

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Authority to) Case No. 11-346-EL-SSO
Establish a Standard Service Offer) Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,)
In the form of an Electric Security Plan.)

In the Matter of the Application of)
Columbus Southern Power Company and) Case No. 11-349-EL-AAM
Ohio Power Company for Approval of) Case No. 11-350-EL-AAM
Certain Accounting Authority.)

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

Columbus Southern Power Company and Ohio Power Company (collectively, "AEP Ohio" or "the Companies"), pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code (O.A.C.), respectfully request that the Public Utilities Commission of Ohio (Commission) issue a protective order so that certain confidential information in the Direct Testimonies of FirstEnergy Solutions Corp. ("FES") witnesses Michael M. Schnitzer and Jonathan A. Lesser; Exelon Generation Company, LCC ("Exelon") witness Joseph Dominguez; and The Office of the Ohio Consumers' Counsel (OCC) witness Anthony J. Yankel is exempted from public disclosure as confidential, proprietary, competitively sensitive, and trade secret information. The reasons supporting this motion (and which also support the motions for protective order that FES, Exelon, and OCC filed on July 25, 2011) are provided in the attached memorandum in support.

COLUMBUS/SH1592929V.1

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Respectfully Submitted,

per authorization
Steven T. Nourse / Eric B. Heller

Steven T. Nourse
Matthew J. Satterwhite
American Electric Power
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
Telephone: (614) 716-1608
Facsimile: (614) 716-2950
stnourse@aep.com
mjsatterwhite@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
41 S. High Street
Columbus, Ohio 43215
Telephone: (614) 227-2100
Facsimile: (614) 227-2270
dconway@porterwright.com

Counsel for Columbus Southern Power
Company and Ohio Power Company

MEMORANDUM IN SUPPORT

AEP Ohio requests that certain confidential information contained in and/or attached to the Direct Testimonies of FES witnesses Messrs. Schnitzer and Lesser, Exelon witness Mr. Dominguez, and OCC witness Mr. Yankel be protected from public disclosure. The information for which protection is sought includes:

Michael M. Schnitzer (FES):

- AEP Ohio's forecast for fuel expenditures (and related analyses) (*see* Schnitzer Testimony at p. 16, lines 7-8; 64, line 14);
- The potential impacts on ESP price from adding in costs associated with certain proposed riders that FES asserts were omitted (*see id.* at p. 16, lines 9-10, 15; p. 17; p. 98);
- AEP Ohio's timeline for environmental compliance and resulting projected capacity and projected EICCR rates through 2020 (*see id.* at p. 68; p. 70, lines 6-15; p. 72, lines 2, 5, 6, 8, and 9; EXC RPD 3-012 Attachment 1, pp. 6 and 25; EXC RPD 3-014 Attachment 4, Selected Pages);
- Projected Facility Closure Cost Recovery (FCCR) Rider rates through the ESP period (*see id.* at p. 79, line 12);
- Projected Carbon Capture and Sequestration Rider rates through the ESP period and related analyses (*see id.* at p. 80, line 7; p. 81, line 9);
- AEP Ohio's projected reserve margins through 2028-2029 (*see id.* at pp. 86-87, n. 142; EXC RPD 3-012 Attachment 1, p. APP-12);
- FES's estimate of the impact of the Pool Termination or Modification Provision on rates in 2014 (*see id.* at p. 90, line 4 and n. 149; p. 91, line 3);
- AEP Ohio's projected earnings and margins from off-system sales in 2011 (*see id.* at p. 112; OCC RPD-24 Attachment 1);
- The witness's proposed corrections to Total Generation Service Price under the ESP (*see id.* at Exhibit MMS-2);

Jonathan A. Lesser (FES):

- Turning Point Solar's projected capacity factor (*see* Lesser Testimony at p. 77, line 23) and projected output (*see id.* at p. 78, lines 4 and 5);

Joseph Dominguez (Exelon):

- The reasons for, terms of, and responses to Exelon's past offerings for energy and capacity to American Electric Power Service Corporation (AEPSC) (Dominguez Testimony at pp. 6-7; 21; 23; 24, lines 11-14; 25, lines 11-16; 26, lines 1-9; and Confidential Exhibit JD-1);
- The price at which Exelon has been able to commit capacity into the PJM RPM auction (*see id.* at p. 21);
- Whether Exelon has been and would be willing to sell energy to AEPSC (*see id.* at p. 22; p. 24, lines 17-19; p. 32, lines 3-5);
- The "corrected" ESP rate calculated by FES witness Mr. Schnitzer and the competitive benchmark testified to by AEP Ohio witness Ms. Thomas (*see id.* at p. 26, lines 10-18; p. 32, line 6);
- Why Exelon chose not to submit bids for the ESP period (*see id.* at p. 26, lines 19-22); what those bids would have been, had they been submitted (*see id.* at p. 27, lines 1-5); and how those bids compared to Exelon's past offerings for energy and capacity to AEPSC (*see id.* at p. 27, lines 6-18);
- The ability of other companies to offer energy and capacity to AEPSC at prices lower than the proposed ESP rate (*see id.* at p. 27, lines 19-23; p. 28, lines 1-2);
- Whether the Commission had notice that AEP Ohio received bilateral wholesale offers for terms that could potentially apply to the reference period of 2012 through 2014, or other energy or capacity offers (*see id.* at p. 31, lines 6-9; p. 32, lines 12-13);
- AEP Ohio's reserve margin through 2028-2029, planned retirements in that period, and capacity position (*see id.* at pp. 33-34, n. 37);

Anthony J. Yankel (OCC):

- AEP Ohio's projected load data for 2012, and comparisons to its actual load data for 2007 (Yankel Testimony at pp. 22-23 and n.15; pp. 24-25 and n. 16; p. 27; p. 28);
- AEP Ohio's projected sales for 2012 (*id.* at p. 29).

This information has been kept confidential and, as a result, retains substantial economic value to the Companies by being kept confidential. It would be costly and time-consuming for third parties to replicate the information on their own, without access to the information.

Allowing unfettered public access to the information would enable third parties to replicate the constrained option model at little or no cost. Accordingly, release of the information to the public would significantly reduce, if not eliminate, the value that the information has by being kept confidential and, thus, would cause harm to AEP Ohio.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Public Utilities Commission of Ohio 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 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. The 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); OhioBell 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), 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.

These factors were adopted by the Supreme Court of Ohio in State ex rel. The Plain Dealer v. Ohio Dept of Ins. (1997), 80 Ohio St3d 513,524-525.

Applying these factors to the information redacted from the pre-filed testimony of FES witnesses Messrs. Schnitzer and Lesser, Exelon witness Mr. Dominguez, and OCC witness Mr. Yankel demonstrates that protection from disclosure is appropriate. As noted above, the information includes a detailed description of the Companies' projected fuel expenditures, ESP rates, load data, reserve margins, and sales; the operating characteristics of their planned Turning Point Solar project; and the Companies' confidential dealings with independent power producers. That information is the product of original research and development, has been kept confidential, and, as a result, retains substantial economic value to the Companies by being kept confidential. It would be costly and time-consuming for third parties to replicate the information on their own, without access to the information. Allowing unfettered public access to the information would enable third parties to replicate the constrained option model at little or no cost. Accordingly, release of the information to the public would significantly reduce, if not eliminate, the value that the information has by being kept confidential and, thus, would cause harm to AEP Ohio.

For the reasons provided above, AEP Ohio requests that the Commission grant its motion, and FES's, Exelon's, and OCC's motions, for a protective order to maintain the confidentiality of the information redacted from the pre-filed testimony of FES witnesses Messrs. Schnitzer and Lesser, Exelon witness Mr. Dominguez, and OCC witness Mr. Yankel, by ordering that that testimony be kept under seal.

Respectfully Submitted,

Steven T. Nourse / per authorization
Erin A. Heller

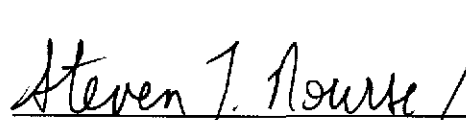
Steven T. Nourse
Matthew J. Satterwhite
American Electric Power
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
Telephone: (614) 716-1608
Facsimile: (614) 716-2950
stnourse@aep.com
mjsatterwhite@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
41 S. High Street
Columbus, Ohio 43215
Telephone: (614) 227-2100
Facsimile: (614) 227-2270
dconway@porterwright.com

Counsel for Columbus Southern Power
Company and Ohio Power Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Columbus Southern Power Company's and Ohio Power Company's Motion for Protective Order has been served upon the below-named counsel and Attorney Examiners via electronic mail this 2nd day of August, 2011.

 *per authorization*
Steven T. Nourse

Samuel C. Randazzo
Joseph E. Olier
Frank P. Darr
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com

Dorothy K. Corbett
Associate General Counsel
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Dorothy.Corbett@duke-energy.com

Richard L. Sites
General Counsel & Senior Director
of Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Philip B. Sineneng
Thompson Hine LLP
41 South High Street
Suite 1700
Columbus, OH 43215
Philip.Sineneng@ThompsonHine.com

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Terry L. Etter
Maureen R. Grady
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
etter@occ.state.oh.us
idzkowski@occ.state.oh.us
grady@occ.state.oh.us

Terrence O'Donnell
Christopher Montgomery
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
todonnell@bricker.com
cmontgomery@bricker.com

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com

John W. Bentine
Mark S. Yurick
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus Ohio 43215
jbentine@cwsllaw.com
myurick@cwsllaw.com
Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

James F. Lang
Laura C. McBride
N. Trevor Alexandor
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, OH 43215
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org

Jay E. Jadwin
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
jejadwin@aep.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpeticoff@vorys.com

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave. NW
Washington, DC 20004
wmassey@cov.com

Pamela A. Fox
Law Director, the City of Hilliard, Ohio
pfox@hilliardohio.gov

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215
cmiller@szd.com
gdunn@szd.com
ahaque@szd.com

Kenneth P. Kreider
Keating Muething & Klekamp PLL
One East Fourth Street
Suite 1400
Cincinnati, OH 45202
kpkreider@kkmklaw.com

Michael J. Settineri
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mjsettineri@vorys.com


Henry W. Eckhart
Shannon Fisk
2100 Chambers Road, Suite 106
Columbus, OH 43212
henryeckhart@aol.com

Jesse A. Rodriguez
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348
jesse.rodriguez@exeloncorp.com

Sandy I-ru Grace
Exelon Business Services Company
101 Constitution Avenue NW
Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
BarthRoyer@aol.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
Gary.A.Jeffries@dom.com



Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
tsantarelli@elpc.org

Trent A. Dougherty
Nolan Moser
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
camille@theoec.org
nolan@theoec.org
trent@theoec.org

Holly Rachel Smith
Holly Rachel Smith, PLLC
3803 Rectortown Road
Marshall, VA 20115
holly@raysmithlaw.com

Emma F. Hand
Douglas G. Bonner
Keith Nusbaum
SNR Denton US LLP
1301 K Street, Suite 600, East Tower
Washington, DC 20005-3364
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
keith.nusbaum@snrdenton.com

David A. Kutik
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
E-mail: dakutik@jonesday.com

Gregory J. Poulos
EnerNOC, Inc.
101 Federal Street, Suite 1100
Boston, MA 02110
E-mail: gpoulos@enernoc.com

Allison E. Haedt
Jones Day
P.O. Box 165017
Columbus, OH 43216-5017
E-mail: aehaedt@jonesday.com

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