

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the Application of the     | ) | Case No. 14-0831-EL-UNC |
| Significantly Excessive Earnings Test under | ) |                         |
| Section 4928.143(F), Ohio Revised Code, and | ) |                         |
| Rule 4901:1-35-03(C)(10), Ohio              |   |                         |
| Administrative Code for The Dayton Power    |   |                         |
| and Light Company                           |   |                         |

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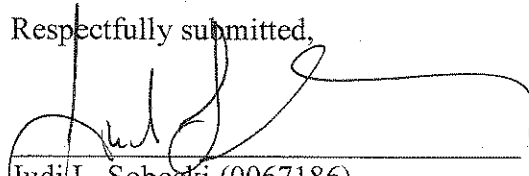
**THE DAYTON POWER AND LIGHT COMPANY'S  
MOTION FOR PROTECTIVE ORDER**

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The Dayton Power and Light Company ("DP&L" or "the Company") moves pursuant to Ohio Administrative Code §4901-1-24(D), for the entry of a Protective Order to designate as confidential portions of the exhibits of DP&L witness Craig Forestal which specify DP&L's estimated capital expenditures ("Confidential Information").

DP&L's estimated capital expenditures constitute proprietary, trade secret material, the public disclosure of which would subject DP&L to an unfair competitive disadvantage. This information is maintained as confidential by the Company. The reasons in support of this motion are fully explained in the attached memorandum. Three unredacted copies of the Confidential Information have been submitted under seal.

Respectfully submitted,



Judi L. Sobecki (0067186)  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
Telephone: (937) 259-7171  
Facsimile: (937) 259-7178  
Email: [judi.sobecki@dplinc.com](mailto:judi.sobecki@dplinc.com)

Attorney for The Dayton Power and Light  
Company

## **MEMORANDUM IN SUPPORT**

Under Ohio Rev. Code §4928.143(F), the Commission is to consider whether there were "excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate."

DP&L is submitting, contemporaneously with this motion, its application, testimony and exhibits of DP&L's Significantly Excessive Earnings Test for calendar year 2013. Exhibit CAF-5 contains DP&L's estimated capital expenditures which are proprietary, trade secret materials. 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. Moreover, making such information publically available would subject DP&L to a substantial competitive disadvantage.

O.A.C. §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. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the estimated capital expenditures will not impair the purposes of Title 49. The Commission and its Staff have full access to the 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 document. No purpose of Title 49 would be served by the public disclosure of this highly proprietary, confidential information.

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.<sup>1</sup>

This definition clearly reflects the state policy favoring the protection of trade secrets such as estimated capital expenditures which is the subject of this motion. The information being redacted is highly confidential information. Indeed, DP&L's estimated capital expenditures were treated as confidential in DP&L's recent ESP case (Case No. 12-426-EL-SSO, et al.) and DP&L's 2012 SEET case (Case No. 13-1495-EL-UNC).

DP&L considers this Confidential Information to be proprietary, confidential and a trade secret as defined by O.R.C. § 1333.61(D). Maintaining the confidentiality of this information will allow DP&L to realize the value of its considerable efforts in developing financial forecasts.

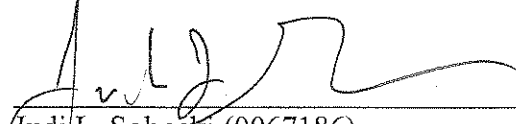
WHEREFORE, for the foregoing reasons, DP&L respectfully requests that the Commission grant this Motion for Protective Order and allow the unredacted Exhibit

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<sup>1</sup> O.R.C. § 1333.61(D).

CAF-5 to DP&L's Significantly Excessive Earnings Test for calendar year 2013,  
designated as Confidential Information, to remain under seal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Judi L. Sobocki', is written over a horizontal line.

Judi L. Sobocki (0067186)  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
Telephone: (937) 259-7171  
Facsimile: (937) 259-7178  
Email: [judi.sobocki@dplinc.com](mailto:judi.sobocki@dplinc.com)

Attorney for The Dayton Power and Light  
Company

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**in**

**Case No(s). 14-0831-EL-UNC**

Summary: Motion for Protective Order and Memorandum in support electronically filed by Emily W Rabb on behalf of The Dayton Power & Light Company