

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of Fuyao)
Glass America Inc. and the Dayton Power & Light) Case No. 19-0810-EL-AEC
Company for Approval of an Economic)
Development Arrangement)

**MOTION FOR PROTECTIVE ORDER FOR
JOINT APPLICATION TO AMEND UNIQUE ARRANGEMENT**

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), Fuyao Glass America Inc. ("Fuyao") moves for a protective order to keep the confidential, proprietary and trade secret information contained in the Joint Application to Amend the Unique Arrangement Between Fuyao Glass America, Inc. and the Dayton Power & Light Company filed on February 2, 2021 (the "Amendment Application,") confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above-cited rule, two (2) unredacted copies of the Amendment Application have been submitted under seal with confidential information highlighted on pages stamped "Confidential."

Fuyao respectfully requests that this motion be granted and that the unredacted versions of the Amendment Application remain under seal.

Respectfully submitted,

By: /s/ Michael J. Settineri
Michael J. Settineri, Counsel of Record (0073369)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Telephone: (614) 464-5462
Fax: (614) 791-5146
Email: mjsettineri@vorys.com
Counsel for Fuyao Glass America Inc.

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

I. Introduction

Through this motion, Fuyao Glass America Inc. (“Fuyao”) seeks a protective order to keep confidential the operational and financial data, actual and potential investment levels, and employment figures contained in Fuyao’s Amendment Application. The confidential information contained in the Amendment Application, if released to the public, would harm Fuyao by providing its domestic and international competitors with proprietary information concerning its operations, investment projections, employment projections and plans at its Dayton facility. A protective order ensures that this trade secret information will remain confidential.¹

II. Argument

Rule 4901-1-24(D) of the Ohio Administrative Code 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 the types of information that are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49 because the Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

¹ Information for which confidential treatment is sought is redacted in the public version of the Amendment Application but is bracketed and highlighted in yellow in the confidential version submitted under seal. Pages of the confidential version of the Amendment application containing confidential information are stamped “Confidential.”

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the “public records” statute must also be read in pari materia with Section 1333.31, 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). The Ohio Supreme Court has affirmed the Commission’s protection of trade secret information. *See also Ohio Consumers’ Counsel v. Pub. Util. Comm’n of Ohio*, 121 Ohio St.3d 362, 370, 2009-Ohio-604 ¶ 31 (affirming Commission order designating and redacting certain protected trade secret information). The Commission has facilitated the protection of trade secrets in its rules (Rule 4901-1-24(A)(7), O.A.C.) and has afforded that protection to other applicants seeking reasonable arrangements under R.C. 4905.31.²

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 *See also* O.A.C. 4901:1-38-03(D) (requiring confidential treatment of employment, financial and customer-specific information provided to demonstrate eligibility for economic development arrangements) and O.A.C. 4901:1-38-05(E) (providing for confidential treatment of customer information filed with the Commission to obtain a unique arrangement).

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets, such as the sensitive information which is the subject of this motion.

In *State ex rel. The Plain Dealer the Ohio Dept. of Ins.*, 80 Ohio St. 3d 513 (1997), the Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

(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.

Id. at 524-525, quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Applying these factors to the confidential information Fuyao seeks to protect, it is clear that a protective order should be granted. The information redacted from the Amendment Application, includes information regarding Fuyao's operational and financial data, actual and potential investment levels, employment figures and plans. Such sensitive information is generally not disclosed and Fuyao takes steps to prevent the disclosure of this information. Its disclosure could give competitors an advantage that would hinder Fuyao's ability to compete worldwide.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*,

56 N.Y.2d 213, 220 (1982) (holding the commission “had an affirmative responsibility to make provision” to protect trade secrets”). The Commission has previously protected information similar to the type and kind that Fuyao is asking to have protected here. *See, e.g., In re the Application of TimkenSteel Corporation*, Case No. 15-1857-EL-AEC, Opinion and Order, at 6-7 (Dec. 16, 2015). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses.

Given the nature of the information that Fuyao seeks to protect, a protective order should issue to ensure the confidentiality of the information designated as confidential in the Amendment Application.

III. Conclusion

For the above reasons, Fuyao requests that the Commission grant this motion for protective order, and maintain the confidential information in the Amendment Application under seal.

Respectfully submitted,

By: /s/ Michael J. Settineri

Michael J. Settineri, Counsel of Record (0073369)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Telephone: (614) 464-5462
Fax: (614) 791-5146
Email: mjsettineri@vorys.com
Counsel for Fuyao Glass America Inc.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/2/2021 2:26:26 PM

in

Case No(s). 19-0810-EL-AEC

Summary: Motion Motion for Protective Order and Memorandum in Support for Joint Application to Amend Unique Arrangement electronically filed by Mr. Michael J. Settineri on behalf of Fuyao Glass America Inc.