

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan.  | ) | Case No. 08-1094-EL-SFD |
|   | ) |                         |
| In the Matter of the Application of the Dayton Power and Light Company for Approval of Revised Tariffs.   | ) | Case No. 08-1095-EL-ATA |
|   | ) |                         |
| In the Matter of the Application of the Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13. | ) | Case No. 08-1096-EL-AAM |
|   | ) |                         |
| In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.                             | ) | Case No. 08-1097-EL-UNC |
|   | ) |                         |

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**MOTION FOR PROTECTIVE ORDER REGARDING THE TESTIMONY AND  
ATTACHMENTS OF DANIEL J. DUANN  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Pursuant to Ohio Adm. Code 4901-1-24, the Office of the Ohio Consumers' Counsel ("OCC") hereby moves the Public Utilities Commission ("PUCO" or "Commission") for a protective order regarding certain information asserted to be confidential by Dayton Power & Light Company ("DP&L" or "Company"). As part of discovery in these proceedings, DP&L provided information to OCC, subject to a protective agreement between OCC and DP&L, and asserts that this information constitutes trade secrets under Ohio law, and that non-disclosure is not inconsistent with the purposes of R.C. Title 49. In OCC's progressive discovery efforts, OCC has obtained

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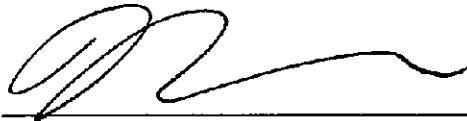
information regarding the Company's projected fuel related costs, and accordingly, OCC hereby requests that the Commission issue such order as is necessary to protect the redacted portions of the testimony (including attachments) of Daniel J. Duann that were deemed confidential. OCC is filing this document under seal, subject to OCC's rights under the protective agreements.

By this Motion, OCC does not concede that the information does indeed constitute trade secrets. However, OCC acknowledges that it has obtained this information pursuant to a protective agreement with DP&L that provides for such information to be treated under a protected status (subject to OCC's right under the protective agreement 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,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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Jacqueline Lake Roberts, Counsel of Record  
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the Application of The | ) | Case No. 08-1094-EL-SSO |
| Dayton Power and Light Company for      | ) |                         |
| Approval of Its Electric Security Plan. | ) |                         |

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the Application of the | ) | Case No. 08-1095-EL-ATA |
| Dayton Power and Light Company for      | ) |                         |
| Approval of Revised Tariffs.            | ) |                         |

|  |   |                         |
|--|---|-------------------------|
| In the Matter of the Application of the  | ) |                         |
| Dayton Power and Light Company for       | ) | Case No. 08-1096-EL-AAM |
| Approval of Certain Accounting Authority | ) |                         |
| Pursuant to Ohio Rev. Code § 4905.13.    | ) |                         |

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the Application of The | ) | Case No. 08-1097-EL-UNC |
| Dayton Power and Light Company for      | ) |                         |
| Approval of Its Amended Corporate       | ) |                         |
| Separation Plan.                        | ) |                         |

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**MEMORANDUM IN SUPPORT**

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Contemporaneously with the filing of this Motion, the testimony of Daniel J. Duann is being filed in this matter. The Public Version of Mr. Duann's testimony and attachments is being filed for viewing by the public. The Public Version reflects the redaction of information that was deemed by DP&L to be confidential as part of the discovery process, pursuant to OCC's protective agreement with the Company.

Without conceding that the information gained during discovery 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 provided by the Company pending such a determination at a later point in time in the event OCC exercises its right to initiate the process for the PUCO to decide if confidential treatment

is appropriate. Accordingly, OCC hereby requests that the Commission issue such order as is necessary to protect the redacted testimony of Daniel J. Duann that was deemed confidential, subject to OCC's rights under the protective agreements.

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 DP&L 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 the assertions made by the Company, confidential treatment of the attachment would be appropriate, subject to OCC's rights under the protective agreements to initiate a process for the PUCO to decide whether the information is subject to protection.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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Jacqueline Lake Roberts, Counsel of Record  
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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 upon those persons listed below via electronic transmission this 26<sup>th</sup> day of January, 2009.



Jacqueline Lake Roberts,  
Assistant Consumers' Counsel

## **PERSONS SERVED**

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