

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,

/s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey (0067892)
(Counsel of Record)
D. Jeffrey Ireland (0010443)
Christopher C. Hollon (0086480)
FARUKI PLL
110 North Main Street, Suite 1600
Dayton, OH 45402
Telephone: (937) 227-3747
Telecopier: (937) 227-3717
Email: jsharkey@ficlaw.com
djireland@ficlaw.com
chollon@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 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.

Respectfully submitted,

/s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey (0067892)
(Counsel of Record)
D. Jeffrey Ireland (0010443)
Christopher C. Hollon (0086480)
FARUKI PLL
110 North Main Street, Suite 1600
Dayton, OH 45402
Telephone: (937) 227-3747
Telecopier: (937) 227-3717
Email: jsharkey@fclaw.com
djireland@fclaw.com
chollon@fclaw.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 15th day of May, 2019.

Thomas McNamee
Public Utilities Commission of Ohio
30 East Broad Street, 16th Floor
Columbus, OH 43215-3793
Email:
thomas.mcnamee@ohioattorneygeneral.gov

Attorney for PUCO Staff

William J. Michael (Counsel of Record)
Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, OH 43215-4203
Email: william.michael@occ.ohio.gov
zachary.woltz@occ.ohio.gov

Attorneys for the Ohio Consumers' Counsel

Kimberly W. Bojko
Brian W. Dressel
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215
Email: bojko@carpenterlipps.com
dressel@carpenterlipps.com

Attorneys for The Ohio Manufacturers'
Association Energy Group

Frank P. Darr (Counsel of Record)
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
Email: fdarr@mwncmh.com
mpritchard@mwncmh.com

Attorneys for Industrial Energy Users – Ohio

David F. Boehm
Michael L. Kurtz
Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
Email: dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Attorneys for The Ohio Energy Group

Joseph Olikier (Counsel of Record)
Matthew White
Evan Betterton
IGS Energy
6100 Emerald Parkway
Dublin, OH 43016
Email: joliker@igsenergy.com
mswhite@igsenergy.com
Ebetterton@igsenergy.com

Attorney for IGS Energy

Kevin R. Schmidt
88 East Broad Street, Suite 1770
Columbus, OH 43215
Email: schmidt@sppgrp.com

Attorney for The Energy Professionals of Ohio

Jeffrey W. Mayes
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, PA 19403
Email: jeffrey.mayes@monitoringanalytics.com

Attorneys for Monitoring Analytics, LLC as
The Independent Market Monitor for PJM

Trent Dougherty
Nathan Johnson
1145 Chesapeake Ave., Suite 1
Columbus, OH 43212-3449
Email: tdougherty@the OEC.org
njohnson@the OEC.org

Attorney for Ohio Environmental
Council

Miranda Leppla
Ohio Environmental Council
1145 Chesapeake Ave., Suite 1
Columbus, OH 43212-3449
Email: mleppa@the OEC.org

Attorney for the Environmental Defense Fund

Michael D. Dortch
Richard R. Parsons
Kravitz, Brown & Dortch, LLC
65 East State Street, Suite 200
Columbus, OH 43215
Email: mdortch@kravitzllc.com
rparsons@kravitzllc.com

Attorneys for Calpine Energy Solutions LLC

Evelyn R. Robinson
2750 Monroe Boulevard
Audubon, PA 19403
Email: evelyn.robinson@pjm.com

Attorney for PJM Interconnection, L.L.C.

Joel E. Sechler (Counsel of Record)
Carpenter Lipps & Leland
280 N. High St., Suite 1300
Columbus, OH 43215
Email: sechler@carpenterlipps.com

Attorneys for EnerNOC, Inc.

Angela Paul Whitfield
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
Email: paul@carpenterlipps.com

Attorney for The Kroger Co.

Colleen Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
Email: cmooney@ohiopartners.org

Attorney for Ohio Partners for Affordable
Energy

Madeline Fleisher
Kristin Field
Environmental Law & Policy Center
21 West Broad Street, Suite 500
Columbus, OH 43215
Email: mfleisher@elpc.org
kfield@elpc.org

Attorneys for The Environmental Law &
Policy Center

Richard C. Sahli
Richard C. Sahli Law Office, LLC
981 Pinewood Lane
Columbus, OH 43230-3662
Email: rsahli@columbus.rr.com

Tony G. Mendoza, Staff Attorney (pro hac vice)
Kristin Henry, Senior Staff Attorney (pro hac vice)
Gregory E. Wannier, Staff Attorney (pro hac vice)
Sierra Club Environmental Law Program
2101 Webster Street, 13th Floor
Oakland, CA 94612
Email: tony.mendoza@sierraclub.org
kristin.henry@sierraclub.org
greg.wannier@sierraclub.org

Attorneys for Sierra Club

Michelle Grant
Dynergy Inc.
601 Travis Street, Suite 1400
Houston, TX 77002
Email: michelle.d.grant@dynergy.com

Attorneys for Dynergy Inc.

Michael J. Settineri
Gretchen L. Petrucci
Ilya Batikov
William A. Sieck
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
Email: mjsettineri@vorys.com
glpetrucci@vorys.com
ibatikov@vorys.com
wasieck@vorys.com
Attorneys for Dynergy Inc.,
PJM Power Providers Group, and
Retail Energy Supply Association

Lisa M. Hawrot
Spilman Thomas & Battle, PLLC
Century Centre Building
1233 Main Street, Suite 4000
Wheeling, WV 26003
Email: lhawrot@spilmanlaw.com

Derrick Price Williamson
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
Email: dwilliamson@spilmanlaw.com

Carrie M. Harris
Spilman Thomas & Battle, PLLC
310 First Street, Suite 1100
P.O. Box 90
Roanoke, VA 24002-0090
Email: charris@spilmanlaw.com

Steve W. Chriss
Senior Manager, Energy Regulatory Analysis
Greg Tillman
Senior Manager, Energy Regulatory Analysis
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716-0550
Email: Stephen.Chriss@walmart.com
Greg.Tillman@walmart.com

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

Steven D. Lesser
James F. Lang
N. Trevor Alexander
Mark T. Keaney
Calfee, Halter & Griswold LLP
41 South High Street
1200 Huntington Center
Columbus, OH 43215
Email: slesser@calfee.com
jlang@calfee.com
talexander@calfee.com
mkeaney@calfee.com

Attorneys for The City of Dayton and
Honda of America Mfg., Inc.

Glen Thomas
1060 First Avenue, Suite 400
King of Prussia, PA 19406
Email: gthomas@gtpowergroup.com

Sharon Theodore
Electric Power Supply Association
1401 New York Ave. NW 11th Floor
Washington, DC
Email: stheodore@epsa.org

Laura Chappelle
201 North Washington Square, Suite 910
Lansing, MI 48933
Email: laurac@chappelleconsulting.net

Attorneys for PJM Power Providers Group

Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
130 West Second Street, Suite 700 East
Dayton, OH 45402
Email: ejacobs@ablelaw.org

Attorney for Edgemont Neighborhood Coalition

Jeanne W. Kingery
Elizabeth H. Watts
Duke-Energy Ohio, Inc.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Email: jeanne.kingery@duke-energy.com
elizabeth.watts@duke-energy.com

Attorneys for Duke-Energy Ohio, Inc.

Carl Tamm, President
Classic Connectors, Inc.
382 Park Avenue East
Mansfield, OH 44905
Email: crtamm@classicconnectors.com

John R. Doll
Doll, Jansen & Ford
111 West First Street, Suite 1100
Dayton, OH 45402-1156
Email: jdoll@djflawfirm.com

Attorneys for Utility Workers of
America Local 175

Matthew W. Warnock
Dylan F. Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Email: mwarnock@bricker.com
dborchers@bricker.com

Attorneys for The Ohio Hospital Association

Christine M.T. Pirik
Terrence N. O'Donnell
William V. Vorys
Jonathan R. Secrest
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, OH 43215
Email: cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
wvorys@dickinsonwright.com
jsecrest@dickinsonwright.com

Attorneys for Mid-Atlantic Renewable
Energy Coalition

John F. Stock
Orla E. Collier
Benesch, Friedlander, Coplan & Aronoff LLP
41 South High Street, 26th Floor
Columbus, OH 43215
Email: jstock@beneschlaw.com
ocollier@beneschlaw.com

Attorneys for Murray Energy Corporation and
Citizens to Protect DP&L Jobs

Mark Landes
Brian M. Zets
Isaac Wiles Burkholder & Teetor, LLC
Two Miranova Place
Suite 700
Columbus, OH 43215
Email: mlandes@isaacwiles.com
bzets@isaacwiles.com

Attorneys for Adams County Commissioners

C. David Kelley, Prosecutor
Dana N. Whalen
110 West Main Street
West Union, OH 45693
Email: prosecutorkelley@usa.com
dana.whalen@adamscountyoh.gov

Attorneys for Monroe Township, Ohio, Sprigg
Township, Manchester Local School District,
and Adams County Ohio Valley School
District

Devin D. Parram
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Email: dparram@bricker.com

Attorney for People Working
Cooperatively, Inc.

/s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/15/2019 1:50:23 PM

in

Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

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