

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 Pursuant) Case No. 11-348-EL-SSO
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.)

ENTRY

The attorney examiner finds:

- (1) By Opinion and Order issued August 8, 2012, the Commission approved the modified electric security plan (ESP) filed by Columbus Southern Power Company (CSP) and Ohio Power Company (jointly AEP-Ohio or Company), with certain modifications. As detailed in the August 8, 2012, ESP Order, the attorney examiners granted AEP-Ohio's motions for protective order filed on July 1, 2011, May 2, 2012, and May 11, 2012, regarding exhibits attached to the testimony of AEP-Ohio witnesses Jay F. Godfrey and Phillip J. Nelson, and information contained in the testimony of Industrial Energy Users-Ohio (IEU) witness Kevin Murray, FirstEnergy Solutions Corporation witness Jonathan A. Lesser, and Exelon Generation Company, LLC witness David I. Fein. Further, the AEP-Ohio ESP Order also granted the motions for protective order filed by AEP-Ohio on July 5, 2012, and July 12, 2012, regarding information contained in the initial brief of IEU and the initial and reply briefs of Ormet Primary Aluminum Corporation (Order at 9-10).
- (2) On December 23, 2013, pursuant to Ohio Adm.Code 4901-1-24, AEP-Ohio filed a motion to extend the protective treatment for the confidential and proprietary information included in the documents and testimony listed above. AEP-Ohio requests that protective treatment be extended for an additional 18 months until August 8, 2015. AEP-Ohio reasons that the

confidential terms of the Turning Point Solar agreement, revenue requirement, AEP-Ohio's offerings and bilateral transactions for capacity, confidential impairment analysis, and fuel cost projections are competitively sensitive information which the Company takes step to protect from public disclosure. AEP-Ohio contends that public disclosure of the referenced information would disadvantage AEP-Ohio in future negotiations and give competitors inappropriate access to competitively sensitive business information. No memorandum contra the motion to extend the protective order was filed.

- (3) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of R.C. Title 49. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (4) Similarly, Ohio Adm.Code 4901-1-24 allows an 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."
- (5) 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." R.C. 1333.61(D).
- (6) The information, for which AEP-Ohio seeks to continue protective treatment, was previously reviewed by the Commission and determined to comply with the requirements for a protective order. Further, the protected information

retains independent economic value and continues to be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court.¹ The attorney examiner finds that the information constitutes trade secret information and its release is, therefore, prohibited under state law. Further, the attorney examiner finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the motion for an extension of the protective order is reasonable and should be granted.

- (7) Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 18 months. Therefore, confidential treatment shall be extended for an additional 18 months until August 8, 2015. Until that date, the docketing division should maintain, under seal, the exhibits, briefs, and reply briefs specifically noted in Finding (1) above.
- (8) Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If AEP-Ohio wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice.

It is, therefore,

ORDERED, That AEP-Ohio's motion for extension of the protective orders be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted information for a period of 18 months, ending on August 8, 2015. It is, further,

¹ See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

ORDERED, That a copy of this entry be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Greta See

By: Greta See
Attorney Examiner

jrj/vrm

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in

Case No(s). 11-0346-EL-SSO, 11-0348-EL-SSO, 11-0349-EL-AAM, 11-0350-EL-AAM

Summary: Attorney Examiner Entry granting motion for an extension of protective order;
electronically filed by Vesta R Miller on behalf of Greta See, Attorney Examiner, Public Utilities
Commission of Ohio