

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
The Dayton Power and Light Company)	Case No. 12-2881-EL-FAC
To Modify its Fuel Rider)	

The Dayton Power and Light Company's
Motion for Protective Order

The Dayton Power and Light Company ("DP&L" or the "Company") pursuant to Ohio Administrative Code ("O.A.C.") Rule 4901-1-24, hereby moves the Commission for a protective order regarding confidential trade secret information of the Company ("Confidential Information") included in the unredacted version of the Initial Brief of The Dayton Power and Light Company ("Initial Brief") filed in this docket on February 28, 2014. A public version, incorporating redactions that correspond to the portions of the Initial Brief to which this motion applies, was filed on the same date. The unredacted Initial Brief contains Confidential Information that constitutes trade secrets under Ohio law and that merits protection from disclosure.

MEMORANDUM IN SUPPORT

DP&L moves that Confidential Information contained in the unredacted version of the Initial Brief be protected from disclosure and that the public version of the Initial Brief be made available through the Commission's normal disclosure process. In support of its motion, DP&L states as follows:

Description of the Confidential Information.

In its Initial Brief, the Company made every effort to minimize the amount of material that would be subject to a protective order. For example, the Company has consistently described a contract that is at issue in this proceeding as the "ILB Option contract," rather than referring to it by

the name of the other contracting party, which would typically be treated as confidential. The information that is confidential in the Initial Brief is limited to a handful of references on four pages of the Initial Brief with respect to information that would either identify a counter-party to a contract or disclose internal corporate hedging policies. Such information is not publicly available and, if known, could be used by coal suppliers to gain an advantage in negotiations.

Disclosing the Confidential Information Would Harm DP&L and its Customers.

The Confidential information is competitively sensitive and a trade secret because suppliers and competitors may use such information to determine the DP&L's procurement policies under which the Company has secured current and future supplies of coal for their plants. The disclosure of such information would adversely impact DP&L because it would permit suppliers and competitors to better determine how to price to their advantage their products and services, including the coal provided to the Companies' facilities.

DP&L Takes Steps to Protect this Information from Public Disclosure.

The Confidential Information is not readily available in the public domain and DP&L takes steps to protect this information from public disclosure. The Confidential Information is not available or ascertainable by other parties through normal or proper means and no reasonable amount of proper independent research could yield this information to other parties.

Additionally, DP&L make reasonable efforts to maintain the secrecy of the Confidential Information. DP&L restricts the access of information to only those employees, officers and representatives of the Company who have a need to know about such information due to their job and management responsibilities. When disclosure is made to outside consultants, attorneys or other non-employees, disclosure is made only if privileged or pursuant to a confidentiality agreement.

Applicable Law.

O.A.C. Rule 4901-1-24(D) provides that the Commission or certain designated employees 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 criteria for determining what should be kept confidential by the Commission is well established, and the Commission also long ago 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., Case No. 81-383-TP-AIR (Entry, February 17, 1982).

Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. Rule 4901-1-24(A)(7)). 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: 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. Ohio R.C. § 1333.61(D).

This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion. This Commission and its Attorney

Examiners have previously carried out this state policy in numerous proceedings. *See, e.g., Columbus Southern Power Company and Ohio Power Company, Case Nos. 09-872-EL-FAC and 09-873-EL-FAC*, (Entry of June 29, 2010); *Elyria Tel. Co.*, Case No. 89-965- TP-AEC (Finding and Order, September 21, 1989). *See also, State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25 (1997), favorably citing the six factor test applied *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App.3d 131, 134135 as:

(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

DP&L submits that the application of the relevant law to the redacted information supports the issuance of a protective order with respect to the unredacted version of the Initial Brief. Further, public disclosure of such information could impair DP&L's efforts to procure fuel for its generating plants on a competitive basis, and could adversely affect its ability to obtain terms, conditions and prices for its fuel supplies as advantageous as those that would otherwise be possible. Public disclosure of this information, on the other hand, is not likely to assist the Commission in carrying out its duties because the information will remain available to the Commission's Staff and those participants in this proceeding who sign a confidentiality agreement.

**The Protective Order Should Be Granted For
Eighteen Months with Rights to File for Further
Extensions Thereafter as Provided by Law.**

The commercial value of the Confidential Information will extend beyond the eighteen-month period contemplated by O.A.C. Rule 4901-1-24 (F). DP&L recognizes, however, that the Commission's practice has generally been to shield such information for that eighteen month period with a recognition that a subsequent right to move for a further extension is authorized

under the Rule. See, *Columbus Southern Power Company and Ohio Power Company, Case Nos. 09-872-EL-FAC and 09-873-EL-FAC* (Paragraph 8 of Entry of June 29, 2010).

Conclusion

For the foregoing reasons, The Dayton Power and Light Company requests that the Commission grant its motion to maintain the redacted portions of the Initial Brief, under seal.

Respectfully submitted,

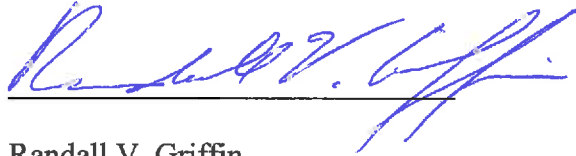


Randall V. Griffin
(Ohio Bar No. 0080499)
Attorney for
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
937-259-7221 (telephone)
937-259-7813 (facsimile)
Randall.Griffin@aes.com

DATED: February 28, 2014

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion has been has been served either electronically or via first class mail, postage prepaid, this 28th day of February, 2014 upon counsel to the parties of record.



Randall V. Griffin
(Ohio Bar No. 0080499)
Attorney for
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
937-259-7221 (telephone)
937-259-7813 (facsimile)
Randall.Griffin@aes.com

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Summary: Motion Motion for Protective Order with respect to Confidential Version of Initial Brief of The Dayton Power and Light Company electronically filed by Mr. Randall V Griffin on behalf of The Dayton Power and Light Company