

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan | : : : : | Case No. 12-426-EL-SSO |
| In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs | : : : : | Case No. 12-427-EL-ATA |
| In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority | : : : : | Case No. 12-428-EL-AAM |
| In the Matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules | : : : : | Case No. 12-429-EL-WVR |
| In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders | : : : | Case No. 12-672-EL-RDR |

**THE DAYTON POWER AND LIGHT COMPANY'S
MOTION FOR PROTECTIVE ORDER**

The Dayton Power and Light Company ("DP&L") files this Motion for Protective Order contemporaneously with the filing the following deposition transcripts under seal with the Commission: Kevin Murray, Joe Bowser, Mike Gorman, Jonathan Lesser, Roger Ruch, and Daniel Duann.

Pursuant to Ohio Admin. Code § 4901-1-24(D), DP&L moves for the entry of a Protective Order to exempt from public disclosure certain information that is confidential, and competitively sensitive and trade secret information ("Confidential Information"). The information at issue is highly confidential information relating to DP&L's business plans,

projected sales and profits, and other financial information. The Confidential Information is included in the deposition testimony of witnesses Kevin Murray, Joe Bowser, Mike Gorman, Jonathan Lesser, Roger Ruch, and Daniel Duann.

This information is maintained as confidential by DP&L, and constitutes proprietary, trade secret material, the public disclosure of which would subject DP&L to an unfair competitive disadvantage. In accordance with Ohio Admin. Code § 4901-1-24(D)(2), three unredacted copies of the Confidential Information have been filed under seal with the Commission.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE DAYTON POWER AND
LIGHT COMPANY'S MOTION FOR PROTECTIVE ORDER**

Pursuant to Ohio Admin. Code § 4901-1-24(D), The Dayton Power and Light Company ("DP&L") moves for the entry of a Protective Order to exempt from public disclosure certain information as confidential, proprietary, competitively sensitive and trade secret information. Specifically, DP&L requests that certain confidential information contained in the deposition testimony of witnesses Kevin Murray, Joe Bowser, Mike Gorman, Jonathan Lesser, Roger Ruch, and Daniel Duann be exempted from public disclosure as confidential, proprietary, competitively sensitive and trade secret information ("Confidential Information").

Section 4901-1-24(D) of the Ohio Administrative Code provides that the Commission may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. The Commission (and its Staff) will have full access to the Confidential Information in order to fulfill its statutory obligations. Further, only that information as is essential to prevent disclosure of Confidential Information was redacted from the publically-filed documents.

The criteria for determining what should be kept confidential by the Commission is well established, and the Commission has recognized its statutory obligation to protect trade secrets:

"The Commission is of the opinion that the 'public records' statute must also be read in *pari materia* with Section 1333.61, Revised Code ("trade secrets" statute). The latter statute must be interpreted

as evincing the recognition, on the part of the General Assembly,
of the value of trade secret information."

In re: General Telephone Co., PUCO Case No. 81-383-TP-AIR (Entry, February 17, 1982).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"'Trade secret' means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, 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."

Ohio Rev. Code § 1333.61(D) (emphasis added).

"A company's determination of its costs, overhead and volume of sales, and particularly its calculation of profit margins on customers' purchases may be the kind of information that the trade secret statute seeks to protect." Kenker Box Co. v. Riemeier Lumber Co., 2000 Ohio App. LEXIS 62198, at *10 (Dec. 29, 2000). Accord: Alpha Benefits Agency, Inc. v. King Ins. Agency, Inc., 13 Ohio App. 3d 673, 683 (1999) (holding that trial court should have ordered plaintiff to produce its "profitability information" to defendant subject to a protective order); Vanguard Transportation Systems v. Edwards Transfer & Storage Co., 109 Ohio App. 3d 786, 789-90 (1996) (affirming trial court order that held that various information including "corporate financial information" constituted a trade secret.").

This definition clearly reflects the state policy favoring the protection of trade secrets such as the information that is the subject of this Motion. The Commission has issued

protective orders in numerous prior proceedings to prevent the public disclosure of trade secrets. E.g., In re Columbia Gas of Ohio, Inc., PUCO Case No. 90-17-GA-GCR (Entry, August 7, 1990); In re Elyria Tel Co., PUCO Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); In re Ohio Bell Tel. Co., PUCO Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989).

The Confidential Information constitutes “business information or plans, [and] financial information” under Ohio Rev. Code § 1333.61(D), and is included in the deposition testimony of witnesses Kevin Murray, Joe Bowser, Mike Gorman, Jonathan Lesser, Roger Ruch, and Daniel Duann. The "Confidential Information" subject to this request is highly confidential information relating to DP&L’s business plans, projected sales and profits, and other financial information, and is protected under the statute.

DP&L considers this Confidential Information to be proprietary, confidential and a trade secret under Ohio Rev. Code § 1333.61(D). The Confidential Information is not known outside of DP&L, and is not disseminated to internal employees unless those employees have a legitimate business need to know the information. Maintaining the confidentiality of this information will prevent an undue competitive disadvantage to DP&L, as well as assisting in fostering the interests of maintaining a fair and robust competitive marketplace within Ohio.

For these foregoing reasons, DP&L respectfully requests that the Commission issue a Protective Order that permits the Confidential Information to be designated as confidential and to remain under seal.

Respectfully submitted,

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/20/2013 12:43:24 PM

in

Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

Summary: Motion The Dayton Power and Light Company's Motion for Protective Order electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company