

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

The Office of the Ohio Consumers' Counsel ("OCC") hereby moves the Public Utilities Commission ("PUCO") for a protective order regarding information asserted to be confidential by Dayton Power & Light ("DP&L" or "Utility").<sup>1</sup> As part of discovery in this proceeding, DP&L provided certain information to OCC, subject to a protective agreement. The Utility asserts that this information is proprietary and confidential, and constitutes trade secrets under Ohio law, and that non-disclosure is not inconsistent with the purposes of R.C. Title 49.

Based on the alleged confidential information, OCC drafted discovery requests to the Utility, which became OCC's 9th set of discovery. That discovery is now the subject to a motion to compel. Under the PUCO's rules, a motion to compel must be accompanied with a copy of the discovery requests that the motion concerns.

<sup>1</sup> This Motion is filed pursuant to Ohio Adm. Code 4901-1-24(D).

OCC hereby requests that the Commission issue such order as is necessary to protect OCC's Discovery requests, Set Nine, served on DP&L on February 25, 2016. The discovery requests contain information that that DP&L deems confidential. OCC is filing the Discovery Requests under seal, as part of its Motion to compel. OCC is also publicly filing a redacted version, subject to OCC's rights under the protective agreement and provisions of Ohio law.

By filing the instant motion, OCC does not concede that the information constitutes trade secrets or is confidential. However, OCC acknowledges that it has obtained this information pursuant to a protective agreement with DP&L. That Protective Agreement provides for such information to be treated as confidential and protected (subject to OCC's right to initiate a process for the PUCO to rule whether the information deserves confidential treatment under Ohio law).

The grounds for this Motion are more fully described in the accompanying Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Jodi Bair

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

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**MEMORANDUM IN SUPPORT**

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Contemporaneously with the filing of this Motion, OCC is filing a Motion to Compel with an attachment that contains information gained during discovery that the Utility asserts is confidential. Accordingly, OCC is filing OCC's Discovery Set Nine served on DP&L on February 25, 2016 under seal, pursuant to Ohio Adm. Code 4901-1-24(D)(2) and the protective agreement between OCC and DP&L. OCC is also filing a version of OCC's Discovery Set Nine for viewing by the public, with the purportedly confidential information redacted pursuant to Ohio Adm. Code 4901-1-24(D)(1) and the protective agreement between OCC and DP&L.

Without conceding that the allegedly confidential information meets the standard for trade secrets and deserves protection from public revelation under R.C. 1333.61(D), OCC files the instant Motion to protect the information. Accordingly, OCC requests that the PUCO issue such order as is necessary to protect OCC's Discovery Set Nine as filed under seal. Such information was designated as confidential by DP&L, subject to OCC's

rights under the protective agreement. OCC, nonetheless, retains the right to initiate the process for the PUCO to decide if confidential treatment is appropriate.

OCC understands that DP&L considers the redacted information to be confidential and deserving of the status of trade secrets as defined in R.C. 1333.61(D). Such assertions would be based on claims by the Utility that the information (1) derives economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by others, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Under such assertions, confidential treatment of the unredacted OCC's Discovery Set Nine would be appropriate, subject to OCC's rights under the protective agreement to initiate a process to determine whether the information should be protected.

For the foregoing reasons and subject to the foregoing reservations of rights, this Motion for Protective Order should be granted.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Jodi Bair

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Protective Order by the Office of the Ohio Consumers' Counsel has been served electronically upon those persons listed below this 22nd day of March, 2016.

/s/ Jodi Bair  
Jodi Bair  
Assistant Consumers' Counsel

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

**Commission of Ohio Docketing Information System on**

**3/22/2016 4:54:07 PM**

**in**

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

Summary: Motion Motion for Protective Order by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Bair, Jodi Ms.