

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution	:	Case No. 15-1830-EL-AIR
	:	
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority	:	Case No. 15-1831-EL-AAM
	:	
In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 15-1832-EL-ATA
	:	

**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 confidential information in the March 12, 2018 Staff Report, including but not limited to Blue Ridge's audit report, which is attached to the Staff Report as Appendix 1. The information at issue includes infrastructure and security records as defined in Ohio Rev. Code § 149.433, as well as confidential policies of DP&L. The information at issue is maintained as highly confidential by DP&L, and its public disclosure would subject DP&L both to a security risk and an unfair competitive disadvantage.

If this Motion is opposed, then DP&L will submit a declaration in support. DP&L will produce an unredacted copy of the Staff Report, including Blue Ridge's audit report, as well as associated work papers, to parties who have a protective agreement with DP&L.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE DAYTON POWER AND
LIGHT COMPANY'S MOTION FOR PROTECTIVE ORDER RELATING
TO ITS DISCLOSURE OF CONFERENCE WITH ATTORNEY EXAMINERS**

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 confidential information in the March 12, 2018 Staff Report, including but not limited to Blue Ridge's audit report, which is attached to the Staff Report as Appendix 1, the release of which would subject DP&L both to a security risk and an unfair competitive disadvantage.

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. Accord: Ohio Rev. Code § 4905.07 (providing that "[e]xcept as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all facts and information in the possession of the public utilities commission shall be public").

The release of trade secret information by the Commission is prohibited by state law. In the Matter of the Joint Application of The Dayton Power and Light Company for Integration of an Energy Efficiency or Peak-Demand Reduction Program with Honda of Am. Mfg., Inc., PUCO Case No. 10-2205-EL-EEC, 2011 Ohio PUC LEXIS 1313, at *6 (Finding and Order, Dec. 7, 2011) ("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.") (citing State ex rel. Besser v. Ohio State Univ., 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000)).

The definition of a "trade secret" includes "any business information or plans [and] financial information." Ohio Rev. Code § 1333.61(D).

"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., 1st Dist. Hamilton Nos. C-990803 and C-990824, 2000 Ohio App. LEXIS 6198, at *10 (Dec. 29, 2000). Accord: Alpha Benefits Agency, Inc. v. King Ins. Agency, Inc., 134 Ohio App. 3d 673, 683, 731 N.E.2d 1209 (8th Dist.1999) (holding that trial court should have ordered plaintiff to produce its "profitability information" to defendant subject to a protective order); Vanguard Transp. Sys. v. Edwards Transfer & Storage Co. Gen. Commodities Div., 109 Ohio App.3d 786, 789-90, 673 N.E.2d 182 (10th Dist.1996) (affirming trial court order that held that various information including "corporate financial information" constituted a trade secret).

This definition 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 the Matter of the Application of Midwest Utility Consultants, Inc. for Certification as a Competitive Retail Natural Gas Aggregator/Broker, PUCO Case No. 09-893-GA-AGG, 2012 Ohio PUC LEXIS 103 (Entry, Jan. 30, 2012) (forecasted financial statements were trade secrets and granted protective treatment); In the Matter of the Application of the Ohio Power Co. and Columbus S. Power Co. for Authority to Merge and Related Approvals, et al., PUCO Case No. 10-2376-EL-UNC, et al., 2011 Ohio PUC LEXIS 1325, at *22-23 (Opinion and Order, Dec. 14, 2011) (forecasted fuel expenditures were trade secrets and granted protective treatment); In the Matter of the Joint Application of The Dayton Power and Light Company for Integration of an Energy

Efficiency or Peak-Demand Reduction Program with Honda of Am. Mfg., Inc., PUCO Case No. 10-2205-EL-EEC, 2011 Ohio PUC LEXIS 1313, at *2-5 (Finding and Order, Dec. 7, 2011) (release of trade secrets prohibited by state law).

Here, the information at issue constitutes "business information or plans, [and] financial information" under Ohio Rev. Code § 1333.61(D). This information is highly confidential, proprietary and competitively sensitive trade secret information under Ohio Rev. Code § 1333.61(D). The information is maintained as highly confidential by 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.

The Commission (and its Staff) will have full access to the information at issue in order to fulfill its statutory obligations. Moreover, DP&L was careful to redact only those portions of The Dayton Power and Light Company's Disclosure of Conference with Attorney Examiners that are essential to prevent the disclosure of the information at issue.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Motion for Protective Order has been served via electronic mail upon the following counsel of record, this 19th day of March, 2018:

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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