

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	: : : :	Case No. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	: : : :	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority	: : : :	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules	: : : :	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders	: : :	Case No. 12-672-EL-RDR

**THE DAYTON POWER AND LIGHT COMPANY'S
MOTION FOR PROTECTIVE ORDER**

The Dayton Power and Light Company ("DP&L") files this Motion for Protective Order contemporaneously with the filing the following deposition transcripts under seal with the Commission: Kevin Murray, Joe Bowser, Mike Gorman, Jonathan Lesser, Roger Ruch, and Daniel Duann.

Pursuant to Ohio Admin. Code § 4901-1-24(D), DP&L moves for the entry of a Protective Order to exempt from public disclosure certain information that is confidential, and competitively sensitive and trade secret information ("Confidential Information"). The information at issue is highly confidential information relating to DP&L's business plans,

projected sales and profits, and other financial information. The Confidential Information is included in the deposition testimony of witnesses Kevin Murray, Joe Bowser, Mike Gorman, Jonathan Lesser, Roger Ruch, and Daniel Duann.

This information is maintained as confidential by DP&L, and constitutes proprietary, trade secret material, the public disclosure of which would subject DP&L to an unfair competitive disadvantage. In accordance with Ohio Admin. Code § 4901-1-24(D)(2), three unredacted copies of the Confidential Information have been filed under seal with the Commission.

Respectfully submitted,

s/ Judi L. Sobecki

Judi L. Sobecki (0067186)
THE DAYTON POWER AND
LIGHT COMPANY
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7171
Telecopier: (937) 259-7178
Email: judi.sobecki@dplinc.com

s/ Charles J. Faruki

Charles J. Faruki (0010417)
(Counsel of Record)
Jeffrey S. Sharkey (0067892)
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
Telephone: (937) 227-3705
Telecopier: (937) 227-3717
Email: cfaruki@ficlaw.com
jsharkey@ficlaw.com

Attorneys for
The Dayton Power and Light Company

**MEMORANDUM IN SUPPORT OF 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 information as confidential, proprietary, competitively sensitive and trade secret information. Specifically, DP&L requests that certain confidential information contained in the deposition testimony of witnesses Kevin Murray, Joe Bowser, Mike Gorman, Jonathan Lesser, Roger Ruch, and Daniel Duann be exempted from public disclosure as confidential, proprietary, competitively sensitive and trade secret information ("Confidential Information").

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. The Commission (and its Staff) will have full access to the Confidential Information in order to fulfill its statutory obligations. Further, only that information as is essential to prevent disclosure of Confidential Information was redacted from the publically-filed documents.

The criteria for determining what should be kept confidential by the Commission is well established, and the Commission has recognized its statutory obligation to protect trade secrets:

"The Commission is of the opinion that the 'public records' statute must also be read in *pari materia* with Section 1333.61, 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., PUCO Case No. 81-383-TP-AIR (Entry, February 17, 1982).

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

Ohio Rev. Code § 1333.61(D) (emphasis added).

"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., 2000 Ohio App. LEXIS 62198, at *10 (Dec. 29, 2000). Accord: Alpha Benefits Agency, Inc. v. King Ins. Agency, Inc., 13 Ohio App. 3d 673, 683 (1999) (holding that trial court should have ordered plaintiff to produce its "profitability information" to defendant subject to a protective order); Vanguard Transportation Systems v. Edwards Transfer & Storage Co., 109 Ohio App. 3d 786, 789-90 (1996) (affirming trial court order that held that various information including "corporate financial information" constituted a trade secret.").

This definition clearly 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 re Columbia Gas of Ohio, Inc., PUCO Case No. 90-17-GA-GCR (Entry, August 7, 1990); In re Elyria Tel Co., PUCO Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); In re Ohio Bell Tel. Co., PUCO Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989).

The Confidential Information constitutes “business information or plans, [and] financial information” under Ohio Rev. Code § 1333.61(D), and is included in the deposition testimony of witnesses Kevin Murray, Joe Bowser, Mike Gorman, Jonathan Lesser, Roger Ruch, and Daniel Duann. The "Confidential Information" subject to this request is highly confidential information relating to DP&L’s business plans, projected sales and profits, and other financial information, and is protected under the statute.

DP&L considers this Confidential Information to be proprietary, confidential and a trade secret under Ohio Rev. Code § 1333.61(D). The Confidential Information is not known outside of 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.

For these foregoing reasons, DP&L respectfully 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,

s/ Judi L. Sobecki

Judi L. Sobecki (0067186)
THE DAYTON POWER AND
LIGHT COMPANY
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7171
Telecopier: (937) 259-7178
Email: judi.sobecki@dplinc.com

s/ Charles J. Faruki

Charles J. Faruki (0010417)
(Counsel of Record)
Jeffrey S. Sharkey (0067892)
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
Telephone: (937) 227-3705
Telecopier: (937) 227-3717
Email: cfaruki@ficlaw.com
jsharkey@ficlaw.com

Attorneys for
The Dayton Power and Light Company

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 20th day of March, 2013:

Samuel C. Randazzo, Esq.
Frank P. Darr, Esq.
Matthew R. Pritchard, Esq.
Joseph E. Olikier, Esq.
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4225
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
joliker@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

Philip B. Sineneng, Esq.
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, OH 43215
Philip.Sineneng@ThompsonHine.com

Amy B. Spiller, Esq.
Deputy General Counsel
Jeanne W. Kingery, Esq.
Associate General Counsel
DUKE ENERGY RETAIL SALES, LLC and
DUKE ENERGY COMMERCIAL ASSET
MANAGEMENT, INC.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Amy.Spiller@duke-energy.com
Jeanne.Kingery@duke-energy.com

Attorneys for Duke Energy Retail Sales, LLC and
Duke Energy Commercial Asset Management, Inc.

Robert A. McMahon, Esq.
EBERLY MCMAHON LLC

Mark A. Hayden, Esq.
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

James F. Lang, Esq.
Laura C. McBride, Esq.
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com

N. Trevor Alexander, Esq.
CALFEE, HALTER & GRISWOLD LLP
1100 Fifth Third Center
21 E. State St.
Columbus, OH 43215-4243
talexander@calfee.com

David A. Kutik, Esq.
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Allison E. Haedt, Esq.
JONES DAY
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-2673
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

Jay E. Jadwin, Esq.
AMERICAN ELECTRIC POWER

2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
bmcMahon@emh-law.com

Rocco O. D'Ascenzo, Esq.
Associate General Counsel
Elizabeth Watts, Esq.
Associate General Counsel
DUKE ENERGY OHIO, INC.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Elizabeth.Watts@duke-energy.com
Rocco.D'Ascenzo@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street Suite 1510
Cincinnati, OH 45202-4454
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com

Attorneys for Ohio Energy Group

Gregory J. Poulos, Esq.
EnerNOC, Inc.
471 East Broad Street
Columbus, OH 43215
Telephone: (614) 507-7377
Email: gpoulos@enernoc.com

Attorney for EnerNOC, Inc.

Colleen L. Mooney, Esq.
OHIO PARTNERS FOR AFFORDABLE
ENERGY
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Attorney for Ohio Partners for Affordable Energy

SERVICE CORPORATION
155 W. Nationwide Blvd., Suite 500
Columbus, OH 43215
jejadwin@aep.com

Attorney for AEP Retail Energy Partners LLC

M. Anthony Long, Esq.
Senior Assistant Counsel
Asim Z. Haque, Esq.
HONDA OF AMERICA MFG., INC.
24000 Honda Parkway
Marysville, OH 43040
tony_long@ham.honda.com
asim_haque@ham.honda.com

Attorney for Honda of America Mfg., Inc.

Richard L. Sites, Esq.
General Counsel and Senior Director of
Health Policy
OHIO HOSPITAL ASSOCIATION
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Thomas J. O'Brien, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

Attorneys for Ohio Hospital Association

Thomas W. McNamee, Esq.
Assistant Attorney General
Devin D. Parram, Esq.
Assistant Attorneys General
180 East Broad Street
Columbus, OH 43215
Thomas.mcnamee@puc.state.oh.us
devin.parram@puc.state.oh.us

Attorneys for the Staff of the Public Utilities
Commission of Ohio

Mark S. Yurick, Esq.
(Counsel of Record)
Zachary D. Kravitz, Esq.
TAFT STETTINIUS & HOLLISTER LLP
65 East State Street, Suite 1000
Columbus, OH 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

Attorneys for The Kroger Company

Mark A. Whitt, Esq. (Counsel of Record)
Andrew J. Campbell, Esq.
WHITT STURTEVANT LLP
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, OH 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

Vincent Parisi, Esq.
Matthew White, Esq.
INTERSTATE GAS SUPPLY, INC.
6100 Emerald Parkway
Dublin, OH 43016
vparisi@igsenergy.com
mwhite@igsenergy.com

Attorneys for Interstate Gas Supply, Inc.

Steven M. Sherman, Esq. Counsel of Record
Joshua D. Hague, Esq. (admitted *pro hac vice*)
KRIEG DEVAULT LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204-2079
ssherman@kdlegal.com
jhague@kdlegal.com

Attorneys for Wal-Mart Stores East, LP
and Sam's East, Inc.

Melissa R. Yost, Esq., (Counsel of Record)
Maureen R. Grady, Esq.
Assistant Consumers' Counsel
Office of The Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
yost@occ.state.oh.us
grady@occ.state.oh.us

Attorneys for Office of the Ohio Consumers'
Counsel

Christopher L. Miller, Esq.
(Counsel of Record)
Gregory H. Dunn, Esq.
Christopher W. Michael, Esq.
ICE MILLER LLP
250 West Street
Columbus, OH 43215
Christopher.Miller@icemiller.com
Gregory.Dunn@icemiller.com
Christopher.Michael@icemiller.com

Attorneys for the City of Dayton, Ohio

M. Howard Petricoff, Esq.
Stephen M. Howard, Esq.
VORYS, SATER, SEYMOUR AND
PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Attorneys for the Retail Energy Supply
Association

Trent A. Dougherty, Esq. Counsel of Record
Cathryn N. Loucas, Esq.
OHIO ENVIRONMENTAL COUNCIL
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
trent@theoec.org
cathy@theoec.org

Attorneys for the Ohio Environmental
Council

Joseph M. Clark, Esq., Counsel of Record
21 East State Street, Suite 1900
Columbus, OH 43215
joseph.clark@directenergy.com

Christopher L. Miller, Esq.
Gregory J. Dunn, Esq.
Alan G. Starkoff, Esq.
ICE MILLER LLP
2540 West Street
Columbus, OH 43215
Christopher.Miller@icemiller.com
Gregory.Dunn@icemiller.com

Attorneys for Direct Energy Services, LLC
and Direct Energy Business, LLC

M. Howard Petricoff, Esq.
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Attorneys for Exelon Generation Company, LLC,
Exelon Energy Company, Inc., Constellation
Energy Commodities Group, Inc., and
Constellation NewEnergy, Inc.

Matthew J. Satterwhite, Esq.
Steven T. Nourse, Esq.
AMERICAN ELECTRIC POWER SERVICE
CORPORATION
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com

Attorneys for Ohio Power Company

Ellis Jacobs, Esq.
Advocates for Basic Legal Equality, Inc.
333 West First Street, Suite 500B
Dayton, OH 45402
ejacobs@ablelaw.org

Attorney for Edgemont Neighborhood
Coalition

Stephanie M. Chmiel, Esq.
Michael L. Dillard, Jr., Esq.
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, OH 43215
Stephanie.Chmiel@ThompsonHine.com
Michael.Dillard@ThompsonHine.com

Attorneys for Border Energy Electric
Services, Inc.

Matthew W. Warnock, Esq.
J. Thomas Siwo, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
mwarnock@bricker.com
tsiwo@bricker.com

Attorneys for The Ohio Manufacturers'
Association Energy Group

Kimberly W. Bojko, Esq.
Joel E. Sechler, Esq.
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
Bojko@carpenterlipps.com
Sechler@carpenterlipps.com

Attorneys for SolarVision, LLC

Matthew R. Cox, Esq.
MATTHEW COX LAW, LTD.
4145 St. Theresa Blvd.
Avon, OH 44011
matt@matthewcoxlaw.com

Attorney for the Council of Smaller Enterprises

Cynthia Fonner Brady, Esq.
Assistant General Counsel
EXELON BUSINESS SERVICES COMPANY
4300 Winfield Road
Warrenville, IL 60555
Cynthia.Brady@constellation.com

Attorney for Constellation
an Exelon Company

Edmund J. Berger, Esq. (admitted *pro hac vice*)
Office of The Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
berger@occ.state.oh.us

Attorneys for Office of the Ohio Consumers'
Counsel

Mary W. Christensen, Esq.
Christensen Law Office LLC
8760 Orion Place, Suite 300
Columbus, OH 43240-2109
mchristensen@columbuslaw.org

Attorneys for People Working Cooperatively, Inc.

Scott C. Solberg, Esq. (admitted *pro hac vice*)
Eimer Stahl LLP
224 South Michigan Avenue, Suite 1100
Chicago, OH 60604
ssolberg@eimerstahl.com

Attorney for Exelon Generation
Company, LLC

Stephen Bennett, Manager
State Government Affairs
300 Exelon Way
Kenneth Square, PA 19348
stephen.bennett@exeloncorp.com

Bill C. Wells, Esq.
AFMCLO/CL
Industrial Facilities Division
Bldg 266, Area A
Wright Patterson AFB, OH 45433
bill.wells@wpafb.af.mil

Christopher C. Thompson, Esq.
Staff Attorney (admitted *pro hac vice*)
USAF Utility Law Field Support Center
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319

Attorneys for Federal Executive Agencies

s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/20/2013 12:43:24 PM

in

Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

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