

**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  
AND REQUEST FOR AN EXPEDITED RULING**

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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) confidential exhibits admitted (or presented on the record without admission) during the hearing, and (2) any other document represented as confidential when submitted to the record but not yet ruled upon by the Attorney Examiners. More specifically, the following items are covered under this motion:

<u>AEP Ohio CONFIDENTIAL Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
Ex. 28 - PPA Unit Capacity Factors Workpaper (Confidential)	XI-2844	XI-2910
Ex. 29 - Live Costs Worksheet (Confidential)	XI-2855	--
Ex. 30 - IEU_RPD-1-003, Confidential Attachment 1-B (Confidential)	XI-2856	XI-2910
Ex. 31 - AEP Price Forecasts, Low Hourly Gen (Confidential)	XI-2862	XI-2910
Ex. 32 - RII AEP Modified Forecast (Confidential)	XI-2867	XI-2910
Ex. 33 - Inputs Worksheet (Confidential)	XI-2869	XI-2910
Ex. 55 - Reconciliation Tab of AJC-S-3 Workpapers (Confidential)	XXI - 5303	--

<u>Sierra Club CONFIDENTIAL Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
Ex. 6 - INT-1-002 (Confidential)	III-709	III-813
Ex. 7 - SC INT-2-45 (Confidential)	IV-973	IV-1163
Ex. 14 - SC INT-2-52 and Supplemental Attachment 1 (Confidential)	IV-1130	IV-1163
Ex. 39 - Errata of Paul L. Chernick (Confidential)	XI-2675	XI-907

<u>OMAEG CONFIDENTIAL Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
Ex. 7 - IEU RPD-1-003, Second Supplemental Att. 2 (Confidential)	III-722	III-814
Ex. 8 - OEG INT-1-016 (Confidential)	III-726	III-814
Ex. 9 - IEU INT-4-017 (Confidential)	III-734	III-814

<u>OCC CONFIDENTIAL Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
Ex. 18 - JFW-2 Revised (Confidential)	XV-3766	XV-3852

<u>ELPC CONFIDENTIAL Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
Ex. 5 - SC INT-1-002 (Confidential)	III-764	III-815
Ex. 6 - ELPC INT-3-012 (Confidential)	III-765	III-815

<u>IEU-OHIO CONFIDENTIAL Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
Ex. 8 - Ex. KDP 2 Detailed View, IEU RPD-1-003 Competitively-Sensitive Confidential Second Supplemental Att. 1C (Confidential)	III-776	III-814

<u>IGS CONFIDENTIAL Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
Ex. 1 - IEU RPD-1-003 Competitively-Sensitive Confidential Second Supplemental Attachment 1B (Confidential)	III-745	III-815

#### CONFIDENTIAL UNREDACTED TRANSCRIPTS FROM INITIAL HEARING

Day IV - Confidential Session for AEP Ohio witness McManus (covering limited redactions on pages 1137, 1138, 1148, 1149 and 1151 of the October 30, 2015 version docketed by Company Counsel)

Day V - Confidential Session for AEP Ohio witness Thomas (covering limited redactions on pages 1329-32 and 1334-35 of the October 30, 2015 version docketed by Company Counsel)

Day XI - Confidential Session for Sierra Club witness Chernick (covering limited redactions on pages 2858-59, 2865, 2868-69, 2873-74 of the October 30, 2015 version docketed by Company Counsel)

So as to avoid any potential delay associated with ruling in conjunction with the merits of this case, the Company seeks expedited ruling under Rule 4901-1-12(C) of the Ohio Administrative Code. After having filed motions for protection on September 18, 2015 (covering direct testimony), December 30, 2015 (covering Stipulation testimony) and February 10, 2016 (covering briefs and Stipulation hearing transcripts), as well as orally ensuring throughout the hearing that confidential exhibits were consistently admitted with a confidential designation into the record without objection by any party as to the confidential designation, this final motion relates back to information already presented and discussed as confidential for the record and should be considered a ministerial clean-up request and a quick ruling does not prejudice any party.

The reasons supporting this motion are provided in the attached Memorandum in Support.

Respectfully submitted,

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*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 limited information: (1) confidential exhibits admitted (or presented on the record without admission) during the hearing, and (2) any other document represented as confidential when submitted to the record but not yet ruled upon by the Attorney Examiners.

More specifically, the following items are covered under this motion:

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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 and AEPGR have taken steps to minimize the amount of information protected from public disclosure as required by O.A.C. 4901-1-24(D). After having received the information from AEPGR on a confidential basis, 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.

### **CONCLUSION**

For the reasons provided above, AEP Ohio respectfully requests that the Commission grant its motion for protective order for the limited information: (1) confidential exhibits admitted (or presented on the record without admission) during the hearing as specified above, and (2) any other document represented as confidential when submitted to the record but not yet ruled upon by the Attorney Examiners. So as to avoid any potential delay associated with ruling in conjunction with the merits of this case, the Company seeks expedited ruling under Rule 4901-1-12(C) of the Ohio Administrative Code.

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*Counsel for Ohio Power Company*

## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Ohio Power Company's Motion for Protective Order and Request for Expedited Ruling* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 2<sup>nd</sup> day of March 2016, via electronic transmission.

/s/ Steven T. Nourse

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