

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 )  
Establish a Standard Service Offer )  
Pursuant to §4928.143, Ohio Rev. Code, )  
In the form of an Electric Security Plan. )

PUCO  
Case No. 11-346-EL-SSO  
Case No. 11-348-EL-SSO

In the Matter of the Application of )  
Columbus Southern Power Company and )  
Ohio Power Company for Approval of )  
Certain Accounting Authority. )

Case No. 11-349-EL-AAM  
Case No. 11-350-EL-AAM

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

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Columbus Southern Power Company and Ohio Power Company, pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code (O.A.C.), respectfully request that the Public Utilities Commission of Ohio issue a protective order keeping confidential the portion of the Deposition of Laura J. Thomas, taken August 10, 2011, that is the subject of and was filed contemporaneously with FirstEnergy Solutions Corp.'s ("FES") August 29, 2011 motion for protective order. The reasons supporting this motion (and also supporting FES's motion) are provided in the attached memorandum in support.

Respectfully submitted,

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## **MEMORANDUM IN SUPPORT**

Columbus Southern Power Company and Ohio Power Company (collectively, “AEP Ohio” or “the Companies”) request that a portion of the Deposition of Laura J. Thomas, which FirstEnergy Solutions Corp. (“FES”) filed contemporaneously with its August 29, 2011 motion for protective order, be protected from public disclosure. The information for which protection is sought includes detailed discussion of, and includes as an exhibit, AEP Ohio’s forecast for fuel expenditures, which the Companies produced to FES during discovery pursuant to a protective agreement between the parties. The information is the product of original research and development by AEP Ohio, 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. Allowing unfettered public access to the information would enable third parties to replicate AEP Ohio’s forecasted expenditures at little or no cost and would give third parties inappropriate access to competitively sensitive business information about the Companies. 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 (the “Commission”) or certain designated employees may issue an order 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 used to determine what the Commission should keep confidential 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 Uniform Trade Secrets Act defines “trade secret” to mean: 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 that 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 contained in the relevant portion of Ms. Thomas' deposition transcript demonstrates that protection from disclosure is appropriate. As noted above, the information includes a detailed description AEP Ohio's forecast for fuel expenditures and also includes an actual copy of the forecast. AEP Ohio utilizes this forecast to estimate its costs of providing SSO service to customers. The 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 AEP Ohio's forecasted expenditures at little or no cost and would grant third parties inappropriate access to competitively sensitive business information about the Companies. 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 motion, for a protective order to maintain the confidentiality of the information contained in the portion of the Deposition of Laura J. Thomas that FES filed contemporaneously with its August 29, 2011 motion for protective order, by ordering that the deposition excerpt be kept under seal.

Respectfully Submitted,

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## 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 6th day of September, 2011.

  
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