

**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 keeping confidential the information that is the subject of the motion for protective orders filed by Industrial Energy Users-Ohio (“IEU-Ohio”) and Ormet Primary Aluminum Corporation (“Ormet”) on June 29, 2012 in this case. The information for which protection is being sought by IEU-Ohio and Ormet is confidential, proprietary, competitively sensitive, and trade secret information of the Company. The reasons supporting this motion are provided in the attached memorandum in support.

Respectfully submitted,

/s/ Yazen Alami

Steven T. Nourse

Matthew J. Satterwhite

Yazen Alami
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
(614) 716-1608
Fax: (614) 716-2950
Email: stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com

Daniel R. Conway
Christen M. Moore
Porter, Wright, Morris & Arthur, LLP
41 S. High St.
Columbus, Ohio 43215
(614) 227-2270
Fax: (614) 227-2100
Email: dconway@porterwright.com
cmoore@porterwright.com

Counsel for Ohio Power Company

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-Ohio and Ormet demonstrates that protection from disclosure is appropriate.

The information marked confidential by IEU-Ohio on page 55 of its Initial Post Hearing Brief relates to an internal Company memorandum detailing the findings of a confidential impairment analysis undertaken by the Company. This information is not readily available in the public domain, has been designated as restricted access confidential within the Company, and retains substantial economic value to AEP Ohio by being kept confidential. Further, this information was discussed during a closed, confidential portion of the evidentiary hearing in this case and the hearing exhibits referencing this information were appropriately marked confidential. Allowing unfettered public access to the information would permit inappropriate access to competitively sensitive business information about the Company. 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 marked confidential by Ormet on pages 1-3 and 13-14 of its Initial Post Hearing Brief also consists of confidential, proprietary, competitively sensitive, and trade secret information of the Company. The information relates to Fuel Adjustment Clause projections made by the Company. This information is not readily available in the public domain and the Companies take steps to protect this information from public disclosure. Further, this information was discussed during a closed,

confidential session of the evidentiary hearing and the hearing exhibits relating to this information were appropriately marked confidential. The public disclosure of such information would adversely impact the Company because it would give competitors inappropriate access to competitively sensitive business information about the Company. 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. Both IEU-Ohio and Ormet have filed confidential versions of their briefs under seal with the Commission and have shared them with parties that have executed confidentiality agreements.

For the reasons provided above, AEP Ohio requests that the Commission grant this motion for protective order, as well as the motions for protective order filed by IEU-Ohio and Ormet on June 29, 2012 in this proceeding, and protect the designated information from public disclosure.

Respectfully submitted,

/s/ Yazen Alami

Steven T. Nourse

Matthew J. Satterwhite

Yazen Alami

American Electric Power Service
Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

(614) 716-1608

Fax: (614) 716-2950

Email: stnourse@aep.com

mjsatterwhite@aep.com

yalami@aep.com

Daniel R. Conway
Christen M. Moore
Porter, Wright, Morris & Arthur, LLP
41 S. High St.
Columbus, Ohio 43215
(614) 227-2270
Fax: (614) 227-2100
Email: dconway@porterwright.com
cmoore@porterwright.com

Counsel for Ohio Power Company

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 5th day of July, 2012.

/s/ Yazen Alami

Yazen Alami

"aehaedt@jonesday.com"
<aehaedt@jonesday.com>,
"Amy.spiller@duke-energy.com"
<Amy.spiller@duke-energy.com>,
"Asim.Haque@icemiller.com"
<Asim.Haque@icemiller.com>,
"barthroyer@aol.com"
<barthroyer@aol.com>,
"bmcMahon@emh-law.com"
<bmcMahon@emh-law.com>,
"bpbarger@bcslawyers.com"
<bpbarger@bcslawyers.com>,
"callwein@wamenergylaw.com"
<callwein@wamenergylaw.com>,
"Carolyn.Flahive@thompsonhine.com"
<Carolyn.Flahive@thompsonhine.com>,
"cathy@theoec.org"
<cathy@theoec.org>,
"cendsley@ofbf.org"
<cendsley@ofbf.org>,
"Christopher.Miller@icemiller.com"
<Christopher.Miller@icemiller.com>,
"cmontgomery@bricker.com"
<cmontgomery@bricker.com>,
"cmoore@porterwright.com"
<cmoore@porterwright.com>,
"Constance.reinhard@exeloncorp.com"
<Constance.reinhard@exeloncorp.com>,
"dakutuk@jonesday.com"
<dakutuk@jonesday.com>,
"dboehm@BKLlawfirm.cim"
<dboehm@BKLlawfirm.cim>,
"dconway@porterwright.com"
<dconway@porterwright.com>,
"djMichalski@hahnlaw.com"
<djMichalski@hahnlaw.com>,
"Doug.bonner@snrdenton.com"
<Doug.bonner@snrdenton.com>,
"eisenstatl@dicksteinshapiro.com"
<eisenstatl@dicksteinshapiro.com>,

"Elizabeth.watts@duke-energy.com"
<Elizabeth.watts@duke-energy.com>,
"Emma.hand@snrdenton.com"
<Emma.hand@snrdenton.com>,
"etter@occ.state.oh.us"
<etter@occ.state.oh.us>,
"fdarr@mwncmh.com"
<fdarr@mwncmh.com>,
"gary.a.jeffries@dom.com"
<gary.a.jeffries@dom.com>,
"gpoulos@enernoc.com"
<gpoulos@enernoc.com>,
"grady@occ.state.oh.us"
<grady@occ.state.oh.us>,
"Gregory.Dunn@icemiller.com"
<Gregory.Dunn@icemiller.com>,
"haydenm@firstenergycorp.com"
<haydenm@firstenergycorp.com>,
"henryeckhart@aol.com"
<henryeckhart@aol.com>,
"holly@raysmithlaw.com"
<holly@raysmithlaw.com>,
"jdaurora@behallaw.com"
<jdaurora@behallaw.com>,
"Jeanne.kingery@duke-energy.com"
<Jeanne.kingery@duke-energy.com>,
"jejadwin@aep.com"
<jejadwin@aep.com>,
"Jesse.rodriquez@exeloncorp.com"
<Jesse.rodriquez@exeloncorp.com>,
"jhummer@uaoh.net"
<jhummer@uaoh.net>,
"jlang@calfee.com"
<jlang@calfee.com>,
"jmaskovyak@ohiopoverlylaw.org"
<jmaskovyak@ohiopoverlylaw.org>,
"jmclark@vectren.com"
<jmclark@vectren.com>,
"joliker@mwncmh.com"
<joliker@mwncmh.com>,
"Jones, John H."
<John.Jones@puc.state.oh.us>,

"Judi.sobecki@DPLINC.com"
 <Judi.sobecki@DPLINC.com>,
 "kaelber@buckleyking.com"
 <kaelber@buckleyking.com>,
 "kpkreider@kmklaw.com"
 <kpkreider@kmklaw.com>,
 "kwatson@cloppertlaw.com"
 <kwatson@cloppertlaw.com>,
 "lehfeldtr@dicksteinshapiro.com"
 <lehfeldtr@dicksteinshapiro.com>,
 "lmcaster@bricker.com"
 <lmcaster@bricker.com>,
 "lmcbride@calfee.com"
 <lmcbride@calfee.com>, "Margard,
 Werner"
 <Werner.Margard@puc.state.oh.us
 >, "matt@matthewcoxlaw.com"
 <matt@matthewcoxlaw.com>,
 "mhpeticoff@vorys.com"
 <mhpeticoff@vorys.com>,
 "mjsatterwhite@aep.com"
 <mjsatterwhite@aep.com>,
 "mjsettineri@vorys.com"
 <mjsettineri@vorys.com>,
 "mkurtz@BKLLawfirm.com"
 <mkurtz@BKLLawfirm.com>,
 "msmalz@ohiopoveritylaw.org"
 <msmalz@ohiopoveritylaw.org>,
 "mswhite@igsenergy.com"
 <mswhite@igsenergy.com>,
 "mwarnock@bricker.com"
 <mwarnock@bricker.com>,
 "myurick@taftlaw.com"
 <myurick@taftlaw.com>,
 "Nolan@theoec.org"
 <Nolan@theoec.org>,
 "Randall.griffin@DPLINC.com"
 <Randall.griffin@DPLINC.com>,
 "rburke@cpv.com"
 <rburke@cpv.com>,
 "ricks@ohanet.org"
 <ricks@ohanet.org>,
 "rjhart@hahnlaw.com"
 <rjhart@hahnlaw.com>,
 "Rocco.dascenzo@duke-
 energy.com"
 <Rocco.dascenzo@duke-
 energy.com>,
 "rremington@hahnlaw.com"

<rremington@hahnlaw.com>,
 "rsugarman@keglerbrown.com"
 <rsugarman@keglerbrown.com>,
 "sam@mwncmh.com"
 <sam@mwncmh.com>,
 "Sandy.grace@exeloncorp.com"
 <Sandy.grace@exeloncorp.com>,
 "sbruce@oada.com"
 <sbruce@oada.com>,
 "smhoward@vorys.com"
 <smhoward@vorys.com>,
 "ssalamido@cloppertlaw.com"
 <ssalamido@cloppertlaw.com>,
 "Stephanie.Chmiel@thompsonhine.c
 om"
 <Stephanie.Chmiel@thompsonhine.
 com>, "stnourse@aep.com"
 <stnourse@aep.com>,
 "talexander@calfee.com"
 <talexander@calfee.com>,
 "Thompson@whitt-sturtevant.com"
 <Thompson@whitt-
 sturtevant.com>,
 "tlindsey@uaoh.net"
 <tlindsey@uaoh.net>,
 "tobrien@bricker.com"
 <tobrien@bricker.com>,
 "toddm@wamenergylaw.com"
 <toddm@wamenergylaw.com>,
 "todonnell@bricker.com"
 <todonnell@bricker.com>,
 "trent@theoec.org"
 <trent@theoec.org>,
 "tsantarelli@elpc.org"
 <tsantarelli@elpc.org>,
 "tsiwo@bricker.com"
 <tsiwo@bricker.com>,
 "vparisi@igsenergy.com"
 <vparisi@igsenergy.com>,
 "walter@buckeyeking.com"
 <walter@buckeyeking.com>,
 "whitt@whitt-sturtevant.com"
 <whitt@whitt-sturtevant.com>,
 "wmassey@cov.com"
 <wmassey@cov.com>,
 "yalami@aep.com"
 <yalami@aep.com>,
 "zkravitz@taftlaw.com"
 <zkravitz@taftlaw.com>

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