

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Alternative Energy Portfolio Standard)
Report to the General Assembly) Case No.13-1909-EL-ACP
For the 2012 Compliance Year)

MOTION FOR PROTECTION OF OHIO POWER COMPANY

Ohio Power Company (AEP Ohio) moves, under O.A.C. 4901-1-24, that the Commission issue a protective order so that certain confidential information is exempted from public disclosure as confidential, proprietary, competitively-sensitive and trade secret information. The Confidential Information is included in the Confidential version of AEP Ohio's "2012 Average REC Purchase Costs" being filed herewith. A memorandum in support detailing the sensitivity and confidentiality of the information is attached, along with an affidavit of Jay F. Godfrey supporting this motion. As is explained in the affidavit, however, AEP Ohio has no objection if the confidential data is aggregated with similar data from electric distribution utilities and electric service companies for purposes of a public report to the General Assembly.

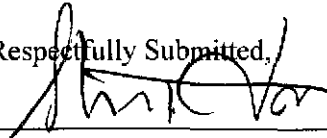
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Respectfully Submitted,



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Counsel for Ohio Power Company

MEMORANDUM IN SUPPORT

Section 4901-1-24(D) of the Commission's rules provides that the Commission 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. As set forth herein, state law prohibits the release of the information which is the subject of this Motion. Moreover, the non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to review the filing.

While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets. See *In re: General Telephony Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets). 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.

The Ohio Supreme Court has held that not only does the Commission have the authority to protect the trade secrets of a public utility, the trade secret statute creates a duty to protect them. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2009), 121 Ohio St.3d 362, 2009-Ohio-604. 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. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, eg, *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 17, 1990).

In 1996, the Ohio General Assembly amended R.C. §§ 4901.12 and 4905.07 in order to facilitate the protection of trade secrets in the Commission's possession. The General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission's possession. By referencing R.C. § 149.43, the Commission-specific statutes now incorporate the provision of that statute that excepts from the definition of "public record" records the release of which is prohibited by state or federal law. R.C. § 149.43(A)(1). In turn, state law prohibits the release of information meeting the definition of a trade secret. R.C. §§ 1333.61(D) and 1333.62. The amended statutes also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 because the Commission and its Staff have access to the information; in many cases, the parties to a case may have access under an appropriate protective agreement. The protection of trade secret information as requested herein will not

impair the Commission's regulatory responsibilities.

In *Pyromatics, Inc. v. Pettiziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga App. 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. The Ohio Supreme Court has adopted these factors as appropriate. *State ex rei. Perrea v. Cincinnati Pub. Sch.* (2009), 123 Ohio St.3d 410, 414, 2009-Ohio-4762 (2009).

In an Entry dated October 29, 2013, the Attorney Examiner directed all electric utilities and electric service companies to file information related to the average cost paid for renewable energy credits used to comply with the 2012 Alternative Energy Portfolio requirements. The Attorney Examiner further directed that cost data be filed as related to four categories: Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar. The Attorney Examiner directed that entities seeking to protect this information should file information under seal and include a Motion for Protective Order. AEP Ohio represents that redacted confidential information is included in the Confidential version of AEP Ohio's "2012 Average REC Purchase Costs" being filed herewith. As further explained below, AEP Ohio submits the affidavit of Jay F. Godfrey supporting this request for confidentiality.

Description of the Confidential Information

The Confidential Information includes average cost data for the renewable energy credits that AEP Ohio has retired, or will be retiring, to demonstrate compliance with its 2012 Ohio AEPS obligations. This table contains average and bundled cost data for Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar renewable energy credits.

Affidavit of Jay F. Godfrey at ¶ 4. ("Godfrey Affidavit").

The Information Is Generally Recognized As Confidential And Proprietary

As Company witness Godfrey affirms in the attached affidavit, the Confidential Information is generally considered confidential and proprietary. Godfrey Affidavit at ¶ 5. The Confidential Information is not available to or ascertainable by, persons outside the parties to the contract by proper means other than on a confidential basis. Godfrey Affidavit at ¶ 6. Indeed, the Confidential Information derives economic value from the fact it is not generally known to persons who can obtain value from its disclosure. Godfrey Affidavit at ¶ 5.

In light of the confidential and proprietary nature of the information, AEP Ohio takes all reasonable efforts to protect it from public disclosure. Godfrey Affidavit at ¶ 7. Among the measures taken are limiting access to the information within the Company to only those persons with a legitimate need to access the information, protecting against disclosure outside the Company, and entering into confidentiality agreements to protect against disclosure by persons outside the Company who are afforded access for legitimate purposes. Godfrey Affidavit at ¶ 7.

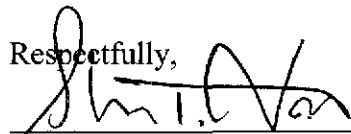
Disclosure Of The Confidential Information Will Result in An Unfair Competitive Advantage To The Competitors Of Ohio Power Company

The renewable energy market is extremely competitive. The Confidential Information, if disclosed to competitors of AEP Ohio, or otherwise made publicly available, would provide an unfair competitive advantage to competitors of the parties to the underlying

contracts. The Confidential Information therefore is entitled to protection from disclosure by the Commission.

CONCLUSION

Based on the foregoing reasons, AEP Ohio submits that the Confidential Information redacted from AEP Ohio's compliance filing constitutes a trade secret under Ohio law and respectfully requests the Commission to order the Confidential Information redacted in this docket and described in this motion and memorandum in support be exempted from public disclosure as confidential, proprietary, competitively-sensitive and trade secret information. Doing so will not only protect the interests of AEP Ohio but will also protect the interests of its customers.

Respectfully,


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Counsel for Ohio Power Company

AFFIDAVIT OF JAY F. GODFREY

Jay F. Godfrey, first being duly sworn, states:

1. I am of the age of majority and competent to make this affidavit. I have personal knowledge of the matters set forth in this affidavit.
2. I am employed by American Electric Power Service Corporation (AEPSC), a wholly owned subsidiary of American Electric Power Company, Inc. (AEP). AEP is the parent company of Ohio Power Company. I am employed as a Managing Director - Renewable Energy. In that capacity, I am responsible for managing AEP's and its subsidiaries' portfolio of Renewable Energy Purchase Agreements (REPAs). I also work closely with AEPSC's REC traders who participate in the bi-lateral broker REC market. I am familiar with the terms and other confidential information relating to wind, solar and other REPAs entered into by Ohio Power Company and its affiliates.
3. I have specific personal knowledge of the confidential, proprietary, competitively sensitive and trade secret nature of the confidential information addressed in this Affidavit through direct contact with this information and through my investigation with other AEPSC and AEP Ohio employees who work directly with the confidential information. I have personal knowledge of efforts taken by AEP Ohio and AEPSC to maintain the secrecy of the confidential information through direct involvement in these efforts, and through my investigation of these efforts with other employees who work directly with these procedures. Finally, I have personal knowledge through my investigation, along with other AEPSC and AEP Ohio employees who work directly with

the confidential information, of the effect the public disclosure of the confidential information would have on AEP Ohio's competitive efforts in securing such contracts.

**Description of the Confidential Information for Which
Protection is Sought**

4. AEP Ohio is requesting that the information related to average costs for renewable energy credits be protected from public disclosure. More specifically, the "Confidential Information" includes average cost data for the renewable energy credits that AEP Ohio has retired, or will be retiring, to demonstrate compliance with its 2012 Ohio AEPS obligations. This table contains average and bundled cost data for Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar renewable energy credits. The information related to AEP Ohio's average costs for acquiring renewable energy credits deals with proprietary information which is confidential, competitively sensitive and a trade secret.

**The Information Contained in Confidential Information Derives
Independent Economic Value By Reason of the Fact that it is Not
Publicly Available**

5. The average cost data included in this table would reveal AEP Ohio's and its affiliate's purchase information, including the volume and cost of various REPAs and REC purchase agreements as well as spot REC broker purchases, which it considers proprietary and confidential. Such sensitive cost data information is generally not disclosed. Its disclosure could give competitors an advantage that would hinder AEP Ohio's ability to obtain competitive prices for renewable energy credits in the future. If the average cost details became generally known or readily available, parties with which AEP Ohio and its affiliates may negotiate could use this knowledge to the detriment of AEP Ohio, its customers and affiliates. Knowledge of these average cost details by other

potential suppliers would establish certain benchmarks in future negotiations, thereby potentially increasing costs incurred by customers, shareholders and AEP Ohio and its affiliates. In sum, this information derives actual, independent economic value to the Company as a result of its not being generally known or readily ascertainable by other persons who could use it to affect the market prices and availability of renewable energy and renewable energy credits in the market.

**The Information is Not Generally Known, Readily Ascertainable
by Proper Means by Other Persons Who Can Obtain Economic
Value from its Disclosure or Use**

6. The Confidential Information is not available or ascertainable by other parties through normal or proper means. No reasonable amount of independent research could yield this information to other parties. The Confidential Information is generally considered confidential and proprietary.

**The Information is the Subject of Efforts Reasonable Under
The Circumstances to Maintain Its Secrecy**

7. The Confidential Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. AEP Ohio and AEPSC limit public access to buildings housing the Confidential Information by use of security guards. Persons not employed by AEP Ohio and AEPSC who are allowed past security guards at buildings where Confidential Information is kept are not permitted to walk within such buildings without an escort. AEP Ohio's and AEPSC's files containing the Confidential Information are maintained separately from AEP Ohio's and AEPSC's general records and access to those files is restricted. Within AEP Ohio and AEPSC, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of AEP Ohio and AEPSC who have a need to know about such

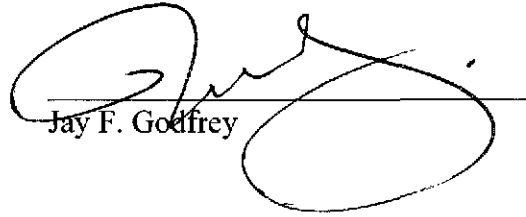
information due to their job and management responsibilities. Outside AEP Ohio and AEPSC, this information is only provided to certain persons who have a legitimate need to review the information to participate in this Cause and who sign a confidentiality agreement.

The Confidential Information Can Be Aggregated

8. If the Confidential Information is aggregated with that of other electric distribution utilities and electric service companies, AEP Ohio's concerns about public disclosure would be avoided. In other words, if the data in the Confidential version of AEP Ohio's compliance filing is combined and aggregated with similar data from electric distribution utilities and electric service companies for purposes of a report to the General Assembly, it would not create concerns for AEP Ohio to file such a report publicly.

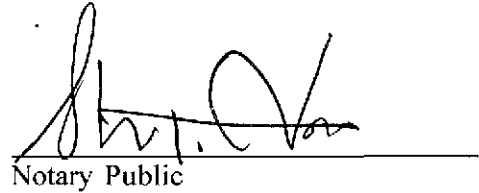
9. Further the Affiant sayeth nothing more.

Dated: 11-12-13


Jay F. Godfrey

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

Subscribed and sworn to before me, a Notary Public, in and for said County and State this
12th day of November 2013.


Notary Public

I am a resident of N/A County, Ohio

My commission expires: N/A



STEVEN T. NOURSE, Attorney At Law
Notary Public, State of Ohio
My commission has no expiration date
Section 147.03 R.C.