

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company, and The Toledo	)	
Edison Company for Authority to Establish	)	Case No. 08-935-EL-SSO
a Standard Service Offer Pursuant to	)	
Section 4928.143, Revised Code, in the	)	
Form of an Electric Security Plan.	)	

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	Case Nos. 09-21-EL-ATA
Illuminating Company, and The Toledo	)	09-22-EL-AEM
Edison Company for Approval of Rider	)	09-23-EL-AAM
FUEL and Related Accounting Authority.	)	

---

**COLUMBUS SOUTHERN POWER COMPANY'S AND  
OHIO POWER COMPANY'S  
COMMENTS ON THE CONFIDENTIALITY OF  
COMMISSION HELD DOCUMENTS**

---

**Introduction**

Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, the "Companies" or "AEP Ohio"), provide these comments as an interested party invited by the Attorney Examiner to comment on the confidentiality of certain documents in the May 23, 2011 Entry.

AEP Ohio made a public record request to the Commission concerning a document filed confidentially with the Commission 24 months prior to the request. The Attorney Examiner issued an Entry in the case declaring that the original order declaring

confidentiality was intended to provide an indefinite confidentiality protection for the information in the document. The Attorney Examiner then provided this comment period to provide interested persons an opportunity regarding whether the information in the report should remain confidential.

AEP Ohio is not seeking the disclosure of truly confidential information. The Companies made the request seeking what appeared to be public information under the Commission's rules. If the information is still confidential then the confidential portions should remain redacted according to the Commission rules. However, if the information is to be maintained as confidential then it should be properly redacted.

### **AEP Ohio Comments**

From the outset let AEP Ohio be clear that is not publicly aware of what is in the document requested. The document is a summary report by Boston Pacific, Inc. of the competitive bid process held back on May 14, 2009 (Report), determining the retail generation rates of the FirstEnergy companies. The request by AEP Ohio was to determine if anything could be learned in general about the competitive bid process and the restructuring of the electric industry in Ohio, from what AEP Ohio believed was already a public document.

A review of Rule 4901-1-24, Ohio Admin. Code, provides the background for the request. According to this rule a party may move the Commission for a protective order regarding confidential trade secret information. The rule also states that a document is

considered confidential for 18 months from the date of approval. The applicable code provision states:

(F) **Unless otherwise ordered**, any order prohibiting public disclosure pursuant to paragraph (D) of this rule **shall automatically expire eighteen months after the date of its issuance**, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.

Emphasis added.

The document requested was declared protected on May 14, 2009, meaning that the “unless otherwise ordered” by the Commission in the original Finding and Order declaring confidentiality and absent a motion seeking to extend the confidentiality, that the protective order expired on November 14, 2010. The May 14, 2009 Finding and Order did not specify a particular time period for the confidentiality. And no motion was filed in the September/October timeframe to extend the confidentiality. The Finding and Order declared a shorter time for some of the information in the report but did not declare a specific time period for the remainder of the report. In AEP Ohio’s reading of the rule that left the presumptive 18 months included in the rule as the appropriate time period for public release of the confidential information.

The Attorney Examiner found that AEP Ohio misconstrued the Commission’s Finding and Order on the length of the confidentiality accorded the Report. Subsequent Commission orders granting confidential treatment of competitive bid auction reports do not support this interpretation of the Commission’s finding. A subsequent case concerning a competitive bid process enumerated the 18 months as the appropriate time

for assumedly the same type of information to remain confidential. See Commission Case No. 10-1284-EL-UNC (October 22, 2010 Finding and Order and January 27, 2011 Finding and Order) There is no reason why the oldest of the reports done on competitive bids processes would be afforded an indefinite cloak of confidentiality protection, especially when more recent reports are limited to 18 months of protection. If anything the oldest of the reports would be the most stale and the report would be the first to be available for public inspection. AEP Ohio agrees that some documents are in need of confidential treatment much longer than 18 months. It is unaware if this document fits into that category, but subsequent orders preserving the same type of information for only 18 months leads AEP Ohio to believe that the intent of the initial protection was also for only 18 months as provided in the Commission rule.

Another issue concerning the granting of confidentiality is the absence of a public version of the Report with redactions to indicate the content of the Report. As stated above, AEP Ohio does not know what is in the report and is not trying to expose some specific supplier or taking some adversarial position with its request. There is no ability for the public to determine in any manner what is in the report. The lack of any attempt at redacting the document for public filing made it difficult to identify if full disclosure was even necessary. Complete redaction of the document is not a practice anticipated by the Commission's rules.

The Commission's rule encourages minimizing of the items filed as confidential. O.A.C. 4901-1-24(D)(1) states:

(1) All documents submitted pursuant to paragraph (D) of this rule should be filed with **only such information redacted as is essential** to prevent disclosure of the allegedly confidential information. Such redacted

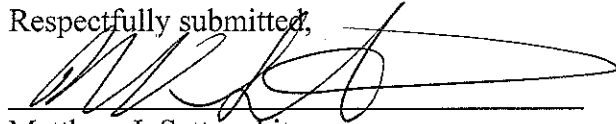
documents should be filed with the otherwise required number of copies for inclusion in the public case file.

The document filed as the Report in the docket is nothing but an indication that confidential treatment was requested. The motion filed seeking the confidentiality also did not have a redacted public copy either. The record is void of any indication of anything in the document.

### **Conclusion**

AEP Ohio did not think it was requesting anything out of the ordinary when requesting a document that under a simple reading of the Commission's rules appeared to be a public document open to public inspection. That said AEP Ohio understands that some documents have a longer confidential shelf life than 18 months. And as companies that file confidential documents, AEP Ohio respects the Commission's attempt to ensure confidentiality is maintained. It would appear under the Commission rules and subsequent actions that this Report would be stale and available for public review. But if the Commission determines otherwise then at a minimum the public is due a properly redacted version ensuring only those items that are truly confidential be redacted.

Respectfully submitted,



Matthew J. Satterwhite

Steven T. Nourse

American Electric Power Corporation

1 Riverside Plaza, 29<sup>th</sup> Floor

Columbus, Ohio 43215-2373

Telephone: (614) 716-1608

Facsimile: (614) 716-2950

[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

[stnourse@aep.com](mailto:stnourse@aep.com)

Counsel for Columbus Southern Power  
Company and Ohio Power Company

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

**Commission of Ohio Docketing Information System on**

**6/7/2011 2:27:57 PM**

**in**

**Case No(s). 08-0935-EL-SSO**

Summary: Comments CSP and OPC Comments electronically filed by Mr. Matthew J Satterwhite on behalf of American Electric Power Service Corporation