

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the OVEC Generation : Case No. 21-0477-EL-RDR
Purchase Rider Audits Required by R.C.
4928.148 for Duke Energy Ohio, Inc., The :
Dayton Power and Light Company, and AEP
Ohio :

**MOTION OF THE DAYTON POWER AND LIGHT COMPANY D/B/A AES OHIO
FOR ENTRY OF A PROTECTIVE ORDER REGARDING THE AUDIT OF THE
LEGACY GENERATION RESOURCE RIDER OF AES OHIO FINAL REPORT**

Pursuant to Ohio Adm.Code 4901-1-24(D), The Dayton Power and Light Company d/b/a AES Ohio (“AES Ohio” or the “Company”) moves for entry of a Protective Order to maintain the confidentiality of redacted information contained in the Audit of the Legacy Generation Resource Rider of AES Ohio Final Report prepared by London Economics International LLC (“Audit Report”), filed December 17, 2021. An unredacted version of the Audit Report remains on file with the Commission.

The Confidential Information reflects highly sensitive pricing and other related information. *Accord:* Dec. 17, 2021 Motion for a Protective Order Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio. AES Ohio subjects the Confidential Information to reasonable efforts to maintain its secrecy, and 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. The Confidential Information, thus, constitutes trade secrets under R.C. 1333.61(D), and should be protected from public disclosure under Ohio Adm.Code 4901-1-24(D). *In the Matter of the Review of the Reconciliation Rider of The Dayton Power and Light Company*, Pub. Util. Comm. No. 20-165-EL-RDR (Nov. 30, 2020 Entry). *Accord:* *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 524-525, 687

N.E.2d 661 (1997); *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) (citing *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000)).

If this Motion is opposed or upon request of the Commission, AES Ohio will submit an affidavit in support.

Respectfully submitted,

/s/ Christopher C. Hollon

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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND SUMMARY

Pursuant to Ohio Adm.Code 4901-1-24(D), AES Ohio moves for entry of a Protective Order to maintain the confidentiality of redacted information contained in the December 17, 2021 Audit Report filed in this proceeding. The Confidential Information is redacted in the publicly-available version of the Audit Report on the Commission's docket.

As shown below, the Commission should protect the Confidential Information because it constitutes trade secrets under Ohio law. R.C. 1333.61(D); *In the Matter of the Review of the Reconciliation Rider of The Dayton Power and Light Company*, Pub. Util. Comm. No. 20-165-EL-RDR (Nov. 30, 2020 Entry). *Accord: State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 524-525, 687 N.E.2d 661 (1997); *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) (citing *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000)).

II. THE CONFIDENTIAL INFORMATION CONSTITUTES PROTECTED TRADE SECRETS UNDER OHIO LAW

The Confidential Information at issue reflects highly sensitive pricing and other related information. *Accord: Dec. 17, 2021 Motion for a Protective Order Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio.*

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, "including where the information is deemed . . . to

constitute a trade secret under Ohio law,” 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 Commission has a duty to protect trade secrets. *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” that “derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means” and is the subject of reasonable efforts to maintain its secrecy. R.C. 1333.61(D). *Accord:* *Plain Dealer*, 80 Ohio St. 3d at 524-525.

“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). In addition, the Commission has protected payroll and salary information as trade secrets. *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Co. and Columbus S. Power Co.*, Pub. Util. Comm. No. 10-2929-EL-UNC, 2012 Ohio PUC LEXIS 359, at *4 (Apr. 13, 2012 Entry).

Such authority reflects a state policy favoring the protection of trade secrets such as the Confidential Information. Indeed, 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 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, and derives independent economic value from not being publicly available.

R.C. 1333.61(D). The Confidential Information is not known outside of AES Ohio and is not disseminated to internal employees unless those employees have a legitimate business need to know the information.

III. CONCLUSION

For these foregoing reasons, AES Ohio requests that the Commission issue a Protective Order that maintains protection of the Confidential Information from public disclosure.

Respectfully submitted,

/s/ Christopher C. Hollon

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CERTIFICATE OF SERVICE

Pursuant to Ohio Adm.Code 4901-1-05, I certify that a copy of the foregoing was e-filed with the Public Utilities Commission of Ohio on December 17, 2021. The PUCO's e-filing system will electronically service notice of the filing of this document on the following parties. In addition, I certify that this document was sent by electronic mail upon the following parties.

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Summary: Motion Motion of The Dayton Power and Light Company d/b/a AES Ohio for Entry of a Protective Order Regarding the Audit of the Legacy Generation Resource Rider of AES Ohio Final Report electronically filed by Mr. Christopher C. Hollon on behalf of The Dayton Power and Light Company d/b/a AES Ohio