

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid	:	CASE NO. 18-1875-EL-GRD
	:	
In the Matter of the Application of The Dayton Power and Light Company for Approval of a Limited Waiver of Ohio Adm.Code 4901:1-18-06(A)(2)	:	CASE NO. 18-1876-EL-WVR
	:	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Methods	:	CASE NO. 18-1877-EL-AAM
	:	
In the Matter of the Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2018	:	CASE NO. 19-1121-EL-UNC
	:	
In the Matter of the Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2019	:	CASE NO. 20-1041-EL-UNC
	:	
In the Matter of the Application of The Dayton Power and Light Company for a Finding That Its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and More Favorable in the Aggregate Test in R.C. 4928.143(E)	:	CASE NO., 20-0680-EL-UNC
	:	

**THE DAYTON POWER AND LIGHT COMPANY'S MOTION
FOR A PROTECTIVE ORDER RELATING TO CONFIDENTIAL
INFORMATION CITED IN ITS INITIAL POST-HEARING BRIEF**

Pursuant to Ohio Adm.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. R.C. 1333.61(D). The information at issue is Confidential Information relating to financial projections and data contained in the Initial Post-Hearing Brief of The Dayton Power and Light Company, which cites and quotes confidential material from the April 1, 2020 Direct Testimony of Gustavo Garavaglia M. and the April 1, 2020 Direct Testimony of R. Jeffrey Malinak in Case No. 20-0680-EL-UNC.

As shown in the November 19, 2020 Motion of The Dayton Power and Light Company for Entry of a Protective Order Relating to Confidential Information Cited in the Direct Testimony of Matthew I. Kahal in Case No. 20-0680-EL-UNC concerning much of the same Confidential Information, the Confidential Information 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. The November 19, 2020 Motion was supported by evidence and was granted at the evidentiary hearing in this proceeding. Tr. Vol. I, pp. 20-21.

Pursuant to the April 8, 2020 and September 9, 2020 Entries in In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters, Case No. 20-591-AU-UNC, an unredacted copy of the Initial Post-Hearing Brief will be filed with the Commission electronically under seal in Case No. 20-2000-XX-XXX.

If this Motion is opposed, then DP&L reserves the right to submit additional evidence in support. DP&L will further produce an unredacted copy of the Initial Post-Hearing Brief to any party who enters into a protective agreement with DP&L in this proceeding.

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

Fax: (937) 227-3717

Email: jsharkey@ficlaw.com

djireland@ficlaw.com

chollon@ficlaw.com

Michael J. Schuler (082390)

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

*Counsel 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 A PROTECTIVE ORDER RELATING TO
CONFIDENTIAL INFORMATION CITED IN ITS INITIAL POST-HEARING BRIEF**

Pursuant to Ohio Adm.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 certain confidential information relating to financial projections and data contained in the Initial Post-Hearing Brief of The Dayton Power and Light Company, which cites and quotes confidential material from the April 1, 2020 Direct Testimony of Gustavo Garavaglia M. and the April 1, 2020 Direct Testimony of R. Jeffrey Malinak in Case No. 20-0680-EL-UNC, be exempt from public disclosure as confidential, proprietary and competitively sensitive trade secret information ("Confidential Information"). The Confidential Information was originally filed with the Commission pursuant to The Dayton Power and Light Company's Motion for Protective Order Relating to the Direct Testimony of Gustavo Garavaglia M. and R. Jeffrey Malinak, filed April 1, 2020, and much of it was addressed in the November 19, 2020 Motion of The Dayton Power and Light Company for Entry of a Protective Order Relating to Confidential Information Cited in the Direct Testimony of Matthew I. Kahal in Case No. 20-0680-EL-UNC, which the Commission granted. Tr. Vol. I, pp. 20-21.

Section 4901-1-24(D) of the Ohio Administrative Code provides that the Commission may issue an order that 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 re The Dayton Power and Light Co., Case No. 10-2205-EL-EEC, Finding and Order (Dec. 7, 2011), 2011 Ohio PUC LEXIS 1313, at *6 ("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 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 re Duke Energy Ohio, Inc., Case No. 17-32-EL-AIR, et al., Opinion and Order (Dec. 19, 2018) at ¶¶ 161-163, 2018 Ohio PUC LEXIS 1268 ("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 re Midwest Utility Consultants, Inc., Case No. 09-893-GA-AGG, Entry (Jan. 30, 2012), 2012 Ohio PUC LEXIS 103 (forecasted financial statements were trade secrets and granted protective treatment); In re Ohio Power Co., Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011), 2011 Ohio PUC LEXIS 1325, at *22-23 (forecasted fuel expenditures were trade secrets and granted protective treatment); In re Dayton Power and Light Co., Case No. 10-2205-EL-EEC, Finding and Order (Dec. 7, 2011), 2011 Ohio PUC LEXIS 1313, at *2-5 (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, and derives independent economic value from not being publicly available. R.C. 1333.61(D). Accord: Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 687 N.E.2d 661 (1997). DP&L maintains the Confidential Information subject to reasonable efforts to keep its secrecy, and the Confidential Information derives independent economic value from not being generally known to others persons who could obtain economic value from its disclosure or use. Nov. 19, 2020 Motion of The Dayton Power and Light Company for Entry of a Protective Order Relating to Confidential Information Cited in the Direct Testimony of Matthew I. Kahal (citing

Nov. 19, 2020 Affidavit of Karin Nyhuis). 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/ 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
Fax: (937) 227-3717
Email: jsharkey@ficlaw.com
djireland@ficlaw.com
chollon@ficlaw.com

Michael J. Schuler (082390)
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

*Counsel 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 The Dayton Power and Light Company's Motion for a Protective Order Relating to Confidential Information Cited in Its Initial Post-Hearing Brief has been served via electronic mail upon the following counsel of record, this 12th day of February, 2021:

Steven L. Beeler
Robert A. Eubanks
Thomas G. Lindgren
OFFICE OF THE
OHIO ATTORNEY GENERAL
PUBLIC UTILITIES SECTION
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
steven.beeler@ohioattorneygeneral.gov
robert.eubanks@ohioattorneygeneral.gov
thomas.lindgren@ohioattorneygeneral.gov

*Counsel for Staff of the
Public Utilities Commission of Ohio*

Christopher Healey
William J. Michael
Amy Botschner O'Brien
Angela O'Brien
OFFICE OF THE
OHIO CONSUMERS' COUNSEL
65 East State Street, 7th Floor
Columbus, Ohio 43215
christopher.healey@occ.ohio.gov
william.michael@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
angela.obrien@occ.ohio.gov

Michael D. Dortch
Justin M. Dortch
KRAVITZ, BROWN & DORTCH, LLC
64 E. State Street, Suite 200
Columbus, Ohio 43215
mdortch@kravitzllc.com
jdortch@kravitzllc.com

*Counsel for Office of the
Ohio Consumers' Counsel*

Matthew R. Pritchard
Todd J. Long
MCNEES WALLACE & NURICK LLC
21 E. State Street, 17th Floor
Columbus, Ohio 43215
mpritchard@mcneeslaw.com
tlong@mcneeslaw.com

Counsel for Industrial Energy Users - Ohio

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

*Counsel for Ohio Manufacturers'
Association Energy Group*

Steven D. Lesser
N. Trevor Alexander
Mark T. Keaney
Kari D. Hehmeyer
BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215-6164
slesser@benschlaw.com
talexander@benschlaw.com
mkeaney@benschlaw.com
khehmeyer@benschlaw.com

*Counsel for the City of Dayton and
Honda of America Mfg., Inc.*

Angela Paul Whitfield
CARPENTER LIPPS & LELAND LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215

Counsel for The Kroger Co.

Christine M.T. Pirik
Madeline Fleisher
DICKINSON WRIGHT PLLC
150 East Gay Street, Suite 2400
Columbus, Ohio 43215
cpirik@dickinsonwright.com
mfleisher@dickinsonwright.com

Counsel for Mission: data Coalition

Michael L. Kurtz
Kurt J. Boehm
Jody Kyler Cohn
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
mkurtz@BKLLawfirm.com
kboehm@BKLLawfirm.com
jkylercohn@BKLLawfirm.com

Counsel for Ohio Energy Group

Stephanie M. Chmiel
Kevin D. Oles
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215
Stephanie.Chmiel@ThompsonHine.com
Kevin.Oles@ThompsonHine.com

Counsel for University of Dayton

David C. Rinebolt
OHIO PARTNERS FOR
AFFORDABLE ENERGY
P.O. Box 1793
Findlay, Ohio 45839

*Counsel for Ohio Partners
for Affordable Energy*

Devin D. Parram
Dane Stinson
Jhay T. Spottswood
BRICKER& ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
dparram@bricker.com
dstinson@bricker.com
Jspottswood@bricker.com

*Counsel for The Ohio Hospital
Association*

Madeline Fleisher
Christine M.T. Pirik
William Vorys
DICKINSON WRIGHT PLLC
150 East Gay Street, Suite 2400
Columbus, Ohio 43215
mfleisher@dicksoninwright.com
cpirik@dicksonwright.com
wvorys@dicksonwright.com

Counsel for Smart Thermostat Coalition

Caroline Cox
ENVIRONMENTAL LAW & POLICY CENTER
21 W. Broad Street, Suite 800
Columbus, Ohio 43215
ccox@elpc.org

Nikhil Vijaykar
ENVIRONMENTAL LAW & POLICY CENTER
35 E. Wacker Dr., Suite 1600
Chicago, Illinois 60601
nvijaykar@elpc.org

*Counsel for Environmental
Law & Policy Center*

Robert Dove
KEGLER BROWN HILL + RITTER Co. L.P.A.
65 East State Street, Suite 1800
Columbus, Ohio 43215
rdove@keglerbrown.com

*Counsel for Natural Resources
Defense Council*

Joseph Halso
SIERRA CLUB
ENVIRONMENTAL LAW PROGRAM
1536 Wynkoop Street
Denver, Colorado 80202
joe.halso@sierraclub.org
Richard C. Sahli
RICHARD SAHLI LAW OFFICE, LLC
981 Pinewood Lane
Columbus, Ohio 43230
rsahli@columbus.rr.com

Counsel for Sierra Club

Miranda Leppla
Trent Dougherty
Chris Tavenor
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212
mleppla@theocc.org
tdougherty@theocc.org
ctavenor@theocc.org

Counsel for Ohio Environmental Council

Dylan F. Borchers
Kara H. Hernstein
Jhay T, Spottswood
BRICKER& ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
dborchers@bricker.com
khernstein@bricker.com
jspottswood@bricker.com

Counsel for Chargepoint, Inc.

Bethany Allen
Joseph Olikier
Michael Nugent
IGS ENERGY
6100 Emerald Parkway
Dublin, Ohio 43016
bethany.allen@igs.com
joe.oliker@igs.com
michael.nugent@igs.com

Frank P. Darr
6800 Linbrook Boulevard
Columbus, Ohio 43235
fdarr2019@gmail.com

Counsel for Interstate Gas Supply, Inc.

Michael J. Settineri
Gretchen L. Petrucci
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
mjsettineri@vorys.com
glpetrucci@vorys.com

Drew Romig
Armada Power LLC
230 West Street, Suite 150
Columbus, Ohio 43215
dromig@armadapower.com

Counsel for Armada Power, LLC

Mark A. Whitt
Lucas A. Fykes
WHITT STURTEVANT LLP
88 E. Broad Street, Suite 1590
Columbus, Ohio 43215
whitt@whitt-sturtevant.com
fykes@whitt0sturtevant.com

Counsel for Direct Energy, LP

s/ Christopher C. Hollon

Christopher C. Hollon

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/12/2021 4:31:25 PM

in

Case No(s). 18-1875-EL-GRD, 18-1876-EL-WVR, 18-1877-EL-AAM, 19-1121-EL-UNC, 20-1041-EL-UNC

Summary: Motion The Dayton Power and Light Company's Motion for a Protective Order Relating to Confidential Information Cited in Its Initial Post-Hearing Brief electronically filed by Mr. Christopher C. Hollon on behalf of The Dayton Power and Light Company