

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. 20-1651-EL-AIR

In the Matter of the Application of The  
Dayton Power and Light Company for  
Accounting Authority

Case No. 20-1652-EL-AAM

In the Matter of the Application of Dayton  
Power and Light Company for Approval of  
Revised Tariffs

Case No. 20-1653-EL-ATA

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**THE DAYTON POWER AND LIGHT COMPANY'S  
MOTION FOR PROTECTIVE ORDER RELATING TO SCHEDULE S-2**

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Pursuant to Ohio Adm.Code 4901-1-24(D), The Dayton Power and Light Company ("DP&L") moves for entry of a Protective Order to exempt from public disclosure certain information that is confidential, proprietary, and competitively sensitive trade secret information. R.C. 1333.61(D). The information at issue is Confidential Information relating to financial projections and data contained in Schedule S-2 (Five-Year Financial Forecast), which is included in the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution ("Application") as required by Ohio Adm.Code 4901-7-01, Appendix A, Standard Filing Requirements for Rate Increases ("SFR"), Chapter II, Section (B)(2). Schedule S-2 appears in Book I, Volume 1 of the Application.

As will be demonstrated in the Direct Testimony of Michael J. Amore, 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.<sup>1</sup>

Pursuant to the April 8, 2020 and September 9, 2020 Entries in *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Pub. Util. Comm. No. 20-591-AU-UNC, an undredacted copy of Book I, Volume 1 of the Application, containing Schedule S-2, will be filed with the Commission electronically under seal in Pub. Util. Comm. No. 20-2000-XX-XXX.

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<sup>1</sup> The Direct Testimony of Michael J. Amore will be filed within 14 days of the filing of the Application pursuant to SFR, Chapter II, Section (A)(6).

Respectfully submitted,

/s/ Michael J. Schuler

Michael J. Schuler (0082390)  
THE DAYTON POWER AND  
LIGHT COMPANY

1065 Woodman Drive  
Dayton, OH 45432  
Telephone: (937) 259-7358  
Telecopier: (937) 259-7178  
Email: michael.schuler@aes.com

/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

(willing to accept service by e-mail)

**MEMORANDUM IN SUPPORT OF THE DAYTON POWER AND LIGHT  
COMPANY'S MOTION FOR PROTECTIVE ORDER RELATING TO SCHEDULE S-2**

Pursuant to Ohio Adm.Code 4901-1-24(D), DP&L moves for 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 relating to financial projections and data contained in Schedule S-2 (Five-Year Financial Forecast) in the Application in this proceeding be exempt from public disclosure as confidential, proprietary and competitively sensitive trade secret information ("Confidential Information"). Schedule S-2 contains the most recent five-year financial forecast for DP&L's income statement, balance sheet, and statement of changes in financial position. SFR, Chapter II, Section (B)(2).

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:* R.C. 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.*, Pub. Util. Comm. No. 10-2205-EL-EEC, 2011 Ohio PUC LEXIS 1313, at \*6 (Dec. 7, 2011 Finding and Order) ("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." R.C. 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*, Pub. Util. Comm. 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*, Pub. Util. Comm. No. 09-893-GA-AGG, 2012 Ohio PUC LEXIS 103 (Jan. 30, 2012 Entry) (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.*, Pub. Util. Comm. No. 10-2376-EL-UNC, *et al.*, 2011 Ohio PUC LEXIS 1325, at \*22-23 (Dec. 14, 2011 Opinion and Order) (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.*, Pub. Util. Comm. No. 10-2205-EL-EEC, 2011 Ohio PUC LEXIS 1313, at \*2-5 (Dec. 7, 2011 Finding and Order) (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 R.C. 1333.61(D). As will be shown in the Direct Testimony of Michael J. Amore, DP&L maintains the Confidential Information subject to reasonable efforts to keep its secrecy - it is not generally known outside of DP&L, and is not disseminated to internal employees unless those employees have a legitimate business need to know the information. The Confidential Information derives independent economic value from not being generally known to other persons who could obtain economic value from its disclosure or use and will prevent an undue competitive disadvantage to DP&L.

The Commission (and its Staff) will have full access to the Confidential Information in order to fulfill its statutory obligations. 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)  
THE DAYTON POWER AND  
LIGHT COMPANY

1065 Woodman Drive  
Dayton, OH 45432  
Telephone: (937) 259-7358  
Telecopier: (937) 259-7178  
Email: michael.schuler@aes.com

/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

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Motion for Protective Order Relating to Schedule S-2 has been served via electronic mail upon the following counsel of record, this 30th day of November, 2020:

Jodi Bair  
Kyle Kern  
Office of the Ohio Attorney General  
30 East Broad Street, 16th Floor  
Columbus, OH 43215  
jodi.bair@ohioattorneygeneral.gov  
kyle.kern@ohioattorneygeneral.gov  
  
Attorneys for Staff of the Commission

Michael L. Kurtz  
Kurt J. Boehm  
Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
Mkurtz@BKLawfirm.com  
Kboehm@BKLawfirm.com  
Jkylercohn@BKLawfirm.com

Attorneys for Ohio Energy Group

Kimberly W. Bojko  
CARPENTER LIPPS & LELAND LLP  
280 North High Street, Suite 1300  
Columbus, OH 43215  
bojko@carpenterlipps.com

Angela Paul Whitfield  
CARPENTER LIPPS & LELAND LLP  
280 North High Street, Suite 1300  
Columbus, OH 43215  
paul@carpenterlipps.com

Attorney for The Ohio Manufacturers'  
Association Energy Group

Attorney for The Kroger Company

/s/ Christopher C. Hollon  
Christopher C. Hollon



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/30/2020 1:06:05 PM**

**in**

**Case No(s). 20-1651-EL-AIR, 20-1652-EL-AAM, 20-1653-EL-ATA**

Summary: Motion The Dayton Power and Light Company's Motion for Protective Order  
Relating to Schedule S-2 electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton  
Power and Light Company