

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid	:	CASE NO. 18-1875-EL-GRD
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In the Matter of the Application of The Dayton Power and Light Company for Approval of a Limited Waiver of Ohio Adm.Code 4901:1-18-06(A)(2)	:	CASE NO. 18-1876-EL-WVR
	:	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Methods	:	CASE NO. 18-1877-EL-AAM
	:	
In the Matter of the Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2018	:	CASE NO. 19-1121-EL-UNC
	:	
In the Matter of the Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2019	:	CASE NO. 20-1041-EL-UNC
	:	
In the Matter of the Application of The Dayton Power and Light Company for a Finding That Its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and More Favorable in the Aggregate Test in R.C. 4928.143(E)	:	CASE NO. 20-0680-EL-UNC
	:	

**THE DAYTON POWER AND LIGHT COMPANY'S
MOTION FOR A PROTECTIVE ORDER RELATING TO
CONFIDENTIAL INFORMATION CITED IN ITS POST-HEARING REPLY BRIEF**

Pursuant to Ohio Adm.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 information that is confidential, proprietary, and competitively sensitive trade secret information. R.C. 1333.61(D). The information at issue is Confidential Information relating to financial projections and data contained in the Post-Hearing Reply Brief of The Dayton Power and Light Company, which cites and quotes confidential material from the April 1, 2020 Direct Testimony of Gustavo Garavaglia M. and the April 1, 2020 Direct Testimony of R. Jeffrey Malinak in Case No. 20-0680-EL-UNC.

As shown in the February 12, 2021 The Dayton Power and Light Company's Motion for a Protective Order Relating to Confidential Information Cited in Its Initial Post-Hearing Brief and the November 19, 2020 Motion of The Dayton Power and Light Company for Entry of a Protective Order Relating to Confidential Information Cited in the Direct Testimony of Matthew I. Kahal in Case No. 20-680-EL-UNC concerning much of the same Confidential Information, the Confidential Information is maintained as confidential by DP&L and constitutes proprietary and competitively sensitive trade secret material, the public disclosure of which would subject DP&L to an unfair competitive disadvantage. The November 19, 2020 Motion was supported by evidence and was granted at the evidentiary hearing in this proceeding. Tr. Vol. I, pp. 20-21.

Pursuant to the April 8, 2020 and September 9, 2020 Entries in In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters, Case No. 20-591-AU-UNC, an unredacted copy of the Post-Hearing Reply Brief will be filed with the Commission electronically under seal in Case No. 20-2000-XX-XXX.

If this Motion is opposed, then DP&L reserves the right to submit additional evidence in support. DP&L will further produce an unredacted copy of the Post-Hearing Reply Brief to any party who enters into a protective agreement with DP&L in this proceeding.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE DAYTON POWER AND LIGHT
COMPANY'S MOTION FOR A PROTECTIVE ORDER RELATING TO
CONFIDENTIAL INFORMATION CITED IN ITS POST-HEARING REPLY BRIEF**

Pursuant to Ohio Adm.Code 4901-1-24(D), DP&L moves for the entry of a Protective Order to exempt from public disclosure certain information as confidential, proprietary, and competitively sensitive trade secret information. Specifically, DP&L requests that certain confidential information relating to financial projections and data contained in the Post-Hearing Reply Brief of The Dayton Power and Light Company, which cites and quotes confidential material from the April 1, 2020 Direct Testimony of Gustavo Garavaglia M. and the April 1, 2020 Direct Testimony of R. Jeffrey Malinak in Case No. 20-680-EL-UNC, be exempt from public disclosure as confidential, proprietary and competitively sensitive trade secret information ("Confidential Information"). The Confidential Information was originally filed with the Commission pursuant to The Dayton Power and Light Company's Motion for Protective Order Relating to the Direct Testimony of Gustavo Garavaglia M. and R. Jeffrey Malinak, filed April 1, 2020, and much of it was addressed in the November 19, 2020 Motion of The Dayton Power and Light Company for Entry of a Protective Order Relating to Confidential Information Cited in the Direct Testimony of Matthew I. Kahal in Case No. 20-680-EL-UNC, which the Commission granted. Tr. Vol. I, pp. 20-21.

Section 4901-1-24(D) of the Ohio Administrative Code provides that the Commission may issue an order that 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: R.C. 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 re The Dayton Power and Light Co., Case No. 10-2205-EL-EEC, Finding and Order (Dec. 7, 2011), 2011 Ohio PUC LEXIS 1313, at *6 ("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." R.C. 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 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 re Duke Energy Ohio, Inc., Case No. 17-32-EL-AIR, et al., Opinion and Order (Dec. 19, 2018) at ¶¶ 161-163, 2018 Ohio PUC LEXIS 1268 ("we note that the Commission has previously granted protective treatment for portions of briefs filed under seal and testimony containing sensitive data, including information that appears to matters relating to competitive business information"); In re Midwest Utility Consultants, Inc., Case No. 09-893-GA-AGG, Entry (Jan. 30, 2012), 2012 Ohio PUC LEXIS 103 (forecasted financial statements were trade secrets and granted protective treatment); In re Ohio Power Co., Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011), 2011 Ohio PUC LEXIS 1325, at *22-23 (forecasted fuel expenditures were trade secrets and granted protective treatment); In re Dayton Power and Light Co., Case No. 10-2205-EL-EEC, Finding and Order (Dec. 7, 2011), 2011 Ohio PUC LEXIS 1313, at *2-5 (release of trade secrets prohibited by state law). Accord: Ohio Consumers' Counsel v. Pub. Util. Comm., 121 Ohio St.3d 362, 2009-Ohio-604, 904 N.E.2d 853, ¶ 8.

Here, the Confidential Information constitutes "business information or plans, [and] financial information" that is confidential, proprietary and competitively sensitive trade secret information, and derives independent economic value from not being publicly available. R.C. 1333.61(D). Accord: Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 687 N.E.2d 661 (1997). DP&L maintains the Confidential Information subject to reasonable efforts to keep its secrecy, and the Confidential Information derives independent economic value from not being generally known to others persons who could obtain economic value from its disclosure or use. Nov. 19, 2020 Motion of The Dayton Power and Light Company for Entry of a Protective Order Relating to Confidential Information Cited in the Direct Testimony of Matthew I. Kahal (citing

Nov. 19, 2020 Affidavit of Karin Nyhuis). The Commission (and its Staff) will have full access to the Confidential Information in order to fulfill its statutory obligations.

For these foregoing reasons, DP&L requests that the Commission issue a Protective Order that permits the Confidential Information to be designated as 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 a Protective Order Relating to Confidential Information Cited in Its Post-Hearing Reply Brief has been served via electronic mail upon the following counsel of record, this 5th day of March, 2021:

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Summary: Motion The Dayton Power and Light Company's Motion for a Protective Order Relating to Confidential Information Cited in Its Post-Hearing Reply Brief electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company