place). The PUCO should not allow DP&L to delay the case further by using the discovery process as a field of combat.

The PUCO should grant this motion to compel.

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<sup>4</sup> Ohio Adm. Code 4901-1-16(A).

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

In this proceeding, DP&L seeks to increase the rates that consumers pay for distribution service but wants to keep secret all of its communications with the independent auditor hired to evaluate its application. DP&L's approach precludes parties from the "ample discovery" they are to be provided under Ohio law<sup>5</sup> and undermines the transparency and openness that PUCO proceedings are founded upon. The PUCO should say no.

The PUCO Staff is required to investigate DP&L and to file a report of its investigation.<sup>6</sup> "In order to complete Staff's review of the application," the PUCO ordered an audit of DP&L's jurisdictional rate base to "ensure the accuracy, prudence, and used and useful nature of DP&L's jurisdictional rate base as presented within its application to

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<sup>5</sup> R.C. 4903.082.

<sup>6</sup> R.C. 4909.19(C).

increase rates."<sup>7</sup> The audit was to be conducted by an independent auditing firm.<sup>8</sup> Blue Ridge Consulting Services, Inc. ("Blue Ridge") was hired as the auditor.<sup>9</sup> The deliverables under the contract with Blue Ridge included a "draft report" that was to be sent to the PUCO Staff prior to the due date of the final audit report. The PUCO ordered that "[a]ny conclusions, results, or recommendations formulated by Blue Ridge may be examined by any participant to this proceeding."<sup>10</sup>

To examine the conclusions, results or recommendations formulated by Blue Ridge, OCC served discovery on DP&L on August 30, 2017,<sup>11</sup> as OCC is permitted to do under Ohio law and PUCO rules.<sup>12</sup> OCC's discovery sought a copy of the drafts of the Blue Ridge audit report and related documents. OCC's discovery would allow it to procure copies of draft audit reports as well as DP&L's responses to draft reports.

On September 19, 2017, DP&L responded to OCC's discovery requests.<sup>13</sup> In its responses, DP&L refused to provide the documents that OCC requested. DP&L objected on the grounds of relevance and vagueness.<sup>14</sup> DP&L also objected because, in DP&L's view, the PUCO did not envision that drafts of the audit would be shared with intervenors in these cases.<sup>15</sup> And DP&L objected because, in its view, "the production of any non-final draft of the audit report to be prepared by Blue Ridge would be duplicative of the

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<sup>7</sup> Entry, Request for Proposal at 1 (Mar. 22, 2017) (the "RFP").

<sup>8</sup> *Id.*

<sup>9</sup> Entry (Apr. 19, 2017).

<sup>10</sup> *Id.* ¶ 11.

<sup>11</sup> *See* Healey Aff. at Exhibit 1.

<sup>12</sup> *See* R.C. 4903.082; Ohio Adm. Code 4901-1-16.

<sup>13</sup> *See* Healey Aff. at Exhibit 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

production of the final audit report."<sup>16</sup> OCC's attempts to resolve this issue with DP&L have been unsuccessful.

DP&L's "response" is evasive, incomplete, insufficient, and contrary to the PUCO's rules<sup>17</sup> and case law.<sup>18</sup> The Attorney Examiner should overrule DP&L's objections and order it to immediately provide complete responses to OCC's discovery requests.

## **II. STANDARD OF REVIEW**

The law requires OCC, as an intervenor and party in this case, to be "granted ample rights of discovery."<sup>19</sup> The General Assembly has also directed the PUCO to regularly review its rules to "aid full and reasonable discovery by all parties."<sup>20</sup> Accordingly, the PUCO has adopted Ohio Administrative Code 4901-1-16(B), which provides that "any party to a commission proceeding may obtain discovery on any matter, not privileged, which is relevant to the subject matter of the proceeding." The rule likewise provides: "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."<sup>21</sup>

In acknowledging the similarities between the PUCO discovery rules and the Ohio Civil Rules, the Ohio Supreme Court has found that the applicable Ohio Civil Rules

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<sup>16</sup> *Id.*

<sup>17</sup> See Ohio Adm. Code 4901-1-16; Ohio Adm. Code 4901-1-20; Ohio Adm. Code 4901-1-23(B) ("an evasive or incomplete answer shall be treated as a failure to answer").

<sup>18</sup> See *In re Application of the Fuel Adjustment Clauses for Columbus S. Power Co. & Ohio Power Co.*, Case No. 11-5906-EL-FAC, Entry (Feb. 3, 2016).

<sup>19</sup> R.C. 4903.082.

<sup>20</sup> *Id.*

<sup>21</sup> Ohio Adm. Code 4901-1-16(B).



have been "liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding."<sup>22</sup> The PUCO recognizes that "the policy of discovery is to allow the parties to prepare and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts."<sup>23</sup> Further, the PUCO's rules on discovery "do not create an additional field of combat to delay trials or to appropriate the Commission's time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings."<sup>24</sup>

The PUCO has authorized parties to enforce their statutory right to discovery by filing a motion to compel. In particular, a party may move to compel discovery regarding any "failure of a party to produce a document . . . requested under rule 4901-1-20 of the Administrative Code."<sup>25</sup> For purposes of these rules, "an evasive or incomplete answer shall be treated as a failure to answer."<sup>26</sup>

### **III. ARGUMENT**

#### **A. The information OCC seeks is relevant and reasonably calculated to lead to the discovery of admissible evidence.**

This case involves the amount that DP&L's customers will pay for electric distribution service. Under R.C. 4905.22, all rates charged by utilities in Ohio must be just and reasonable. In determining rates, the PUCO must establish the valuation as of

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<sup>22</sup> *Ohio Consumers' Counsel v. PUCO*, 111 Ohio St. 3d 300, 320 (2006).

<sup>23</sup> *In re Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (Mar. 17, 1987).

<sup>24</sup> *Id.* (citing *Penn Cent. Transp. Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76 (C.P. 1971)).

<sup>25</sup> Ohio Adm. Code 4901-1-23(A)(1), (2).

<sup>26</sup> Ohio Adm. Code 4901-1-23(B).

date certain of the property that is used and useful for providing service to customers.<sup>27</sup>

The auditor's reports, which focus on DP&L's jurisdictional rate base, are important to the determination of just and reasonable valuation of DP&L's date certain property.

The audit reaches the very heart of these cases. The audit report, thus, is essential to the PUCO's determination whether DP&L's proposed charges are just and reasonable under R.C. 4905.22.

OCC's discovery seeks draft audit reports (including the draft report that Blue Ridge was to present to the PUCO Staff by September 18, 2017<sup>28</sup>), as well as changes made to the report, including those made or suggested by the utility. This will enable OCC to examine any conclusions, results, or recommendations formulated by Blue Ridge, including those formulated as part of any draft reports.

Additionally, obtaining copies of draft reports will enable OCC to determine whether and how any conclusions, results, or recommendations have changed between the issuance of any drafts and the final report. In particular, OCC should be aware of any conclusions, results, or recommendations that were in the draft report but not in the final report so the reasons why they were excluded can be examined. This information will enable OCC to assess the justness and reasonableness of the auditor's conclusions in its final report. And it will inform OCC as to whether the audit process is truly an independent process, as the PUCO intended. This is especially needed where the auditor is not subject to discovery that is otherwise permitted between and among parties to a PUCO proceeding.

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<sup>27</sup> R.C. 4909.15(A)(1).

<sup>28</sup> See Entry (Sept. 5, 2017).

There is no merit to DP&L's objection that the discovery requested is not relevant. DP&L is wrong. The information relates directly to issues in this case—the development of an appropriate jurisdictional rate base.

**B. Both the final audit report and drafts of the audit report in these cases should be available to all parties so that all parties are able to fully examine the conclusions, results, and recommendations formulated by the auditor.**

In RPD No. 300, OCC asked DP&L to produce copies of all drafts of the audit report in DP&L's possession. In objecting to OCC's RPD No. 300, DP&L claimed that the PUCO "did not contemplate that any non-final draft of the audit report to be prepared by Blue Ridge would be shared with parties other than the Staff of the Commission and DP&L." DP&L also asserted that "the production of any non-final draft of the audit report to be prepared by Blue Ridge would be duplicative of the production of the final audit report." Both arguments fail.

First, DP&L misstates the intent of the PUCO's entries in this case when it claims that they strictly limit access to draft audit reports to the PUCO Staff and DP&L. Nothing in the entries suggests that DP&L and the PUCO Staff have the exclusive right to see drafts of the audit report. Indeed, contrary to DP&L's assertion in its objection to OCC's discovery, the PUCO's entries do not explicitly state that DP&L shall receive a copy of draft audit reports at all. The RFP states only that a draft report of the auditor's findings shall be "presented to Staff" and that "DP&L shall provide any and all documents or information requested by the auditor selected and the Commission Staff."<sup>29</sup> At no point did the PUCO rule—or even remotely imply—that DP&L is the keeper of the draft audit reports and can decide whether or not OCC gets to see them.

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<sup>29</sup> RFP at 4.

Indeed, in selecting Blue Ridge, the PUCO stated: "Any conclusions, results, or recommendations formulated by Blue Ridge may be examined by any participant to this proceeding."<sup>30</sup> The PUCO did not limit this statement to conclusions, results, or recommendations made in the final audit report. Thus, any conclusions, results, or recommendations made in drafts of the audit report should also be examined by parties to the case.

Drafts of the audit and communications regarding any such drafts should be discoverable in this case, just like they have been discoverable in other cases. The PUCO addressed this issue two years ago in an AEP Ohio case. There, OCC had sought, through a public records request, draft audit reports sent to AEP Ohio and communications from AEP Ohio related to the draft audit reports.<sup>31</sup> The PUCO granted OCC's request and ordered the utility to respond to OCC's discovery.<sup>32</sup> In a case involving FirstEnergy and another Blue Ridge audit, the PUCO granted OCC's motion to compel discovery related to the audit report.<sup>33</sup> And DP&L itself has provided such information in the past to OCC, with the PUCO Staff approval.<sup>34</sup>

The circumstances are similar here. Blue Ridge completed its investigation and presented its draft audit report to the PUCO Staff on September 18, 2017.<sup>35</sup> Under the RFP in this case, the final audit report was to be presented to the PUCO Staff on

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<sup>30</sup> Entry ¶ 11 (Apr. 19, 2017).

<sup>31</sup> See *In re Fuel Adjustment Clauses for Ohio Power Co.*, Case No. 11-5906-EL-FAC, Entry ¶8 (Feb. 3, 2016).

<sup>32</sup> *Id.*

<sup>33</sup> *In re 2015 Review of the Delivery Capital Recovery Rider Contained in the Tariffs of [FirstEnergy]*, Case No. 15-1739-EL-RDR, Entry (Dec. 19, 2016).

<sup>34</sup> *In re Application of the Dayton Power & Light Co. to Establish a Fuel Rider*, Case No. 12-2881-EL-FAC.

<sup>35</sup> See Entry (Sept. 5, 2017).

September 29, 2017.<sup>36</sup> There is no basis for DP&L to deny OCC access to these documents. They should be discoverable. DP&L's argument to the contrary is flawed.

DP&L's argument that producing the draft report would be duplicative with the final report is also without merit. It presumes that the drafts of the audit do not change, which is contrary to utilities' practices of commenting on drafts, seeking changes to the independent auditor's findings. A draft report is just that—a draft. It is subject to comment and revision before the final report is issued. Results, conclusions, and recommendations made in a draft report may be changed in the final report. Participants should know of changes and why any changes were made so they are on equal footing with the DP&L, who seeks to cloak its communications with the independent auditor in a shroud of secrecy. OCC should be able to discover DP&L's communications with the auditor (and the PUCO Staff) because these are communications that may affect the independent auditor's recommendations on how much money the utility will receive from customers in this rate case. The PUCO process is one founded on transparency, not secrecy.<sup>37</sup>

DP&L's arguments against RPD No. 300 are unavailing. The PUCO should overrule DP&L's objection and order DP&L to produce the documents OCC requested.

**C. OCC's discovery requests are specific and well-defined, not vague or overly broad as DP&L asserts.**

DP&L objects to OCC's RPD Nos. 300 and 301 on vagueness grounds. DP&L also objects to RPD No. 301 as overly broad. DP&L's objections are baseless.

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<sup>36</sup> *Id.*

<sup>37</sup> *See, e.g.*, R.C. 4905.07 (all facts and information in the PUCO's possession shall be public and open to inspection by interested parties).

In RPD No. 300, OCC asked for the following: "copies of all drafts of the Blue Ridge Consulting Services, Inc. ('Blue Ridge') audit report. This includes, but is not limited to, (i) any and all drafts received by the Company, and (ii) any drafts prepared or edited by the Company, the PUCO Staff, or Blue Ridge, with any track changes, edits, comments, and redlines intact." In RPD No. 301 OCC specifically asked for the following: "Please provide a copy of all communications between the (i) Company and (ii) Blue Ridge and/or the PUCO Staff regarding drafts of the Blue Ridge audit report. Include all attachments. This should include, but should not be limited to, any comments, questions, or suggestions that the Company provided to the PUCO Staff or to Blue Ridge regarding any drafts of the Blue Ridge audit report."

There is nothing vague about OCC's discovery requests. Indeed, they could not be any clearer: OCC seeks all drafts of the audit report in DP&L's possession, whether DP&L generated those drafts or received them from another party, and communications concerning those drafts.

Ohio Adm. Code 4901-1-20(A)(1) allows parties to submit requests to "[p]roduce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, or data compilations, *which are in the possession, custody, or control of the party upon whom the request is served.*" (emphasis added.) Thus, DP&L must produce documents in its possession that are responsive to OCC's requests.

Further, DP&L objects to RPD No. 301 as seeking information DP&L does not know at this time. This objection makes no sense. The RPD seeks information regarding communications DP&L has had with the PUCO Staff or Blue Ridge or both regarding the

draft audit. DP&L cannot possibly claim that it does not know the content of communications it has had with the PUCO Staff and Blue Ridge *in the past*. The PUCO should overrule DP&L's objection and require it to give OCC the documents it seeks.

**D. OCC RPD 301 is not duplicative of OCC RPD 299.**

DP&L also objects to OCC RPD 301 on the grounds that it is duplicative of OCC RPD 299. DP&L is incorrect. OCC RPD 299 asked for data requests made to DP&L by Blue Ridge and DP&L's responses.<sup>38</sup> OCC RPD 301, in contrast, asks for all communications between DP&L and Blue Ridge/Staff related to the audit report. Thus, while RPD 299 is limited to Blue Ridge's data requests to DP&L, RPD 301 is broader and includes any other communications between DP&L and Blue Ridge/Staff. OCC explained this distinction to DP&L, but DP&L ignored it and continued to refuse to respond to OCC RPD 301.<sup>39</sup>

**E. OCC undertook reasonable efforts to resolve the discovery dispute.**

As detailed in the attached affidavit, OCC made reasonable efforts to resolve this discovery dispute.<sup>40</sup> Once OCC received the responses and objections, OCC immediately contacted DP&L's counsel and expressed its concerns and its position by phone. OCC offered legal authority to back up its view of DP&L's responsibilities under the discovery rules. OCC discussed the issues with DP&L's counsel. DP&L responded by informing OCC that it had no further response and that it would not produce the requested documents. OCC took all reasonable efforts to resolve this discovery dispute. DP&L left

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<sup>38</sup> See Healey Aff. at Exhibit 3.

<sup>39</sup> *Id.* at Exhibit 2.

<sup>40</sup> *Id.*

OCC no choice but to file this motion to compel, and it was communicated to DP&L this motion would be forthcoming.

#### IV. CONCLUSION

The documents that OCC seeks are relevant, are reasonably calculated to lead to the discovery of admissible evidence, are neither privileged nor confidential, and are not subject to any other valid objections. DP&L refuses to provide these documents to OCC primarily on DP&L's mistaken belief that the PUCO intended for it to have special access to relevant documents that would be exempt from public disclosure. But the discovery standard in Ohio does not allow a utility to hide documents from the public simply because it prefers that OCC and others not know what type of influence it may have had on an independent audit. The PUCO's rules entitle parties to broad discovery, and OCC's requests in this case are well within the bounds of what OCC is entitled to. The PUCO should grant this motion to compel.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Motion to Compel Responses to Discovery by the Office of the Ohio Consumers' Counsel was provided to the persons listed below electronically this 31st day of October 2017.

/s/ Christopher Healey  
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the	)	Case No. 15-1830-EL-AIR
Dayton Power and Light Company for	)	
an Increase in Electric Distribution	)	
Rates.	)	

In the Matter of the Application of the	)	Case No. 15-1831-EL-AAM
Dayton Power and Light Company for	)	
Approval to Change Accounting	)	
Methods.	)	

In the Matter of the Application of the	)	Case No. 15-1832-EL-ATA
Dayton Power and Light Company for	)	
Tariff Approval.	)	

---

**AFFIDAVIT OF CHRISTOPHER HEALEY  
IN SUPPORT OF MOTION TO COMPEL**

---

I, Christopher Healey, counsel of record 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 the Dayton Light and Power Company ("DP&L") as to the motion to compel responses to OCC's Requests for Production of Documents:

1. OCC submitted its 19th set of discovery to DP&L on August 30, 2017.
2. True and correct copies of OCC's discovery requests that are the subject of OCC's motion to compel are attached hereto as Exhibit 1.
3. On or about September 19, 2017, Duke served its Objections and Responses to OCC's first set of discovery. In its responses, Duke objected to every discovery request on numerous grounds.

4. True and correct copies of DP&L's objections and responses are attached hereto as Exhibit 2.

5. On September 19, 2017, immediately after receiving DP&L's discovery responses, I contacted DP&L counsel Jeff Sharkey by phone to discuss DP&L's responses. I explained to Mr. Sharkey that OCC disagreed with DP&L's objections and explained to him why they are all meritless. Mr. Sharkey's response was that the order authorizing the audit report did not specifically state that DP&L must respond to discovery requests related to the report, so DP&L would not respond to any such discovery.

6. I sent Mr. Sharkey a follow-up email that same day documenting OCC's position.

7. On September 27, 2017, after not receiving any response from Mr. Sharkey, I sent a follow-up email to him. He responded on October 2, 2017 that DP&L would not produce the requested documents.

8. On October 2, 2017, I sent a follow-up email to Mr. Sharkey acknowledging DP&L's position.

9. Also on October 2, 2017, I sent Mr. Sharkey an email asking whether DP&L would produce the final report. Mr. Sharkey responded that DP&L did not have a copy of the final report.

10. True and correct copies of all email communications between OCC and DP&L are attached hereto as Exhibit 3.

11. A true and correct copy of OCC RPD 299 is attached hereto as Exhibit 4.

12. To date, DP&L has refused to produce the documents that OCC requests.

13. Reasonable resolution of this discovery dispute may not be achieved without the PUCO's intervention. OCC therefore files its motion to compel.

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.

  
\_\_\_\_\_  
Christopher Healey, Affiant

Subscribed and sworn to before me this 31st day of October 2017.

  
\_\_\_\_\_  
Notary Public



Debra Jo Bingham, Notary Public  
Union County, State of Ohio  
My Commission Expires June 13, 2020

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Dayton	)	
Power and Light Company for an Increase in	)	Case No. 15-1830-EL-AIR
Electric Distribution Rates.	)	
In the Matter of the Application of the Dayton	)	
Power and Light Company for Approval to Change	)	Case No. 15-1831-EL-AAM
Accounting Methods.	)	
In the Matter of the Application of the Dayton	)	Case No. 15-1832-EL-ATA
Power and Light Company for Tariff Approval.	)	

---

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED UPON DAYTON POWER AND LIGHT COMPANY  
  
NINETEENTH SET  
(AUGUST 30, 2017)**

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The Office of the Ohio Consumers' Counsel, in the above-captioned proceedings before the Public Utilities Commission of Ohio, submits the following Requests for Production of Documents pursuant to sections 4901-1-20 of the Ohio Administrative Code for response from the Dayton Power and Light Company ("DP&L" or the "Company") within 20 days. An electronic, non-pdf (*e.g.* Microsoft Excel) response should be provided to the Office of the Ohio Consumers' Counsel at the following addresses:

Christopher Healey (0086027)  
Terry Etter (0067445)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: Healey – (614) 466-9571  
Telephone: Etter – (614) 466-7964  
christopher.healey@occ.ohio.gov  
terry.etter@occ.ohio.gov  
(will accept service via email)

Additionally, DP&L 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, orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, 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, but 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, electronic, or otherwise perceptible means, including, but not

limited to, telephone conversations, emails, 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” and “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. “You,” “Your,” and “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 and vice versa. Words expressing the past tense shall be deemed to express the present tense and vice versa.
8. “Person” includes any firm, corporation, partnership, 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,” “the identity of,” and “identified” mean as follows:



- A. When used in reference to an individual, to state his full name, his 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, to 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, (i) to state the type of communication (*e.g.*, letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto; and (ii) 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, to 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, to 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 (*e.g.*, 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” and “Company” mean the Dayton Power and Light Company.
14. “Application” or “Applications” means the DP&L filings made in Case No. 15-1830-EL-AIR et al., including but not limited to the filing on November 30, 2015.

**INSTRUCTIONS FOR ANSWERING**

1. All information is to be divulged that 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 is requested to produce responsive materials and information within its physical control or custody, as well as materials and information 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;
  - 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, 2004 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.
11. To the extent that any interrogatory requests the production of documents, such interrogatory shall be treated as a request for the production of documents, and such documents shall be produced as if the interrogatory were designated a request for the production of documents.
  12. To the extent that any request the production of documents seeks an interrogatory response (in addition to, or in place of, a request for a document), such request for the production of a documents shall be treated as an interrogatory, and such request shall be responded to as if it were designated an interrogatory.

## **REQUESTS FOR PRODUCTION OF DOCUMENTS**

\* In accordance with Ohio Adm. Code 4901-1-16(D)(5), OCC requests that all responses be supplemented with subsequently acquired information at the time such information is available.

- RPD-300. Please provide copies of all drafts of the Blue Ridge Consulting Services, Inc. ("Blue Ridge") audit report. This includes, but is not limited to, (i) any and all drafts received by the Company, and (ii) any drafts prepared or edited by the Company, the PUCO Staff, or Blue Ridge, with any track changes, edits, comments, and redlines intact.
- RPD-301. Please provide a copy of all communications between the (i) Company and (ii) Blue Ridge and/or the PUCO Staff regarding drafts of the Blue Ridge audit report. Include all attachments. This should include, but should not be limited to, any comments, questions, or suggestions that the Company provided to the PUCO Staff or to Blue Ridge regarding any drafts of the Blue Ridge audit report.
- RPD-302. Paragraph 6 of the PUCO's April 19, 2017 Entry states: "The Company shall enter into a contract with Blue Ridge by May 5, 2017, for the purpose of providing payment for its auditing services." Please provide a copy of this contract.

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Office of the Ohio Consumers' Counsel's Requests for Production of Documents Propounded Upon The Dayton Power and Light Company, Nineteenth Set, was served upon the persons listed below via electronic transmission this 30th day of August, 2017.

/s/ Christopher Healey

Christopher Healey  
Assistant Consumers' Counsel

**SERVICE LIST**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The : Case No. 15-1830-EL-AIR  
Dayton Power and Light Company for an  
Increase in Electric Distribution Rates. :

In the Matter of the Application of The : Case No. 15-1831-EL-AAM  
Dayton Power and Light Company for  
Approval to Change Accounting Methods. :

In the Matter of the Application of The : Case No. 15-1832-EL-ATA  
Dayton Power and Light Company for Tariff  
Approval. :

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**THE DAYTON POWER AND LIGHT COMPANY'S OBJECTIONS  
AND RESPONSES TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
NINETEENTH SET OF DISCOVERY REQUESTS  
August 30, 2017**

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The Dayton Power and Light Company ("DP&L") objects and responds to  
The Office of the Ohio Consumers' Counsel's Nineteenth Set of Discovery Requests, 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 the party requesting the information as it is for DP&L, DP&L may specify the records from which the answer may be derived or ascertained and afford the party requesting the information 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 objects because these discovery requests seek information that DP&L does not know at this time.

13. DP&L objects to the request to the extent that it mischaracterizes previous statements or information or is an incomplete recitation of past statements or information or takes those statements or information outside of the context in which they were made.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

RPD-300. Please provide copies of all drafts of the Blue Ridge Consulting Services, Inc. ("Blue Ridge") audit report. This includes, but is not limited to, (i) any and all drafts received by the Company, and (ii) any drafts prepared or edited by the Company, the PUCO Staff, or Blue Ridge, with any track changes, edits, comments, and redlines intact.

**RESPONSE:** General Objections Nos. 1 (relevance), 9 (vague or undefined). DP&L further objects because the Commission's April 17, 2017 Entry selecting Blue Ridge to conduct the accounting review of DP&L's application for an increase in its electric distribution rates did not contemplate that any non-final draft of the audit report to be prepared by Blue Ridge would be shared with parties other than the Staff of the Commission and DP&L. DP&L further objects to this Request because the production of any non-final draft of the audit report to be prepared by Blue Ridge would be duplicative of the production of the final audit report.

RPD-301. Please provide a copy of all communications between the (i) Company and (ii) Blue Ridge and/or the PUCO Staff regarding drafts of the Blue Ridge audit report. Include all attachments. This should include, but should not be limited to, any comments, questions, or suggestions that the Company provided to the PUCO Staff or to Blue Ridge regarding any drafts of the Blue Ridge audit report.

**RESPONSE:** General Objections Nos. 1 (relevance), 2 (overbroad), 7 (not in DP&L's possession), 9 (vague or undefined), 12 (seeks information that DP&L does not know at this time). DP&L further objects to this Request because it is duplicative to OCC's RPD-299.

RPD-302. Paragraph 6 of the PUCO's April 19, 2017 Entry states: "The Company shall enter into a contract with Blue Ridge by May 5, 2017, for the purpose of providing payment for its auditing services." Please provide a copy of this contract.

**RESPONSE:** General Objections Nos. 1 (relevance), 3 (privileged and work product), 4 (proprietary), 9 (vague or undefined). Subject to all general objections, DP&L states see DP&L-AIR 0035611 – DP&L-AIR 0035616 – CONFIDENTIAL.

Respectfully submitted,

/s/ Michael J. Schuler

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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 The Office of the Ohio Consumers' Counsel's Nineteenth Set of Discovery Requests, August 30, 2017, has been served via electronic mail upon the following counsel of record, this 19th day of September, 2017:

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/s/ Jeffrey S. Sharkey  
Jeffrey S. Sharkey

1221514.1

## Healey, Christopher

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**From:** Healey, Christopher  
**Sent:** Wednesday, October 04, 2017 8:55 AM  
**To:** 'Sharkey, Jeffrey S.'  
**Cc:** Etter, Terry  
**Subject:** RE: DP&L 15-1830 - Discovery Follow Up 19th Set [IWOV-DMS.FID92418]

Jeff,

Thank you. If you do receive a copy in the future, I request that you supplement your response to OCC RPD 300.

-Chris

---

**From:** Sharkey, Jeffrey S. [mailto:JSharkey@ficlaw.com]  
**Sent:** Wednesday, October 04, 2017 8:52 AM  
**To:** Healey, Christopher  
**Subject:** RE: DP&L 15-1830 - Discovery Follow Up 19th Set [IWOV-DMS.FID92418]

Chris: DP&L does not have a copy of the final report. Jeff.

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**From:** [Christopher.Healey@occ.ohio.gov](mailto:Christopher.Healey@occ.ohio.gov) [mailto:Christopher.Healey@occ.ohio.gov]  
**Sent:** Monday, October 02, 2017 2:39 PM  
**To:** Sharkey, Jeffrey S.  
**Cc:** [Terry.Etter@occ.ohio.gov](mailto:Terry.Etter@occ.ohio.gov); Michael Schuler; Ireland, D. Jeffrey; Hollon, Christopher C.  
**Subject:** RE: DP&L 15-1830 - Discovery Follow Up 19th Set [IWOV-DMS.FID92418]

Jeff,

Is it DP&L's position that it will not produce the final report, either? This would fall within the scope of OCC RPD 300.

Thank you,  
Chris

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**From:** Healey, Christopher  
**Sent:** Monday, October 02, 2017 9:18 AM  
**To:** 'Sharkey, Jeffrey S.'  
**Cc:** Etter, Terry; Michael Schuler; Ireland, D. Jeffrey; Hollon, Christopher C.  
**Subject:** RE: DP&L 15-1830 - Discovery Follow Up 19th Set [IWOV-DMS.FID92418]

Jeff,

Thank you for your response. We disagree with your belief and will proceed accordingly.

-Chris

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**From:** Sharkey, Jeffrey S. [<mailto:JSharkey@ficlaw.com>]  
**Sent:** Monday, October 02, 2017 9:14 AM  
**To:** Healey, Christopher  
**Cc:** Etter, Terry; Michael Schuler; Ireland, D. Jeffrey; Hollon, Christopher C.  
**Subject:** RE: DP&L 15-1830 - Discovery Follow Up 19th Set [IWOV-DMS.FID92418]

Chris:

Sorry for the delay in getting back to you. DP&L is going to stand on its objections to OCC's request for a copy of Blue Ridge's draft report. DP&L believes that the draft report was not intended to be subject to discovery.

Jeff.

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**From:** [Christopher.Healey@occ.ohio.gov](mailto:Christopher.Healey@occ.ohio.gov) [<mailto:Christopher.Healey@occ.ohio.gov>]  
**Sent:** Wednesday, September 27, 2017 5:31 PM  
**To:** Sharkey, Jeffrey S.  
**Cc:** [Terry.Etter@occ.ohio.gov](mailto:Terry.Etter@occ.ohio.gov); Michael Schuler  
**Subject:** RE: DP&L 15-1830 - Discovery Follow Up 19th Set

Jeff,

I am following up on the below. Please let me know if you have an update.

Thank you,  
Chris

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**From:** Healey, Christopher  
**Sent:** Tuesday, September 19, 2017 5:08 PM  
**To:** 'Sharkey, Jeffrey S.'  
**Cc:** Etter, Terry; Michael Schuler  
**Subject:** DP&L 15-1830 - Discovery Follow Up 19th Set

Jeff,

Thank you for talking with me just now regarding your responses to OCC's 19th discovery set.

With respect to OCC RPD-300, OCC is seeking all drafts of the Blue Ridge audit report. Your response is that the Commission's April 17, 2017 entry does not contemplate sharing the draft with other parties. The discovery standard is that OCC is entitled to any relevant information. See Ohio Adm. Code 4901-1-16. There would be no reason for the entry to give us an explicit right to discover this information because we already have that right under the PUCO's rules. Please produce all responsive documents to OCC RPD 300.

Regarding OCC RPD-301, OCC is seeking all communications between DP&L and Blue Ridge/the PUCO Staff. You responded that this is duplicative of OCC RPD 299. It is not duplicative. OCC RPD-299 relates only to data requests made to the Company by Blue Ridge and the Company's responses. OCC RPD-300 is broader and includes all communications (not just data requests and responses) involving DP&L, Blue Ridge, and the PUCO Staff. Please produce all responsive documents (though obviously, I am not asking you to reproduce any documents that you have already produced in response to RPD 299).

I am happy to discuss these further with you at your convenience.

Thank you,  
Chris

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**REQUESTS FOR PRODUCTION OF DOCUMENTS**

RPD-299. Please provide a copy of all formal and informal requests (e.g., interrogatories, data requests) made to the Company by Blue Ridge Consulting Services, Inc. or any other entity working on behalf of the Commission Staff or Commission in this proceeding and the Company's response to those data requests.

**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 (seeks information that DP&L does not know at this time). Subject to all general objections, DP&L states that it will produce responsive unprivileged documents in accordance with General Objection No. 8.

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

**Commission of Ohio Docketing Information System on**

**10/31/2017 2:56:53 PM**

**in**

**Case No(s). 15-1830-EL-AIR, 15-1831-EL-AAM, 15-1832-EL-ATA**

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 Healey, Christopher Mr.