

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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|--|---|-------------------------|
| In the Matter of the Complaint of AT&T |) | |
| Ohio, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. 06-1509-EL-CSS |
| |) | |
| The Dayton Power and Light Company, |) | |
| |) | |
| Respondent. |) | |

ENTRY

The attorney examiner finds:

- (1) On December 28, 2006, AT&T Ohio filed a complaint against The Dayton Power and Light Company (DP&L). AT&T Ohio alleged that DP&L breached the Joint Pole Line Agreement that was entered into between the parties.
- (2) On September 21, 2007, AT&T Ohio and DP&L filed a Stipulation and Recommendation (Stipulation), along with attachments. The parties filed both a public version and a confidential version of the Stipulation submitting that the Stipulation contains confidential information.
- (3) On October 9, 2007, the parties filed a joint motion for protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that the financial information of the deal between the parties, which is contained in Section II(B) of the Stipulation, be protected.
- (4) By finding and order issued November 7, 2007, the Commission adopted, and approved in its entirety, the Stipulation submitted by the parties. In addition, the Commission granted the parties' October 9, 2007, motion for a protective order, concluding that Section II(B) of the Stipulation filed on September 21, 2007, be maintained under seal for a period of 18 months from the date of the finding and order, or May 7, 2009.

- (5) By entry issued April 15, 2009, the attorney examiner granted the motion for extension of the protective order filed by AT&T Ohio and DP&L and ordered that Section II(B) of the Stipulation filed on September 21, 2007, be maintained under seal for a period of 18 months or until November 8, 2010.
- (6) On September 23, 2010, AT&T Ohio and DP&L filed a motion for extension of the protective order issued by the attorney examiner on April 15, 2009. The parties maintain that this information constitutes a trade secret under Ohio law. Moreover, the parties aver that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code, as the parties have made reasonable efforts to maintain the secrecy of the information. In addition, the parties point out that the Commission's regulatory responsibilities in this proceeding will not be impaired because the Commission does have access to the unredacted Stipulation containing this information which was filed under seal in this proceeding.
- (7) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.
- (8) Similarly, Rule 4901-1-24, O.A.C., allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (9) Ohio law defines a trade secret as "information . . . that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the

subject of efforts that are reasonable under the circumstances to maintain its secrecy." Section 1333.61(D), Revised Code.

- (10) The attorney examiner has examined the information covered by the motion for protective order filed by AT&T Ohio and DP&L, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in Section II(B) of the Stipulation filed on September 21, 2007, constitutes trade secret information. Release of this information is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that the motion for protective order filed by AT&T Ohio and DP&L is reasonable and should be granted.
- (11) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders to be issued for a period of 18 months. Accordingly, the docketing division should continue to maintain under seal Section II(B) of the Stipulation filed on September 21, 2007, for a period of 18 months from November 8, 2010, or until May 8, 2012.
- (12) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If the parties wish to extend this confidential treatment beyond the 18 months granted in this entry, they should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion is filed, the Commission may release this information to the public upon expiration of the protective order, without prior notification to the parties.

It is, therefore,

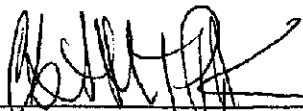
ORDERED, That the motion for extension of the protective order filed by AT&T Ohio and DP&L for Section II(B) of the Stipulation be granted. It is, further,

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, (1997) 80 Ohio St.3d 513, 524-525.

ORDERED, That Section II(B) of the Stipulation shall be maintained under seal for a period of 18 months from November 8, 2010, or until May 8, 2012. It is, further,

ORDERED, That copies of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

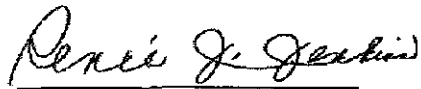


By: Christine M.T. Pirik
Attorney Examiner

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/dah

Entered in the Journal

NOV 03 2010



Renee J. Jenkins
Secretary

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