

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of : Case No. 16-0395-EL-SSO
The Dayton Power and Light Company for
Approval of Its Electric Security Plan :

In the Matter of the Application of : Case No. 16-0396-EL-ATA
The Dayton Power and Light Company for
Approval of Revised Tariffs :

In the Matter of the Application of : Case No. 16-0397-EL-AAM
The Dayton Power and Light Company for
Approval of Certain Accounting Authority :
Pursuant to Ohio Rev. Code § 4905.13

**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, proprietary, and competitively sensitive trade secret information. Ohio Rev. Code § 1333.61(D). The information at issue is Confidential Information regarding DP&L's financial information and forecasts in the May 15, 2019 Initial Post-Hearing Brief of The Dayton Power and Light Company. The source of this information is the Direct Testimony of R. Jeffrey Malinak in Support of the Amended Stipulation and Recommendation, which was filed pursuant to DP&L's March 22, 2017 Motion for Protective Order and treated as confidential by the Commission.

The information at issue is maintained as confidential by DP&L, and constitutes proprietary and competitively sensitive 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), an original and two unredacted copies of the Confidential Information are to be filed under seal with the Commission.

If this Motion is opposed, then DP&L will submit a declaration in support.

DP&L will further produce an unredacted copy of the May 15, 2019 Initial Post-Hearing Brief of The Dayton Power and Light Company to any party who has a protective agreement with DP&L in this matter.

Respectfully submitted,

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**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 and competitively sensitive trade secret information. Specifically, DP&L requests that certain confidential information regarding DP&L's financial information and forecasts contained in the May 15, 2019 Initial Post-Hearing Brief of The Dayton Power and Light Company be exempt from public disclosure as confidential, proprietary and competitively sensitive trade secret information ("Confidential Information"). The source of this information is the Direct Testimony of R. Jeffrey Malinak in Support of the Amended Stipulation and Recommendation, which was filed pursuant to DP&L's March 22, 2017 Motion for Protective Order and treated as confidential by the Commission.

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).

"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 Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates, PUCO No. 17-32-EL-AIR, et al., 2018 Ohio PUC LEXIS 1268 (Dec. 19, 2018 Opinion and Order), ¶¶ 161-163 ("we note that the Commission has previously granted protective treatment for portions of briefs filed under seal and testimony containing sensitive data, including

information that appears to matters relating to competitive business information"); 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). Accord: Ohio Consumers' Counsel v. Pub. Util. Comm., 121 Ohio St.3d 362, 2009-Ohio-604, 904 N.E.2d 853, ¶ 8.

Here, the Confidential Information constitutes "business information or plans, [and] financial information" that 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, 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.

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 publicly-filed version of the May 15, 2019 Initial Post-Hearing Brief of The Dayton Power

and Light Company only those portions that are essential to prevent disclosure of Confidential Information. Finally, DP&L will produce an unredacted copy of the Initial Post-Hearing Brief of The Dayton Power and Light Company to any party who has a protective agreement with DP&L in this matter.

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.

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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 has been served via electronic mail upon the following counsel of record, this 15th day of May, 2019.

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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