

**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 limited information: (1) redacted from the public version of P3/EPSC's Initial Post-Hearing Brief filed on February 1, 2016 (pages 36 and 48), and (2) redacted from the public version of the hearing transcript Volumes XXI and XXII docketed by the Company on January 20, 2016.

These portions of the P3/EPSC brief and transcripts filed under seal 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 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 limited information: (1) redacted from the public version of P3/EPSC’s Initial Post-Hearing Brief filed on February 1, 2016 (pages 36 and 48), and (2) redacted from the public version of the hearing transcript Volumes XXI and XXII docketed by the Company on January 20, 2016.

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 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 information at issue here, 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 for the limited information: (1) redacted from the public version of P3/EPSC's Initial Post-Hearing Brief filed on February 1, 2016 (pages 36 and 48), and (2) redacted from the public version of the hearing transcript Volumes XXI and XXII docketed by the Company on January 20, 2016. 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 10th day of February, 2016.

/s/ Steven T. Nourse

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Summary: Motion -Ohio Power Company's Motion for Protective Order electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company