

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 11-346-EL-SSO
and Ohio Power Company for)	Case No. 11-348-EL-SSO
Authority to Establish a Standard)	
Service Offer Pursuant to § 4928.143,)	
Ohio Rev. Code, in the Form of an)	
Electric Security Plan.)	
)	
In the Matter of the Application of)	Case No. 11-349-EL-AAM
Columbus Southern Power Company)	Case No. 11-350-EL-AAM
and Ohio Power Company for Approval)	
of Certain Accounting Authority.)	

OHIO POWER COMPANY’S MOTION FOR PROTECTIVE ORDER

Ohio Power Company (“AEP Ohio” or the “Company”), pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code (“O.A.C.”), respectfully requests that the Public Utilities Commission of Ohio (“Commission”) issue a protective order ordering to be kept confidential: 1) the response to Questions 39 and 45 and Exhibit KMM-9 contained in the direct testimony of Kevin M. Murray that Industrial Energy Users-Ohio (“IEU”) filed on May 4, 2012 in this proceeding; 2) the information described in Exhibit A of FirstEnergy Solutions Corp.’s (“FES”) Motion for Protective Order filed on May 4, 2012 in this proceeding; 3) the information that is the subject of Exelon Generation Company, LLC’s (“Exelon”) Motion for Protective Order filed on May 4, 2012 in this proceeding; and 4) the information that is the subject of the OMA Energy Group’s (“OMAEG”) Motion for Protective Order filed on May 4, 2012 in this proceeding. The information for which protection is being sought by IEU, FES and Exelon is confidential, proprietary,

competitively sensitive, and trade secret information of the Company. AEP Ohio takes no position as to whether the information OMAEG seeks to protect is confidential but files this motion pursuant to a confidentiality agreement executed between the Company and OMAEG. The reasons supporting this motion are provided in the attached memorandum in support.

Respectfully submitted,

/s/ Yazen Alami

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MEMORANDUM IN SUPPORT

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order to protect the confidentiality of information contained in documents filed with the Commission 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 Ohio Revised Code. The criteria used to determine what information 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. *See* O.A.C. Rule 4901-1- 24(A)(7).

The Uniform Trade Secrets Act, as adopted in Ohio, 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.

Ohio Revised Code § 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, but that trade secret statutes create a duty to protect them. *See, e.g., 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, 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); *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 *State ex rel. The Plain Dealer v. Ohio Dept of Ins.*, 80 Ohio St3d 513, 524-525 (1997), the Supreme Court of Ohio adopted the following factors to be considered in determining 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.

Applying these factors to the information that is the subject of the motions filed by IEU, FES, and Exelon demonstrates that protection from disclosure is appropriate.

As supported in the attached affidavit of Kelly D. Pearce, the information contained in response to Questions 39 and 45 and Exhibit KMM-9 of the direct testimony of IEU witness Murray consists of confidential, proprietary, and competitively sensitive information. The information details the Company's offerings and bilateral transactions for capacity. This information contains third-party information, has been designated as restricted access confidential within the Company, and retains substantial economic value to AEP Ohio by being kept confidential. Allowing unfettered public access to the information would permit inappropriate access to competitively sensitive business information about the Company and its contracting parties. 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 would cause harm to AEP Ohio.

The information described in FES' Motion for Protective Order consists of confidential, proprietary, competitively sensitive, and trade secret information. The information is included in the confidential exhibits attached to the Supplemental Commission-Ordered testimony of Company witness Phillip J. Nelson. The information relates to pricing and payment structure of the Turning Point Solar project. This same information was previously found to be confidential, proprietary, competitively sensitive, and trade secret information in an August 4, 2011 Entry in this proceeding. Additionally,

this same information is the subject of the Motion for Protective Order and Memorandum in Support (including the supporting Affidavit of Jay F. Godfrey attached thereto) that the Company filed in this proceeding on May 2, 2012. The public disclosure of this information would significantly reduce, if not eliminate, the value that the information has by being kept confidential and would cause harm to AEP Ohio.

Finally, as supported in the attached affidavit of Kelly D. Pearce, the information that is the subject of Exelon's Motion for Protective Order also consists of confidential, proprietary, and competitively sensitive information. The information relates to an offer for capacity that the Company received. This information contains third-party information, has been designated as restricted access confidential within the Company, and retains substantial economic value to AEP Ohio by being kept confidential. Allowing unfettered public access to the information would permit inappropriate access to competitively sensitive business information about the Company and its contracting parties. 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 would cause harm to AEP Ohio.

Pursuant to O.A.C. Rule 4901-1-24(D)(1), only the information that is essential to prevent disclosure of the confidential information is redacted. Unredacted copies of the exhibits and testimony at issue have been filed under seal with the Commission and have been shared with parties that have executed confidentiality agreements.

For the reasons provided above, AEP Ohio requests that the Commission grant this motion for protective order, well as the motions for protective order that Exelon,

FES, IEU, and OMAEG filed on May 4, 2012, and protect the designated information from public disclosure.

Respectfully submitted,

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3. I have personal knowledge of the confidential, proprietary, competitively sensitive, and trade secret nature of the Confidential Information. I have personal knowledge of the efforts taken to maintain the secrecy of the Confidential Information through direct contact with this information and through other AEPSC and AEP Ohio employees who work directly with these procedures.

4. Public disclosure of the Confidential Information could have a significant and severe impact on the competitive and financial standing of AEP Ohio. The Confidential Information derives independent economic value by virtue of the fact that it is not publicly available. Knowledge of the Confidential Information by AEP Ohio's competitors could deprive AEP Ohio of the ability to achieve the most favorable contract terms and most advantageous contract prices for its customers during future negotiations.

5. The Confidential Information is not available to or ascertainable by other parties through normal of proper means. The Confidential Information is generally considered restricted access confidential due to the high level of value to AEP Ohio's competitors and is not known outside of AEP Ohio's business.

6. The Confidential Information has been the subject of efforts reasonable under the circumstances to maintain its secrecy. The Confidential Information is kept confidential in the offices of AEP Ohio. The Company restricts the access of Confidential Information to only those employees, officers, and representatives of the Company who have a need to know about such information due to their job and management responsibilities. Outside the Company, this information is only provided

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon the below-listed counsel via electronic mail this 11th day of May, 2012.

/s/ Yazen Alami

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Summary: Motion Ohio Power Company's Motion for Protective Order electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company