BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the	:	Case No. 17-1213-EL-UNC
Significantly Excessive Earnings Test under	:	
Section 4928.143(F), Ohio Revised Code, and	:	
Rule 4901:1-35-03(C)(10), Ohio	:	
Administrative Code for The Dayton Power	:	
and Light Company	:	

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 that is confidential, and competitively sensitive and trade secret information. The information at issue is confidential information relating to DP&L's internal financial forecasts and projected expenditures. The Confidential Information is included in Exhibit CAF-7, attached to the testimony of Craig A. Forestal.

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), two unredacted copies of the Confidential Information have been filed under seal with the Commission.

Respectfully submitted,

 */s/ Michael J. Schuler*_____
Michael J. Schuler (0082390)
 *Counsel of Record
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7358
Facsimile: (937) 259-7178
Email: michael.schuler@aes.com

Attorney for The Dayton Power
and Light Company

(willing to accept service via email)

MEMORANDUM IN SUPPORT OF THE DAYTON POWER AND LIGHT COMPANY'S MOTION FOR PROTECTIVE ORDER

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 as confidential, proprietary and competitively sensitive trade secret information. Specifically, DP&L requests that Exhibit CAF-7, which contains forward projections of expenses and financial information, be exempted from public disclosure as confidential, proprietary and competitively sensitive trade secret information ("Confidential Information"). The Confidential Information contains confidential financial 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. *See*, Ohio Rev. Code § 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 the Matter of the Joint Application of The Dayton Power and Light Company for Integration of an Energy Efficiency or Peak-Demand Reduction Program with Honda of Am. Mfg., Inc.*, PUCO Case No. 10-2205-EL-EEC, 2011 Ohio PUC LEXIS 1313, at *6 (Finding and Order, Dec. 7, 2011) ("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." Ohio Rev. Code § 1333.61(D).

Ohio courts have held that various information including "corporate financial information" constitutes trade secret and should be afforded confidential treatment. *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). "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). *See also, 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).

This definition 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. *See e.g., In the Matter of the Application of Midwest Utility Consultants, Inc. for Certification as a Competitive Retail Natural Gas Aggregator/Broker*, PUCO Case No. 09-893-GA-AGG, 2012 Ohio PUC LEXIS 103 (Entry, Jan. 30, 2012) (forecasted financial statements were trade secrets and granted protective treatment); *In the Matter of the Application of the Ohio Power Co. and Columbus S. Power Co. for Authority to Merge and Related Approvals, et al.*, PUCO Case No. 10-2376-EL-UNC, *et al.*, 2011 Ohio PUC LEXIS 1325, at *22-23 (Opinion and Order, Dec. 14, 2011)

(forecasted fuel expenditures were trade secrets and granted protective treatment); *In the Matter of the Joint Application of The Dayton Power and Light Company for Integration of an Energy Efficiency or Peak-Demand Reduction Program with Honda of Am. Mfg., Inc.*, PUCO Case No. 10-2205-EL-EEC, 2011 Ohio PUC LEXIS 1313, at *2-5 (Finding and Order, Dec. 7, 2011) (release of trade secrets prohibited by state law).

Here, the Confidential Information constitutes "business information or plans, [and] financial information" under Ohio Rev. Code § 1333.61(D). This Confidential Information, which appears in Exhibit CAF-7, attached to the testimony of Craig A. Forestal, is confidential, proprietary and competitively sensitive trade secret information under Ohio Rev. Code § 1333.61(D). The Confidential Information is not known outside of DP&L other than the counterparties in negotiation, and is not disseminated to internal employees unless those employees have a legitimate business need to know the information. DP&L and the counterparties to the Confidential Information are subject to non-disclosure agreements to maintain the confidentiality of 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.

The Commission (and its Staff) will have full access to the Confidential Information in order to fulfill its statutory obligations. Further, DP&L was careful to redact from the publically-filed exhibits only those portions that are essential to prevent disclosure of Confidential Information.

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,

 /s/ Michael J. Schuler
Michael J. Schuler (0082390)
 *Counsel of Record
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7358
Facsimile: (937) 259-7178
Email: michael.schuler@aes.com

Attorney for The Dayton Power
and Light Company

(willing to accept service via email)

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Summary: Motion for Protective Order electronically filed by Mrs. Dona R Seger-Lawson on behalf of The Dayton Power and Light Company