

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals	) ) ) )	Case No. 10-2376-EL-UNC
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	) ) ) ) ) )	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
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders	) ) ) )	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders	) ) ) )	Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company	) ) ) )	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	) ) ) ) )	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	) ) ) ) )	Case No. 11-4921-EL-RDR

**JOINT APPLICATION FOR REVIEW THROUGH AN INTERLOCUTORY APPEAL
OF THE ATTORNEY EXAMINER'S NOVEMBER 18, 2011 ENTRY OF COLUMBUS
SOUTHERN POWER COMPANY, OHIO POWER COMPANY, THE OHIO HOSPITAL
ASSOCIATION, AND PAULDING WIND FARM LLC**

Pursuant to Rule 4901-1-15(A)(1) of the Ohio Administrative Code (O.A.C.), Columbus Southern Power Company, Ohio Power Company, the Ohio Hospital Association, and Paulding Wind Farm LLC (collectively, “Joint Applicants”) respectfully submit this Application for Review through an Interlocutory Appeal of the Attorney Examiner’s November 18, 2011 Entry,¹ which orders the disclosure of certain documents that have been deemed responsive to a public-records request to the Public Utilities Commission of Ohio (“Commission”). The Joint Applicants request that the Commission overrule the Attorney Examiner’s order to the extent that it calls for the public release of a document, identified by the Commission as Section Number 92, which contains a copy of a confidential term sheet containing AEP Ohio’s settlement communications and trade secret information. To the best of AEP Ohio’s knowledge, this term sheet was not included in Section Number 92 when AEP Ohio’s representatives inspected the documents and recommended Section Number 92 for disclosure in redacted form (rather, Section Number 92 reviewed by AEP Ohio was merely a cover memo that did not include an attachment that was a confidential settlement offer). The Joint Applicants would not have recommended disclosure of the term sheet because, as detailed in Joint Movants’ original and supplemental Motions for Protective Orders, the term sheet contains AEP Ohio’s highly sensitive financial, business, and trade secret information. Further, the Attorney Examiner’s November 18, 2011 Entry specifically distinguishes between the types of documents to be produced on November 25 with redactions and the other core settlement communications – like the term sheet – which the Attorney Examiner is still evaluating. Finally, the term sheet, even in

¹ Pursuant to O.A.C. Rule 4901-1-15(C), a copy of the November 18, 2011 Entry is attached as Exhibit A.

its redacted form, contains highly sensitive business, financial, and trade secret information that must not be disclosed.

The reasons supporting this Interlocutory Appeal are more fully explained in the attached Memorandum in Support.

Respectfully submitted jointly,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In the November 18, 2011 Entry, the Attorney Examiner ordered that certain documents that the Joint Movants to the October 19, 2011 Supplemental Joint Motion for Protective Orders (“Supplemental Joint Motion”) designated as containing references to AEP Ohio’s highly sensitive financial and business information be disclosed to the public in redacted form on November 25, 2011. November 18, 2011 Entry at ¶ 14. The Attorney Examiner further directed that interested parties were permitted to review *in camera* the documents that the Commission plans to disclose on November 25. *Id.* The Supplemental Joint Motion further requested that certain other documents that contain confidential AEP Ohio term sheets or other parties’ redline markups of AEP Ohio’s term sheets that contain or reflect AEP Ohio’s highly sensitive financial and business information not be released. The Attorney Examiner directed in his November 18 Entry that he will rule on the release of those documents in a future entry. *Id.* at ¶ 15. One such confidential AEP Ohio term sheet, however, has been included in the group of documents that the Attorney Examiner plans to disclose on November 25, 2011. That term sheet contains highly sensitive financial, business, and trade secret information about AEP Ohio and should not be disclosed, even in redacted form.

II. LAW AND ARGUMENT

A. To The Best Of AEP Ohio’s Knowledge, The Term Sheet At Issue Was Not Part Of The Document To Which It Is Now Attached During The Company’s First Document Inspection.

Counsel for AEP Ohio and a representative of the Company inspected the documents that the Commission designated as responsive to the public records request both before the Joint Movants filed the Supplemental Joint Motion and after the Attorney Examiner issued the

November 18, 2011 Entry. (Affidavit of L. Bradfield Hughes (“Hughes Aff.”) at ¶ 3, 7.)

Representatives of the Company first reviewed unredacted documents designated for disclosure on October 13, 2011. (*Id.* at ¶ 3.) On November 22 and 23, 2011, they reviewed the redacted documents that are to be publicly disclosed on November 25, 2011. (*Id.* at ¶ 7.)

The October 13 review took place at the Commission, in a conference room equipped with a laptop computer and projection screen. (*Id.* at ¶ 4.) Company representatives were permitted to review electronic images of the 220 documents that the Commission had deemed responsive to the public records request, but were not permitted to review hard copies of the documents. (*Id.*) During this electronic review, they recorded basic information about each document, such as the date, sender, recipient, and subject of the “top” or most recent e-mail in each e-mail string. (*Id.*) They did not, however, have sufficient time to take detailed notes about each and every e-mail and attachment included within the 220 settlement communications. (*Id.*) Within the time allotted for the review, they recorded as many notes as they could about each document on an Excel spreadsheet that was later used by the Joint Movants to identify, pursuant to direction in the Attorney Examiner’s October 7, 2011 Entry, the specific documents for which the Joint Movants would seek protective orders from the Commission. (*Id.* ¶ 5.) Among other notes logged for each of the 220 settlement communications was whether the document in question was an e-mail. (*Id.*) If so, the Company’s reviewers also noted whether the e-mail included any referenced attachment. (*Id.*)

As Mr. Hughes avers, the vast majority of the e-mails reviewed by the Company’s representatives on October 13 did not include any referenced attachments within the same Section Number or slip sheet as their cover e-mails — the attachments were generally treated separately from the cover e-mails and given separate (non-sequential) Section Numbers and slip

sheets by the Commission before the images were produced for review. (*Id.*) In other words, e-mails were, for the most part, assigned separate Section Numbers from any referenced attachments. (*Id.*)

On the Excel spreadsheet, in the entry correlating to the document identified with the slip sheet bearing Section Number 92, the Company's representatives recorded "no" in the column that recorded whether or not each e-mail logged included its referenced attachment. (*Id.* at ¶ 6.) Based on that entry in the spreadsheet and the Company's representatives' best recollection, the electronic image that they reviewed for Section Number 92 on October 13, 2011 was a cover e-mail that lacked its referenced attachment. (*Id.*) And it was on that basis that Joint Movants identified Section Number 92 in the Supplemental Motion for Protective Order as a document that could be released to the public, subject to redaction, without disclosing core settlement communications or trade secrets.

When the Company's representatives returned to the Commission on November 22, 2011 to inspect the redacted documents to be released pursuant to paragraph 14 of the November 18, 2011 Entry, they were provided with hard copies, rather than electronic copies, of the documents slated for public release. (*Id.* at ¶ 7.) The representatives discovered that the hard copy version of Section Number 92 provided on November 22 included its referenced attachment – a copy of an AEP Ohio term sheet that the representatives do not recall seeing, and their records do not reflect as being included, in Section Number 92 during the October 13, 2011 review. (*Id.* at ¶ 8.)²

² It should also be noted that, during the October review, two different documents bearing Section Number 147 were provided for electronic review and no document bearing Section Number 149 was provided. The Company's representatives designated the two documents bearing Section Number 147 as 147-1 and 147-2, respectively, in the Supplemental Joint Motion for Protective Order. The Joint Movants included 147-1 within the category of highly

The Joint Applicants believe this was caused by an administrative error/oversight and, had AEP Ohio's representatives seen that a term sheet was attached to Section Number 92 during the October 13 document inspection, the Joint Movants would not have designated Section Number 92 as a document that the Joint Movants approved of the Commission disclosing publicly upon redaction. As the Joint Movants explained in their initial and supplemental joint motions for protective orders, and as will be explained below, the information contained in AEP Ohio's term sheets is trade secret information that the Commission must protect. To the extent that release of the confidential term sheet is based on the Joint Movants' designation of Section Number 92 as being subject to release, the Commission should acknowledge that such designation was based on the version of Section Number 92 made available for review on October 13 and was not based on the confidential attachment subsequently discovered to be part of Section Number 92 during the November 22 review.

B. The November 18, 2011 Entry Provides For Further Evaluation of Term Sheets Like The One Included In Section Number 92, Not For Disclosure On November 25.

That the term sheet presently included for public disclosure in the Section Number 92 document should not be disclosed is also apparent from the Attorney Examiner's November 18, 2011 Entry. In that Entry, the Attorney Examiner explained that the Joint Movants designated two different categories of documents in their Supplemental Joint Motion: (1) documents containing confidential settlement communications and / or references to AEP Ohio's highly

confidential term sheets subject to Paragraph 18 of the supporting Affidavit. The Joint Movants included 147-2 (a cover e-mail) within the category of documents that should be redacted before public disclosure, and requested the opportunity to review any document bearing Section Number 149. During the November review of redacted hard copies, however, it became apparent that the Commission assigned Section Number 149 to the document that Joint Movants had previously designated as Section Number 147-2. During the November review, the Attorney Examiner agreed that the confidential term sheet bearing Section Number 147 would be the subject of a later Entry and would not be publicly disclosed on November 25.

sensitive financial and business information that should be redacted before public disclosure (138 documents), and (2) documents that represent confidential AEP Ohio term sheets or other parties' redline markups of the term sheets that contain or reflect AEP Ohio's highly sensitive financial and business information and that cannot be released in any form. November 18, 2011 Entry at ¶ 4.

To determine whether disclosure of the two categories of documents was appropriate, the Attorney Examiner applied the Commission's well-established tests for determining whether information is a trade secret and, therefore, prohibited from being publicly released. *Id.* at ¶ 11. The Attorney Examiner found that "the documents identified in paragraph 19 of the October 19, 2011, supplemental joint motion for protective order" – those documents designated by the Joint Movants as suitable for disclosure with redactions – "do include information that constitutes trade secret information." *Id.* at ¶ 12. With respect to those documents, however, the Attorney Examiner further found that the documents could be released in redacted form. *Id.* at ¶ 14.

The Attorney Examiner then concluded: "The attorney examiner will rule on the release of the remaining documents" – the documents that represent confidential term sheets and markups of term sheets that contain or reflect AEP Ohio's highly sensitive financial and business information – "in a future entry." (Emphasis added.) It is clear from the November 18, 2011 Entry that only those documents in the first category designated for redaction by the Joint Movants were intended to be redacted and disclosed on November 25, 2011. Ruling on the disclosure of term sheets like the one presently included in Section Number 92 was to be deferred to a later entry. The Commission should apply the reasoning and substance of the Attorney Examiner's November 18, 2011 Entry and should conclude that disclosure of the term sheet in Section Number 92 is not appropriate at this time.

C. The Term Sheet Included In Section Number 92 Contains Highly Sensitive Financial, Business, And Trade Secret Information That Must Not Be Publicly Disclosed And Are Not Required To Be Disclosed.

The Joint Applicants hereby incorporate by reference the initial Joint Motion for Protective Orders of Signatory Parties to the Sept. 7, 2011 Stipulation Filing as Joint Movants (“Joint Motion”) and the Supplemental Joint Motion, and the arguments contained in each motion, as if fully rewritten. As the Joint Movants explained in those motions, AEP Ohio’s term sheets and related information is trade secret information that may not be publicly disclosed. Indeed, Ohio law exempts from disclosure under the Public Records Act any business information that derives potential economic value from not being known by others and is the subject of reasonable efforts to maintain its secrecy. (Jt. Mot. at 9-10; Supp. Jt. Mot. at 10-11.) Further, much of the information contained in the term sheet presently included in Section Number 92 satisfies the multifactor test that Ohio courts apply to determine whether business information constitutes a “trade secret.” (Supp. Jt. Mot. at 11-16.) Finally, numerous other states have found that trade secrets submitted to public agencies during confidential settlement negotiations – like the trade secrets contained in the term sheet at issue here – are exempt from disclosure under public records acts because release of such materials would impair agency functions and chill critical settlement negotiations. (Jt. Mot. at 6; Supp. Jt. Mot. at 16-18.)

As the Joint Movants also explained in those motions, confidential settlement communications that parties share with Commission Staff during negotiations are not “records” under R.C. 149.011(G), and therefore are not required to be disclosed. The parties’ settlement communications with Staff also are exempt from disclosure under R.C. 149.43(A)(1)(v) and R.C. 4901.16, which prohibits Staff from divulging “any information” respecting the “transaction, property, or business of any public utility.” For these reasons, and for the other reasons

previously stated in the initial and supplemental joint motions for protective orders. the Commission must not permit the term sheet in Section Number 92 to be disclosed to the public.

III. CONCLUSION

For the foregoing reasons, The Joint Applicants respectfully request that the Commission overrule the Attorney Examiner's November 18, 2011 Entry to the extent that it orders the public disclosure of the term sheet included in the document designated Section Number 92.

Respectfully submitted jointly,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Application for Review through Interlocutory Appeal was served by electronic mail upon the individuals listed below this 23rd day of November, 2011.

//s/ Christen M. Moore

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COLUMBUS/1610176v.2

Exhibit A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Power Company and Columbus Southern) Case No. 10-2376-EL-UNC
Power Company for Authority to Merge)
and Related Approvals.)

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 Section 4928.143, Revised)
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.)

In the Matter of the Application of)
Columbus Southern Power Company to) Case No. 10-343-EL-ATA
Amend its Emergency Curtailment)
Service Riders.)

In the Matter of the Commission Review)
of the Capacity Charges of Ohio Power) Case No. 10-344-EL-ATA
Company and Columbus Southern Power)
Company.)

In the Matter of the Application of)
Columbus Southern Power Company for)
Approval of a Mechanism to Recover) Case No. 11-4920-EL-RDR
Deferred Fuel Costs Ordered Under)
Section 4928.144, Ohio Revised Code.)

In the Matter of the Application of Ohio)
Power Company for Approval of a)
Mechanism to Recover Deferred Fuel) Case No. 11-4921-EL-RDR
Costs Ordered Under Section 4928.144,)
Ohio Revised Code.)

ENTRY

The attorney examiner finds:

- (1) By entry issued October 7, 2011, the attorney examiner set forth a procedure to afford all persons interested the opportunity to review *in camera* the documents subject to a public records request and to comment on the motion for protective treatment docketed on September 30, 2011, in this matter. Interested persons were given until October 14, 2011, to complete the *in camera* review and any motions seeking to provide additional, more specific arguments regarding a certain document or documents were to be filed by October 19, 2011. Memoranda contra were due on October 24, 2011.
- (2) On October 19, 2011, a supplemental joint motion for protective order and memorandum in support was filed by counsel for Columbus Southern Power Company and Ohio Power Company, Ohio Energy Group, Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., Exelon Generation Company, LLC, Duke Energy Retail Sales, LLC, Ohio Hospital Association, AEP Retail Energy Partners LLC, Paulding Wind Farm LLC, EnerNoc, Inc., Environmental Law and Policy Center, Kroger Company, and Association of Independent Colleges and Universities of Ohio (collectively "joint movants"). Joint movants contend that during their *in camera* review of the documents subject to the public records request, they have identified 37 documents for which protective treatment is no longer sought and 183 documents for which they renew the motion for protective order.
- (3) No memoranda contra the October 19, 2011, supplemental joint motion for protective order were filed. However, on October 19, 2011, FirstEnergy Solutions Corporation, a non-signatory party to the stipulation in this proceeding, filed a memorandum in support of the issuance of a protective order.
- (4) By entry issued October 24, 2011, the attorney examiner directed the release of the 37 documents that the joint movants identified as no longer being subject to a motion for protective treatment subject to the public records request. The remaining 183 documents were subject to further *in camera* review by the attorney examiner.

Of the remaining 183 documents, joint movants claimed that 138 of the documents contain the parties' confidential settlement communications and/or references to AEP's highly sensitive financial and business information that should be redacted before any public disclosure. These 138 documents were denoted in paragraph 19 of the joint movants' October 19, 2011, supplemental joint motion for protective order. The remaining 45 documents, according to the joint movants and specified in paragraph 18 of the October 19, 2011, supplemental joint motion for protective order, represent confidential AEP-Ohio term sheets or other parties' redline markups of the AEP-Ohio term sheets that contain or reflect AEP-Ohio's highly sensitive financial and business information that can not be released in any form.

- (5) Joint movants argue that the state law prohibition set forth in Section 4901.16, Revised Code, clearly prohibits the disclosure of information acquired by the Commission staff regarding the transaction, property, or business of AEP-Ohio obtained by staff while acting as a party to this proceeding. As such, the documents subject to the public records request satisfy the state law exemption of Section 149.43(A)(1)(v), Revised Code, and are, therefore, not public records subject to disclosure. Joint movants also assert that the documents at issue also qualify as trade secrets pursuant to Section 1333.61(D), Revised Code, as the documents were marked confidential during the negotiations, the parties opened their dialogue by expressing a common understanding that the matters discussed are confidential, and the parties maintained the confidentiality of those discussions and documents exchanged in the effort to reach a negotiated result. Those documents include, according to joint movants, elements of AEP-Ohio's business that are highly competitively sensitive and confidential, including rate and business structures. Next, joint movants assert that the confidential settlement documents shared in negotiations are not public records under Section 149.011(G), Revised Code, as the documents do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the Commission. Finally, joint movants maintain that existing case law does not concern preliminary settlement communications resembling those that the joint movants seek here to protect as confidential. In fact, joint movants claim that the settlement communications involved here constitute trial

preparation records exempt from disclosure under Section 149.43(A)(1)(g), Revised Code.

- (6) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has held that records of communications between attorneys and their state government clients pertaining to attorney's legal advice are excepted from disclosure under Section 149.43, Revised Code, as release of such records is prohibited by state law. *State ex rel. Thomas v. Ohio State Univ.* (1994), 71 Ohio St.3d 245. In addition, the Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.
- (7) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), allows the attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (8) Ohio law defines a trade secret as "information . . . 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." Section 1333.61(D), Revised Code.
- (9) The Ohio Supreme Court has found that an *in camera* inspection is necessary to determine whether materials are entitled to protection from disclosure. *State ex re. Allright Parking of Cleveland Inc. v. Cleveland* (1992), 63 Ohio St.3d 772. The attorney examiner has conducted an *in camera* review and determined that the following documents contain privileged

attorney/client communications between and among Staff and its counsel: 8, 18, 75, 79, 80, 81, 82, 83, 97, 99, 100, 102, 109, 119, 122, 123, 137, 138, 140, 142, and 144. Accordingly, the attorney examiner finds that these documents are not subject to disclosure under Section 149.43, Revised Code. Notwithstanding that the identified documents are exempted from disclosure as privileged attorney/client communications pursuant to Section 149.43, Revised Code, the attorney examiner notes that the staff, in the interest of public disclosure and openness, has agreed that the identified documents can be released subject to any redaction for trade secrets as discussed further below.

- (10) Rule 4901-1-24(D)(1), O.A.C., also provides that, where confidential material can be reasonably redacted from a document without rendering the remaining document incomprehensible or of little meaning, redaction should be ordered rather than wholesale removal of the document from public scrutiny. Thus, in order to determine whether to issue a protective order, it is necessary to review the materials in question; to assess whether the information constitutes a trade secret under Ohio law; to decide whether nondisclosure of the materials will be consistent with the purposes of Title 49, Revised Code; and to evaluate whether the confidential material can be reasonably redacted. Further, the Ohio Supreme Court recently upheld the Commission's determination that trade secret information included information such as: (1) customer names, (2) account numbers, (3) customer Social Security numbers or employer identification numbers, (4) contract termination dates or other termination provisions, (5) financial consideration in each contract, (6) price of generation specified in each contract, (7) volume of generation covered by each contract, and (8) terms under which options may be exercisable. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604.
- (11) Based upon the *in camera* review of the materials in question, the attorney examiner will now consider each of the two tests to assess whether trade secrets are present. Should the attorney examiner find trade secrets to be present, the attorney examiner will then consider whether, based on the review of the documents, nondisclosure will be consistent with the purposes

expressed in Title 49. Finally, the attorney examiner will evaluate the possibility of redaction, if necessary.

- (12) Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the documents identified in paragraph 19 of the October 19, 2011, supplemental joint motion for protective order do include information that constitutes trade secret information. The attorney examiner notes that retail electric generation service is a competitive service in this state. Section 4928.03, Revised Code. Therefore, consistent with the Court's decision in *Ohio Consumers Counsel, supra*, the attorney examiner finds that the following information should be considered as trade secrets: (1) customer names, (2) customer load information, (3) rates and prices charged to individual customers, (3) proposed rates and components of proposed rates, (4) time periods during which proposed rates would be charged, (5) volume of customer load or generation subject to proposed rates, and (6) specific terms and conditions under which proposed rates may be obtained.
- (13) Release of this information is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. In making this determination, the attorney examiner notes that the joint movants have argued that the documents were marked confidential during the negotiations, the parties opened their dialogue by expressing a common understanding that the matters discussed were confidential, and the parties maintained the confidentiality of those discussions and documents exchanged in the effort to reach a negotiated result. Those documents include, according to joint movants, elements of AEP-Ohio's business that are highly competitively sensitive and confidential, including rate and business structures. The joint movants arguments in this regard are unopposed.
- (14) Having determined that certain documents contain trade secret information, the attorney examiner now must evaluate whether

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

the documents containing trade secrets can be reasonably redacted to remove the confidential information contained therein without rendering the remaining document incomprehensible or of little meaning. The attorney examiner does find that it is possible to redact the identified documents and release a redacted version of the documents. This determination is in accord with the joint movants' assertion that the identified documents could be released in a redacted form. Therefore, the identified documents will be released in redacted form on November 25, 2011, unless otherwise ordered. Parties to the proceeding may review *in camera* at the offices of the Commission the redacted documents before November 25, 2011.

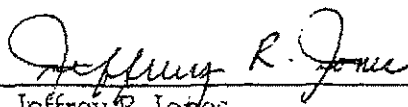
- (15) The attorney examiner will rule on the release of the remaining documents in a future entry.

It is, therefore,

ORDERED, That, unless otherwise ordered by the Commission, the documents identified in finding 12 be released in redacted form on November 25, 2011. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in these matters.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Jeffrey R. Jones
Attorney Examiner

/vrm ⁷¹⁰

Entered in the Journal
NOV 18 2011

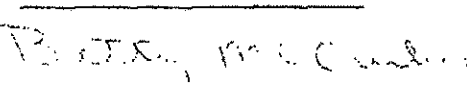

Betty McCauley
Secretary

Exhibit B

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals	) ) ) )	Case No. 10-2376-EL-UNC
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	) ) ) ) ) )	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
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders	) ) ) )	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders	) ) ) )	Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company	) ) ) )	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	) ) ) ) )	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	) ) ) ) )	Case No. 11-4921-EL-RDR

**AFFIDAVIT OF L. BRADFELD HUGHES IN SUPPORT OF COLUMBUS SOUTHERN
POWER COMPANY'S AND OHIO POWER COMPANY'S APPLICATION FOR
REVIEW THROUGH AN INTERLOCUTORY APPEAL OF THE ATTORNEY
EXAMINER'S NOVEMBER 18, 2011 ENTRY**

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

L. Bradfield Hughes, being first duly sworn, states as follows:

1. I am over eighteen years of age and am competent to testify regarding the matters set forth herein.

2. I am an attorney licensed to practice law in the State of Ohio, registration number 0070997. I have personal knowledge of the matters set forth herein.

3. On October 13, 2011, along with Michele L. Bair, a representative of my client, AEP, I reviewed the approximately 220 settlement communications from AEP's ESP case that had previously been identified by Commission Staff as responsive to a public-records request received by the Commission.

4. This October 13 review took place at the offices of the Commission, in a conference room equipped with a laptop computer and projection screen. Ms. Bair and I were permitted to review electronic images of the documents that the Commission had deemed responsive to the public-records request, but we were not permitted to review hard copies of the documents. We had sufficient time during this electronic review to take a quick look at all of the documents and record some basic information about them (such as the date, sender, recipient, and subject of the "top" or most recent e-mail in each e-mail string), but we did not have sufficient time to take detailed notes about each and every e-mail and attachment included within the settlement communications produced to us for review.

5. Within the time allotted for the review, we recorded as many notes as we could about each document – some of which were lengthy e-mail strings – on an Excel spreadsheet that was later used by the Joint Movants to identify the specific documents for which the Joint Movants would seek protective orders from the Commission. One of the notes that we logged for each of the settlement communications was whether the document in question was an e-mail. If so, another note that we logged for each document was whether the e-mail included any referenced attachment.

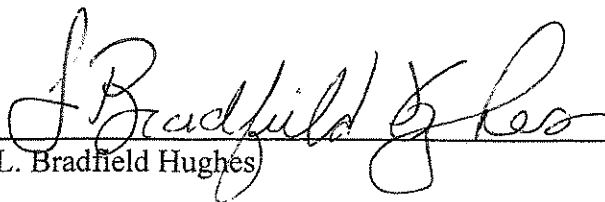
6. On our spreadsheet, in the entry correlating to the document identified with the slip sheet bearing Section Number 92, Ms. Bair and I recorded "no" in the column that we used to record whether or not each e-mail that we were logging included its referenced attachment. Based on that entry in the spreadsheet and our best recollection, the image that we reviewed for Section Number 92 on October 13 was a cover e-mail that lacked its referenced attachment. The vast majority of the e-mails that we reviewed on October 13 did not include any referenced attachments within the same Section Number or slip sheet as their cover e-mails — the attachments were generally treated separately from the cover e-mails and given separate (non-sequential) Section Numbers and separate slip sheets by the Commission before the images were produced to us for review. Put another way, e-mails were usually assigned separate Section Numbers from any referenced attachments. Further, the images of the e-mails did not generally have Section Numbers that were sequential to the Section Numbers assigned to their attachments. The Commission's practice of separating the e-mails from their attachments and assigning them non-sequential Section Numbers made our (already expedited) review more difficult to complete within the allotted time, because it was difficult for us to link each e-mail with any referenced attachment(s).

7. On November 22, during the inspection of redacted documents contemplated by Paragraph 14 of the Attorney Examiner's November 18 Entry, we were provided hard copies – not electronic copies – of the documents slated for public release on November 25, in contrast to the electronic images that we had reviewed on October 13. The hard copies provided to us on November 22 included a copy of AEP's Term Sheet (in Section Number 92) that we did not recall seeing before during the review that occurred on October 13.


8. The version of Section Number 92 produced in hard copy on November 22 was an e-mail string that included the referenced attachment, which appeared to be a redacted copy of AEP's August 17, 2011 Term Sheet. As noted in paragraph 6 above, our October 13 spreadsheet indicated "no" in the column corresponding to whether the e-mail in Section 92 included its referenced attachment.

9. To the best of my knowledge, the document bearing Section Number 92 is the only copy of AEP's Term Sheet that is slated for public release on November 25. Consistent with the November 18 Entry, all remaining Term Sheets for which Joint Movants have sought Protective Orders will be the subject of a later Entry by the Commission.

FURTHER AFFIANT SAYETH NAUGHT.


L. Bradfield Hughes

Sworn to before me and subscribed in my presence this 23rd day of November, 2011.


Notary Public

LINDA S. BRAITHWAITE
Notary Public, State of Ohio
Commission Expires 05-05-2013

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in

Case No(s). 11-0346-EL-SSO

Summary: Application Joint Application for Review through an Interlocutory Appeal of the Attorney Examiner's November 18, 2011 Entry of Columbus Southern Power Company, Ohio Power Company, the Ohio Hospital Association, and Paulding Wind Farm LLC electronically filed by Ms. Christen M Moore on behalf of Columbus Southern Power Company and Ohio Power Company and the Ohio Hospital Association and Paulding Wind Farm, LLC