

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of)
Columbus Southern Power Company For)
Approval of its Electric Security Plan)
Including Related Accounting Authority;)
an Amendment to its Corporate)
Separation Plan; and the Sale or Transfer)
Certain Generating Assets)**

Case No. 08- 917-EL-SSO

and

**In the Matter of the Application of
Ohio Power Company for Approval of
its Electric Security Plan Including
Related Accounting Authority; and an
Amendment to its Corporate Separation
Plan**

Case No. 08-918-EL-SSO

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**COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER COMPANY'S
MOTION FOR PROTECTIVE ORDER**

Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, the “Companies” or “AEP Ohio”), pursuant to Rule 4901-1-24, Ohio Admin. Code, hereby move the Commission for a protective order regarding confidential trade secret information of the Companies included in the confidential version of the Direct Testimony and Exhibits of Ms. Emily S. Medine, a witness for the Office of the Ohio Consumers’ Counsel (“OCC”). On October 31, 2008, OCC filed under seal a confidential version of Ms. Medine’s testimony that included the confidential information, a public version with the confidential information redacted, and also filed a motion for a protective order, as the non-disclosure agreement it executed in order gain access to the confidential information required. The

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confidential information that OCC included in Ms. Medine's testimony constitutes trade secrets under Ohio law and merit protection from disclosure.

MEMORANDUM IN SUPPORT

The Companies' motion requests that certain confidential information filed in this proceeding by Emily S. Medine on behalf of OCC be exempted from public disclosure as confidential, proprietary, competitively sensitive and trade secret information (the "Confidential Information").

The Companies have attached to this motion the affidavit of James D. Henry, Vice President of Fuel Procurement for American Electric Power Service Corporation ("AEPSC") ("Henry Affidavit"). Mr. Henry is Vice President of Fuel Procurement for AEPSC and is responsible for the procurement of fossil fuels for AEP's eastern generating fleet, which includes the power plants owned and operated by Columbus Southern Power Company and Ohio Power Company. Mr. Henry describes the confidential information for which protection is sought, explains how the Companies have maintained the confidentiality of the information, and confirms the substantial economic value that the information provides to the Companies as a result of maintaining its confidentiality.

Description Of The Confidential Information.

The Confidential Information includes certain information contained in the confidential version of Ms. Medine's Direct Testimony, at pages 32 and 42, Exhibits 11, 12, 13, and Attachment EVA-B. A public version Ms. Medine's Direct Testimony, Exhibits, and Attachments from which the Confidential Information was redacted has also been filed in this case. The Henry Affidavit explains that, as may be seen even by a review of the redacted

“public” version of Ms. Medine’s Direct Testimony and Exhibits, the Confidential Information includes coal inventory information on an individual plant and total company basis.

The Confidential Information Derives Independent Economic Value By Reason Of The Fact That It Is Not Publicly Available.

Mr. Henry also confirms that the Confidential Information is not readily available in the public domain and the Companies take steps to protect this information from public disclosure. Such information is competitively sensitive and a trade secret because competitors may use such data to determine the Companies’ current and projected resource costs, detailed information about the operations of CSP and OPCo’s facilities and the price at which the Companies have secured coal for their plants. Mr. Henry also confirms that the disclosure of such costs would adversely impact the Companies because it would permit competitors to better determine how to price their services and products, including the coal provided to the Companies’ facilities. Further, he points out, the disclosure of the Company’s resource needs and costs would disincite the negotiation or competitive bidding process by allowing potential suppliers or vendors to know what the Company’s expectations are with respect to its resource needs and costs. Thus, Mr. Henry concludes, these suppliers or vendors would have the advantage of knowing how to price their bids or negotiate to provide resources if they had access to the Confidential Information.

The Information Is Not Generally Known, Readily Ascertainable By Proper Means By Other Persons Who Can Obtain Economic Value From Its Disclosure Or Use.

Mr. Henry also explains that the Confidential Information is not available or ascertainable by other parties through normal or proper means; and that no reasonable amount of proper independent research could yield this information to other parties.

The Information Is The Subject Of Efforts Reasonable Under The Circumstances To Maintain Its Secrecy.

Mr. Henry further described the reasonable efforts under the circumstances that have been taken to maintain the secrecy of the Confidential Information. The Companies and AEPSC restrict the access of information to only those employees, officers and representatives of the Companies and AEPSC who have a need to know about such information due to their job and management responsibilities. The Companies and AEPSC limit public access to buildings housing the Confidential Information by use of security guards. Persons not employed by the Companies and AEPSC who are allowed past security guards at buildings where Confidential Information is kept are not permitted to walk within such buildings without an escort. The Companies and AEPSC's files containing the Confidential Information are maintained separately from CSP's, OPCo's and AEPSC's general records and access to those files is restricted. Within the Companies and AEPSC, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of the Companies and AEPSC who have a need to know about such information due to their job and management responsibilities. Outside CSP, OPCo and AEPSC, this information is only provided to certain persons who have a legitimate need to review the information to participate in this proceeding and who sign a confidentiality agreement.

Applicable Law

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees 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.

The criteria for determining what should be kept confidential by the Commission is well established, and the Commission also long ago recognized its statutory obligation to protect trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982).

Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)). The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act: "Trade secret" means 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 reasonable under the circumstances to maintain its secrecy.

R.C. § 1333.61(D).

This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion. Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade

secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power, through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965- TP-AEC (Finding and Order, September 21, 1989); Ohio Bell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 7, 1990).

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

The Protective Order Should Be Granted.

Applying these factors to the Companies' Confidential Information, it is clear that a protective order should be granted. It is precisely the kind of information which companies go to great lengths to keep confidential.

Further, public disclosure of such information could impair the Companies' efforts to procure fuel for their generating plants on a competitive basis, and could adversely affect their

ability to obtain terms, conditions and prices for their fuel supplies as advantageous as those that would otherwise be possible. On the other hand, public disclosure of this information is not likely to assist the Commission in carrying out its duties.

Conclusion

For the above reasons the Companies request that the Commission grant its motion (and OCC's similar motion) to maintain the redacted portions of Ms. Medine's Direct Testimony, Exhibits and Attachment under seal.

November 7, 2008

Respectfully submitted,


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Counsel for Columbus Southern Power
Company and Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Motion for Protective Order was served by E-mail upon counsel for all parties of record in this case, on this 7th day of November, 2008.


Daniel R. Conway *by J. Kenneth Shew*

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AFFIDAVIT OF JAMES D. HENRY

James D. Henry, upon his oath, deposes and states:

1. I am employed by American Electric Power Service Corporation (AEPSC), a wholly owned subsidiary of American Electric Power Company, Inc. (AEP). AEP is the parent company of Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo), collectively, the "Companies". I am employed in the Fuel, Emissions & Logistics Group (FEL) as Vice President of Fuel Procurement. In that capacity, I am responsible for the procurement of fossil fuels for AEP's eastern generating fleet, which includes power plants owned and operated by Columbus Southern Power Company, Ohio Power Company, Appalachian Power Company, Indiana Michigan Power Company and Kentucky Power Company. I am also responsible for coal and coal bed methane property optimization, reclamation oversight and activities related to AEP's discontinued mining operations.

2. I have personal knowledge of the confidential, proprietary, competitively sensitive and trade secret nature of the Confidential Information addressed herein and in the accompanying Motion through direct contact with this information and through my work with other AEPSC, OPCo and CSP employees who work directly with the Confidential Information. I have personal knowledge of efforts taken by the Companies and AEPSC to maintain the secrecy of the Confidential Information through direct contact with these efforts and through my familiarity with the efforts of other employees who work directly with these procedures.

**Description of the Confidential Information for
Which Protection is Sought**

3. CSP and OPCo are requesting that certain confidential information filed in this Cause by Emily S. Medine on behalf of the Office of the Ohio Consumers Counsel be exempted

from public disclosure as confidential, proprietary, competitively sensitive and trade secret information (the “Confidential Information”).

4. More specifically, the Confidential Information includes certain information contained in the Direct Testimony and Exhibits of Ms. Medine. A public version Ms. Medine’s Direct Testimony and Exhibits wherein the Confidential Information is redacted has also been filed in this case. For convenience, a copy of the public version of this workpaper is also included with this Affidavit. As may be seen by a review of the redacted “public” version of Ms. Medine’s Direct Testimony and Exhibits, the Confidential Information includes coal inventory information on an individual plant and total basis.

**The Information Contained in Confidential Information
Derives Independent Economic Value By
Reason of the Fact that it is Not Publicly Available**

5. The Confidential Information is not readily available in the public domain and the Companies take steps to protect this information from public disclosure. Such information is competitively sensitive and a trade secret because competitors may use such data to determine the Companies’ current and projected resource costs, detailed information about the operations of CSP and OPCo’s facilities and the price at which the Companies have secured coal for their plants. The disclosure of such costs would adversely impact the Companies because it would permit competitors to better determine how to price their services and products, including the coal provided to the Companies’ facilities. Further, the disclosure of the Company’s resource needs and costs would disincite the negotiation or competitive bidding process by allowing potential suppliers or vendors to know what the Company’s expectations are with respect to its resource needs and costs. Thus, these suppliers or vendors would have the advantage of knowing how to price their bids or negotiate to provide resources.

**The Information is Not Generally Known, Readily Ascertainable
by Proper Means by Other Persons Who Can
Obtain Economic Value from its Disclosure or Use**

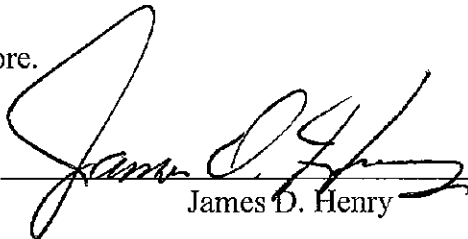
6. The Confidential Information is not available or ascertainable by other parties through normal or proper means. No reasonable amount of proper independent research could yield this information to other parties.

**The Information is the Subject of Efforts Reasonable
Under The Circumstances to Maintain Its Secrecy**

7. The Confidential Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The Companies and AEPSC restrict the access of information to only those employees, officers and representatives of the Companies and AEPSC who have a need to know about such information due to their job and management responsibilities. The Companies and AEPSC limit public access to buildings housing the Confidential Information by use of security guards. Persons not employed by The Companies and AEPSC who are allowed past security guards at buildings where Confidential Information is kept are not permitted to walk within such buildings without an escort. The Companies and AEPSC's files containing the Confidential Information are maintained separately from CSP, OPCo's and AEPSC's general records and access to those files is restricted. Within the Companies and AEPSC, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of the Companies and AEPSC who have a need to know about such information due to their job and management responsibilities. Outside CSP, OPCo and AEPSC, this information is only provided to certain persons who have a legitimate need to review the information to participate in this Cause and who sign a confidentiality agreement.

Further the Affiant sayeth nothing more.

Dated: 11/7/08


James D. Henry

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

James D. Henry appeared before me, a Notary Public in and for this County and State,
and swore that the foregoing statements are true.

Cheryl L. Strawser
Printed

Cheryl L. Strawser
Signature

My Commission Expires:

October 1, 2011

My County of Residence:

Franklin

CHERYL L. STRAWSER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 10-01-11