

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of : Case No. 14-1505
The Dayton Power and Light Company for : Appeal from the Public Utilities
Approval of Its Electric Security Plan, etc. : Commission of Ohio
: Public Utilities Commission of Ohio
: Case Nos. 12-426-EL-SSO,
: 12-427-EL-ATA,
: 12-428-EL-AAM,
: 12-429-EL-WVR, and
: 12-672-EL-RDR
:

**MOTION OF CROSS-APPELLANT THE DAYTON POWER AND LIGHT
COMPANY FOR LEAVE TO FILE PAPERS UNDER SEAL**

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**MOTION OF CROSS-APPELLANT THE DAYTON POWER AND LIGHT
COMPANY FOR LEAVE TO FILE PAPERS UNDER SEAL**

Pursuant to S.Ct.Prac.R. 4.01(A) and Sup. R. 45(E), Cross-Appellant The Dayton Power and Light Company ("DP&L") moves for leave to file two papers under seal: (1) the Brief of Cross-Appellant The Dayton Power and Light Company -- Confidential Version ("Confidential Brief"), and (2) the Supplement to the Brief of Cross-Appellant The Dayton Power and Light Company (Volume III) ("Supplement Volume III"). The Confidential Brief refers to highly confidential, proprietary business information from DP&L Ex. 4A, WJC-5, which contains trade secrets under R.C. 1333.61. Supplement Volume III contains the source information cited in the Confidential Brief, DP&L Ex. 4A, WJC-5.

So as to use the least restrictive means of maintaining the confidentiality of DP&L Ex. 4A, WJC-5, DP&L is filing an identical copy of its Confidential Brief, with the confidential information redacted ("Public Brief"). DP&L has also filed a Motion of Cross-Appellant The Dayton Power and Light Company for Leave to File a Public Version of Its Brief.

In that motion, DP&L asks the Court to allow public access to its Public Brief except for information taken directly from the DP&L Ex. 4A, WJC-5, which is redacted in the Public Brief.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION OF CROSS-APPELLANT
THE DAYTON POWER AND LIGHT COMPANY
FOR LEAVE TO FILE PAPERS UNDER SEAL**

Cross-Appellant The Dayton Power and Light Company ("DP&L") moves for leave to file two papers under seal that contain highly confidential, proprietary business information: (1) the Brief of Cross-Appellant The Dayton Power and Light Company ("Confidential Brief"), and (2) the Supplement to the Brief of Cross-Appellant The Dayton Power and Light Company (Volume III) ("Supplement Volume III). The Confidential Brief refers to highly confidential, proprietary business information from DP&L Ex. 4A, WJC-5, which contains trade secrets under R.C. 1333.61. Supplement Volume III contains the source information cited in the Confidential Brief, DP&L Ex. 4A, WJC-5.

Under Sup. R. 45(E)(2),

"A court *shall restrict public access* to information in a case document or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following:

- (a) Whether public policy is served by restricting public access;
- (b) Whether any state, federal, or common law exempts the document or information from public access;
- (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, *proprietary business information*, public safety, and fairness of the adjudicatory process."

(Emphasis added.)

Ohio courts have widely recognized the confidentiality of trade secrets. The Ohio Uniform Trade Secrets Act defines a "trade secret" as

"information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are a reasonable under the circumstances to maintain its secrecy."

R.C. 1333.61(D) (emphasis added).

"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.*, 2000 Ohio App. LEXIS 62198, at *10 (Dec. 29, 2000). *Accord: Alpha Benefits Agency, Inc. V. King Ins. Agency, Inc.*, 13 Ohio App. 3d 673, 683 (1999) (holding that trial court should have ordered plaintiff to produce its "profitability information" to defendant subject to a protective order); *Vanguard Transportation Systems v. Edwards Transfer & Storage Co.*, 109 Ohio App. 3d 786, 789-90 (1996) (affirming trial court order that held that various information including "corporate financial information" constituted a trade secret.).

DP&L Ex. 4A, WJC-5 contains "business information or plans, [and] financial information" under R.C. 1333.61(D). That information is highly confidential and relates to DP&L's business plans and projected financial information. Thus, it is protected by the statute, and it is in the public interest to restrict public access.

Moreover, DP&L maintains the secrecy of the information in DP&L Ex. 4A, WJC-5. The information is not known outside of DP&L, and it is not disseminated to internal employees unless they have a legitimate business need to know the information. In addition, it was treated confidentially in the underlying proceedings before the Public Utilities Commission. Maintaining the confidentiality of the information in DP&L Ex. 4A, WJC-5 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.

DP&L proposes using the least restrictive means available for maintaining the confidentiality of the DP&L Ex. 4A, WJC-5. DP&L is filing an identical copy of its Confidential Brief, with the confidential information redacted ("Public Brief"). DP&L has also filed a Motion of Cross-Appellant The Dayton Power and Light Company for Leave to File a Public Version of Its Brief, which the Court's Clerk asked DP&L to file. In that motion, DP&L asks the Court to allow public access to its Public Brief except for information taken directly from the DP&L Ex. 4A, WJC-5, which is redacted in the Public Brief. Those limited redactions will protect DP&L's proprietary business information while at the same time promoting public access to all other information in DP&L's Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of Cross-Appellant The Dayton Power and Light Company for Leave to File Papers Under Seal has been served via electronic mail, upon the following counsel of record, this 20th day of January, 2015:

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