

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Dayton Power and Light Company To) Case No. 09-1012-EL-FAC
Establish a Fuel Rider.)

ENTRY

The attorney examiner finds:

- (1) On June 24, 2009, the Commission issued an Opinion and Order approving a stipulation that, *inter alia*, authorized The Dayton Power and Light Company (DP&L) to institute a fuel recovery rider (fuel rider), effective January 1, 2010. *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-SSO, et al. (*ESP case*). Under the terms of the stipulation, DP&L is required to submit an annual fuel cost filing, beginning in 2011, with the 2011 and 2012 filings subject to an audit.
- (2) On November 10, 2010, the Commission issued an entry selecting Energy Ventures Analysis, Inc. (Auditor) to perform a management/performance and financial audit. Consistent with the Commission's order, the audit report was filed on April 29, 2011.
- (3) On April 29, 2011, DP&L filed a motion for protective order, claiming that certain information provided in the confidential version of the audit report constitutes confidential trade secret information under Ohio law. In support of its motion, DP&L states that it has taken steps to protect the information from public disclosure. DP&L explains that the disclosure of such information would adversely impact DP&L and its customers.
- (4) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. 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. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.

- (5) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), allows the attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (6) Ohio law defines a trade secret as "information . . . 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) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Section 1333.61(D), Revised Code.
- (7) The attorney examiner has examined the information covered by the motion for protective order filed by DP&L, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in the audit report constitutes trade secret information. Release of this document is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that the audit report has been reasonably redacted to remove the confidential information contained therein and have been docketed as such. Therefore, the attorney examiner finds that DP&L's motion for protective order is reasonable and should be granted with regard to the confidential information contained in the audit report filed confidentially on April 29, 2011.

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

- (8) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry, or until January 8, 2013. Until that date, the docketing division should maintain, under seal, the information filed confidentially.
- (9) Rule 4901-1-24(F), O.A.C., provides a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If DP&L wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to DP&L.
- (10) Having reviewed the report, the attorney examiner finds that this matter should be set for hearing. Accordingly, the following procedural schedule shall be set:

July 25, 2011	Intervention Deadline
August 23, 2011	Prehearing Conference Pre-filed testimony deadline
August 30, 2011	Hearing commences

Both the prehearing conference and the hearing will commence at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-C, Columbus, Ohio 43215-3793.

It is, therefore,


ORDERED, That the motion for protective order filed by DP&L on April 29, 2011, be granted in accordance with Finding (7). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted audit report filed in this docket on April 29, 2011, for a period of 18 months, ending January 8, 2013. It is, further,

ORDERED, That the procedural schedule set forth in Finding (10) be adopted. It is, further,

ORDERED, That a copy of this Entry is served upon all parties of record in this proceeding.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Jonathan J. Tauber
Attorney Examiner

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Entered in the Journal

JUL 08 2011

Betty McCauley

Betty McCauley
Secretary