

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application Seeking</b>	)	
<b>Approval of Ohio Power Company's</b>	)	
<b>Proposal to Enter into an Affiliate Power</b>	)	<b>Case No. 14-1693-EL-RDR</b>
<b>Purchase Agreement for Inclusion in the</b>	)	
<b>Power Purchase Agreement Rider.</b>	)	

<b>In the Matter of the Application of</b>	)	
<b>Ohio Power Company for Approval of</b>	)	<b>Case No. 14-1694-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, respectfully requests that the Public Utilities Commission of Ohio ("Commission") issue a protective order keeping confidential information contained in the testimonies and exhibits of The Office of the Ohio Consumers' Counsel (OCC) witnesses James F. Wilson and Robert B. Fortney and PJM Power Providers Group (P3)/Electric Power Supply Association (EPSA) witness A. Joseph Cavicchi that were filed under seal on December 28, 2015.

These portions of the testimonies and exhibits filed under seal, which are also the subject of motions for protective order that OCC and P3/EPSA filed on December 28, 2015, discuss and refer to confidential and proprietary competitively-sensitive information related to several generating units owned, or partially owned, by AEP Generation Resources, Inc. and AEP Ohio's portion of the Ohio Valley Electric Corporation assets, as well as confidential and proprietary information regarding forecasts of future wholesale market energy, capacity, and fuel prices, and

forecasted costs including projected costs associated with environmental compliance. They constitute trade secrets under Ohio law and, therefore, merit protection from public disclosure.

The reasons supporting this motion (and also supporting the motions made by OCC and P3/EPSC) are provided in the attached Memorandum in Support.

Respectfully submitted,

/s/ Daniel R. Conway  
Steven T. Nourse  
Matthew J. Satterwhite  
Matthew S. McKenzie  
American Electric Power  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215-2373  
Telephone: (614) 716-1608  
Facsimile: (614) 716-2950  
stnourse@aep.com  
mjsatterwhite@aep.com  
msmckenzie@aep.com

Daniel R. Conway  
Porter Wright Morris & Arthur, LLP  
41 S. High Street  
Columbus, Ohio 43215  
Telephone: (614) 227-2100  
Facsimile: (614) 227-2270  
dconway@porterwright.com

Christopher L. Miller  
Ice Miller LLP  
250 West Street  
Columbus, Ohio 43215  
Telephone: (614) 462-2339  
Fax: (614) 222-4707  
Email: Christopher.Miller@icemiller.com

*Counsel for Ohio Power Company*

## **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) witnesses James F. Wilson and Robert B. Fortney and PJM Power Providers Group (P3)/Electric Power Supply Association (EPSA) witness A. Joseph Cavicchi that were filed under seal on December 28, 2015.<sup>1</sup>

The page citations to the portions of testimony for which AEP Ohio seeks a protective order, and which have been submitted under seal, are as follows: OCC witnesses James F. Wilson, at pages 3, 8, 10-11, 14, and 16, and Robert B. Fortney, at pages 5-6; and P3/EPSA witness A. Joseph Cavicchi, at pages 11, and 14-15. AEP Ohio also requests that the Commission order that the portions of exhibits submitted under seal, which are contained in Exhibits JFW-1, -2, and -3 to OCC witness Wilson’s testimony; Attachment RBF-A to OCC witness Fortney’s testimony; and Attachments AJC-S-1, -2, -3, -4A, -4B, -4C, and -4D to P3/EPSA witness Cavicchi’s testimony, also be kept confidential.

The information for which protection is sought includes confidential, proprietary, and competitively sensitive information about several generating units owned, or partially owned, by AEP Generation Resources, Inc. (AEPGR) and AEP Ohio’s portion of the Ohio Valley Electric Corporation (OVEC) assets, as well as confidential and proprietary competitively-sensitive information regarding forecasts of future wholesale market energy, capacity, and fuel prices, and forecasted costs including projected costs associated with environmental compliance. The

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<sup>1</sup> The portions of Mr. Wilson’s, Mr. Fortney’s, and Mr. Cavicchi’s testimony that are the subject of this motion also were, respectively, the subject of motions for protective order that OCC and P3/EPSA filed contemporaneously with the witnesses’ testimony.

information is the product of original research and development by AEP Ohio and/or AEPGR, has been kept confidential, and, as a result, retains substantial economic value to AEP Ohio and AEPGR 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 and AEPGR. 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 AEPGR.

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'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.

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. Fortney, and Mr. Cavicchi, it is clear that protection from disclosure is appropriate. As noted above, the information includes competitively-sensitive confidential information regarding several generating units owned, or partially owned, by AEPGR and AEP Ohio's portion of the OVEC assets, as well as confidential and proprietary competitively-sensitive information regarding forecasts of future wholesale market energy, capacity, and fuel prices, and forecasted costs including projected costs associated with environmental compliance. 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 and AEPGR 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 and AEPGR. Specifically, public disclosure would enable third parties to gain information about the costs and operations of the generation units and forecast prices that could impair AEP Ohio's ability to sell at the best price and, thus, could impair the benefit that customers would realize under the Company's proposed Purchase

Power Agreement. Likewise, a disclosure of the costs expected for environmental compliance projects would disclose assumptions related to a future transaction and disclose expected pricing putting the contracting party in an unlevel position when negotiating for favorable pricing for goods and services. The same applies for the fuel price assumptions that are not shared publicly and are the result of proprietary analysis. 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, AEP Ohio's customers, and AEPGR.

The Commission should be aware that AEP Ohio has taken steps to minimize the amount of information protected from public disclosure as required by O.A.C. 4901-1-24(D). AEP Ohio worked with parties during the discovery process to provide documentation confidentially under confidentiality agreements. The discovery process allowed the intervening parties to review the information and interact with the Company. The Company's open interaction with intervening parties is best shown by the example of an intervenor filing its testimony as a public document after consultation with the Company before filing. The intervenor provided the Company an advance copy of testimony it intended to file as confidential, on the due date for intervenor testimony. The Company was able to review the presumed confidential information and informed the intervenor that the Company would not consider the information marked in the testimony confidential as confidential. Thus, the intervenor was able to file its testimony in full in the public record.

For the reasons provided above, AEP Ohio respectfully requests that the Commission grant its motion for protective order, as well as the motions for protective orders that OCC and P3/EPSC have filed, to maintain the confidentiality of the information contained in the portions of the testimony and exhibits of James F. Wilson, Robert B. Fortney, and A. Joseph Cavicchi

that OCC and P3/EPSC, have filed under seal contemporaneously with their respective December 28, 2015 motions, by ordering that the testimony excerpts and exhibits be kept under seal.

Respectfully Submitted,

/s/ Daniel R. Conway  
Steven T. Nourse  
Matthew J. Satterwhite  
American Electric Power  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215-2373  
Telephone: (614) 716-1608  
Facsimile: (614) 716-2950  
stnourse@aep.com  
mjsatterwhite@aep.com  
msmckenzie@aep.com

Daniel R. Conway  
Porter Wright Morris & Arthur  
41 S. High Street  
Columbus, Ohio 43215  
Telephone: (614) 227-2100  
Facsimile: (614) 227-2270  
dconway@porterwright.com

Christopher L. Miller  
Ice Miller LLP  
250 West Street  
Columbus, Ohio 43215  
Telephone: (614) 462-2339  
Fax: (614) 222-4707  
Email: Christopher.Miller@icemiller.com

*Counsel for Ohio Power Company*



## 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 30th day of December, 2015.

/s/ Daniel R. Conway

Daniel R. Conway

Allison@carpenterlipps.com;  
Bojko@carpenterlipps.com;  
charris@spilmanlaw.com;  
ckilgard@taftlaw.com;  
chris@envlaw.com;  
Christopher.Miller@icemiller.com;  
cmooney@ohiopartners.org;  
drinebolt@ohiopartners.org  
dstinson@bricker.com;  
ghiloni@carpenterlipps.com;  
dclark1@aep.com;  
dboehm@BKLawfirm.com;  
dconway@porterwright.com;  
dwilliamson@spilmanlaw.com;  
fdarr@mwncmh.com;  
gaunder@CarpenterLipps.com;  
ghull@eckertseamans.com;  
glpetrucci@vorys.com;  
gpoulos@enernoc.com  
Greta.see@puc.state.oh.us;  
haydenm@firstenergycorp.com;  
mhpetricoff@vorys.com;  
jeffrey.mayes@monitoringanalytics.com;  
jennifer.spinosi@directenergy.com;  
jkylercohn@BKLawfirm.com;  
jlang@calfee.com;  
jmcdermott@firstenergycorp.com;  
Jodi.bair@occ.ohio.gov;  
joliker@igsenergy.com;  
jvickers@elpc.org;  
Katie.johnson@puc.state.oh.us;  
Kevin.moore@occ.ohio.gov;  
Kristin.henry@sierraclub.org;  
Kurt.Helfrich@ThompsonHine.com;

Larry.sauer@occ.ohio.gov;  
laurie.williams@sierraclub.org;  
lhawrot@spilmanlaw.com;  
mjsatterwhite@aep.com;  
msmckenzie@aep.com;  
mdortch@kravitzllc.com;  
mfleisher@elpc.org;  
msoules@earthjustice.org;  
mjsettineri@vorys.com;  
mkurtz@BKLawfirm.com;  
mpritchard@mwncmh.com;  
msmalz@ohiopovertylaw.org;  
myurick@taftlaw.com;  
rseiler@dickinsonwright.com  
rsahli@columbus.rr.com;  
ricks@ohanet.org;  
sam@mwncmh.com;  
Sarah.Parrot@puc.state.oh.us  
scasto@firstenergycorp.com;  
Sechler@carpenterlipps.com  
schmidt@sppgrp.com;  
Scott.Campbell@ThompsonHine.com;  
sfisk@earthjustice.org;  
sasloan@aep.com;  
Stephanie.Chmiel@ThompsonHine.com;  
steven.beeler@puc.state.oh.us;  
stnourse@aep.com;  
talexander@calfee.com;  
tdougherty@theOEC.org;  
tobrien@bricker.com;  
todonnell@dickinsonwright.com  
twilliams@snhsllaw.com;  
tony.mendoza@sierraclub.org;  
Werner.margard@puc.state.oh.us;  
William.michael@occ.ohio.gov;  
william.wright@puc.state.oh.us

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Summary: Motion Ohio Power Company's Motion for Protective Order electronically filed by Mr. Daniel R. Conway on behalf of Ohio Power Company