

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution	:	Case No. 15-1830-EL-AIR
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In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority	:	Case No. 15-1831-EL-AAM
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In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 15-1832-EL-ATA
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**THE DAYTON POWER AND LIGHT COMPANY'S
MOTION FOR PROTECTIVE ORDER RELATING TO
SUPPLEMENTAL TESTIMONY OF CRAIG A. FORESTAL**

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 confidential information in the April 11, 2018 Supplemental Testimony of Craig A. Forestal, specifically certain information in Supplemental Exhibit CAF-1 and Supplemental Exhibit CAF-2. As explained in Mr. Forestal's testimony (p. 4, n.2), the information at issue contains confidential employee salary information. Salary is personal information of each employee and should not be disclosed in this matter. Further, DP&L would be at a competitive disadvantage in its hiring efforts if the salaries that it pays become public. DP&L maintains that information as confidential in the ordinary course of business, and restricts who can have access to it.

If this Motion is opposed by any party, then DP&L requests an opportunity to present further evidence in support of this Motion.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE DAYTON POWER AND
LIGHT COMPANY'S MOTION FOR PROTECTIVE ORDER RELATING TO
SUPPLEMENTAL TESTIMONY OF CRAIG A. FORESTAL**

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 in Supplemental Exhibit CAF-1 and Supplemental Exhibit CAF-2 attached to the April 11, 2018 Supplemental Testimony of Craig A. Forestal. As explained in Mr. Forestal's testimony (p. 4, n. 2), the information at issue contains confidential employee salary information. Salary is personal information of each employee and should not be disclosed in this matter. Further, DP&L would be at a competitive disadvantage in its hiring efforts if the salaries that it pays become public. DP&L maintains that information as confidential in the ordinary course of business, and restricts who can have access to it.

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. Accord: 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).

The Commission has found that payroll and salary information constitute trade secrets protected from disclosure under Ohio law. In the Matter of the Commission Review of the Capacity Charges of Ohio Power Co. and Columbus S. Power Co., PUCO Case No. 10-2929-EL-UNC, 2012 Ohio PUC LEXIS 359, at *3 (Apr. 13, 2012). Moreover, "[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 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 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 salary information at issue constitutes "business information or plans, [and] financial information" under Ohio Rev. Code § 1333.61(D). This information is confidential and competitively sensitive trade secret information under Ohio Rev. Code § 1333.61(D). Apr. 11, 2018 Supplemental Testimony of Craig A. Forestal, p. 4, n. 2. DP&L maintains that information as confidential in the ordinary course of business, and restricts who can have access to it. Id. The information is personal information of each employee, and DP&L would be placed at a competitive disadvantage in its hiring efforts if the salaries that it pays become public. Id. As such, the information derives independent economic value from not being generally known to, and not being readily ascertainable by other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Ohio Rev. Code § 1333.61(D)(1) and (2).

The Commission (including its Staff) will have full access to the confidential information in order to fulfill its statutory obligations. Moreover, DP&L was careful to redact only those portions of Supplemental Exhibit CAF-1 and Supplemental Exhibit CAF-2 that are essential to prevent the disclosure of the information at issue.

For the foregoing reasons, DP&L requests that the Commission issue a Protective Order permitting the information at issue to be designated as confidential and 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 Protective Order Relating to Supplemental Testimony of Craig A. Forestal has been served via electronic mail upon the following counsel of record, this 11th day of April, 2018:

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Summary: Motion The Dayton Power and Light Company's Motion for Protective Order Relating to Supplemental Testimony of Craig A. Forestal electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company