

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Ohio Power Company for Authority to</b>	)	
<b>Establish a Standard Service Offer</b>	)	<b>Case No. 13-2385-EL-SSO</b>
<b>Pursuant to Section 4928.143, Revised Code,</b>	)	
<b>in the Form of an Electric Security Plan</b>	)	

<b>In the Matter of the Application of</b>	)	
<b>Ohio Power Company for Approval of</b>	)	<b>Case No. 13-2386-EL-AAM</b>
<b>Certain Accounting Authority</b>	)	

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**OHIO POWER COMPANY’S  
MOTION FOR PROTECTIVE ORDER**

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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 contained in the testimony of The Office of the Ohio Consumers’ Counsel witness James F. Wilson and the testimony of Industrial Energy Users – Ohio witness Kevin M. Murray, which, respectively, are the subject of the motions for protective order that OCC and IEU filed on May 6, 2014, and which discuss the Company’s confidential cost and earnings forecast information related to AEP Ohio’s portion of the Ohio Valley Electric Corporation (“OVEC”) assets. AEP Ohio also requests that the Commission order that Exhibit AST-2 to Ohio Energy Group witness Alan S. Taylor’s testimony, which contains AEP Ohio’s projection of the net benefits of its portion of OVEC for 2015-2023, be kept confidential.

The reasons supporting this motion (and also supporting the motions made by OCC and IEU-Ohio) are provided in the attached Memorandum in Support.

Respectfully submitted,

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## **MEMORANDUM IN SUPPORT**

Ohio Power Company (“AEP Ohio” or the “Company”) requests that the Public Utilities Commission of Ohio (“Commission”) issue a protective order keeping confidential the portions of the testimony and exhibits of The Office of the Ohio Consumers’ Counsel (“OCC”) witness James F. Wilson, Industrial Energy Users-Ohio (“IEU-Ohio”) witness Kevin M. Murray, and Ohio Energy Group (“OEG”) witness Alan S. Taylor that were filed under seal on May 6, 2014.<sup>1</sup> The information for which protection is sought includes confidential, proprietary, and competitively sensitive information about AEP Ohio’s portion of the Ohio Valley Electric Corporation (“OVEC”) assets, including AEP Ohio’s forecasts and projections related to the future performance of those assets. The information is the product of original research and development by AEP Ohio, has been kept confidential, and, as a result, retains substantial economic value to AEP Ohio by being kept confidential. It would be costly and time-consuming for third parties to replicate the information on their own. Allowing unfettered public access to the information would give third parties inappropriate access to competitively sensitive business information about AEP Ohio. 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, thus, would cause harm to AEP Ohio.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Public Utilities Commission of Ohio (the “Commission”) or certain designated employees may issue an order 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

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<sup>1</sup> The portions of Mr. Wilson’s and Mr. Murray’s testimony that are the subject of this motion also were, respectively, the subject of motions for protective order that OCC and IEU-Ohio filed contemporaneously with the witnesses’ testimony.

and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The criteria used to determine what 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. § 4901-1-24(A)(7). Ohio’s version of the Uniform Trade Secrets Act 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.

R.C. § 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, the trade secrets statute creates a duty to protect them. *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, and now the new entrants who will be providing power, 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 *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 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.

These factors were adopted by the Supreme Court of Ohio in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513,524-525.

Applying these factors to the information contained in the relevant portions of the testimony offered by Mr. Wilson, Mr. Murray, and Mr. Taylor demonstrates that protection from disclosure is appropriate. As noted above, the information includes confidential forecast and performance information pertaining to AEP Ohio's portion of the OVEC assets. The information

is the product of original research and development, has been kept confidential, and, as a result, retains substantial economic value to AEP Ohio by being kept confidential. It would be costly and time-consuming for third parties to replicate the information on their own, without access to the information. Allowing unfettered public access to the information would give third parties inappropriate access to competitively sensitive business information about AEP Ohio.

Specifically, public disclosure would enable third parties to gain information about the costs and operations of the OVEC assets that could impair AEP Ohio's ability to sell their output at the best price and, thus, could impair the benefit that customers would realize under the Company's proposed Purchase Power Agreement. 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, thus, would cause harm to AEP Ohio and its customers.

For the reasons provided above, AEP Ohio respectfully requests that the Commission grant its motion, OCC's motion for protective order, and IEU-Ohio's motion for protective order to maintain the confidentiality of the information contained in the portions of the testimony of James F. Wilson and Kevin M. Murray that OCC and IEU-Ohio filed contemporaneously with their respective May 6, 2014, motions, as well as the confidentiality of Exhibit AST-2 to the Testimony of Alan S. Taylor, which OEG filed under seal, by ordering that the testimony excerpts and exhibits be kept under seal.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Ohio Power Company's Motion for Protective Order* has been served upon the below-named counsel and Attorney Examiners via electronic mail this 9th day of May, 2014.

/s/ Christen M. Blend

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Summary: Motion Ohio Power Company's Motion for Protective Order electronically filed by Ms. Christen M. Blend on behalf of Ohio Power Company and Conway, Daniel R. Mr.