

FILE

BEFORE THE
OHIO POWER SITING BOARD

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In the Matter of the Application of)
American Municipal Power-Ohio, Inc., for)
a Certificate of Environmental)
Compatibility and Public Need for an)
Electric Generation Station and Related)
Facilities in Meigs County, Ohio.)

Case No. 06-1358-EL-BGN

AGREED PROTECTIVE ORDER

WHEREAS, discovery and the hearing in this action may require the production and disclosure of documents, testimony, materials and/or other information which contain confidential, proprietary or trade secret information requiring protection against unrestricted disclosure and use; and

WHEREAS, Applicant American Municipal Power-Ohio, Inc. ("AMP-Ohio"), on the one hand, and the Natural Resources Defense Council, the Ohio Environmental Council and the Sierra Club (hereinafter collectively "Intervenor Groups"), on the other, have agreed to the entry of this Agreed Protective Order in order to permit the production of confidential, proprietary or trade secret information between them.

NOW, THEREFORE, it is hereby ORDERED pursuant to Rule 4906-7-07(H)(1)(g & h) of the Rules of the Ohio Power Siting Board (the "OPSB Rules") that the following provisions shall apply to such documents, testimony, materials and/or other information:

1. As used in this Agreed Protective Order ("Protective Order"), the word "document" or "documents" means any kind of written, printed, recorded, electronic, computer or graphic matter, however produced or reproduced, in any tangible form, including, but not limited to, the following: (a) interrogatories and answers thereto; (b) requests for admissions and

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answers thereto; (c) document requests and responses thereto; (d) documents produced by any party or third-party in this action, whether pursuant to OPSB Rule 4906-7-07(H), subpoena or by agreement; (e) motions and briefs in support of or in response to motions; (f) deposition and hearing transcripts and exhibits; and (g) any portions of papers filed with the Board which quote from or summarize any of the foregoing.

2. AMP-Ohio or the Intervenor Groups may designate as "Confidential" any documents, testimony, materials and/or other information that the party making such designation reasonably believes in good faith to contain or disclose trade secrets; confidential research, development or commercial information; or other information which is of a commercially sensitive or confidential nature.

3. All documents, testimony, and other materials produced by AMP-Ohio or the Intervenor Groups in this case and labeled "Confidential" or "Attorneys' Eyes Only" shall only be used in this proceeding.

4. Use of any information or documents subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used for any business, commercial, competitive or other purpose. This Protective Order, however, in no way operates to restrict the disclosure or use of any information or documents that are known or become known through means or sources outside of this litigation.

5. AMP-Ohio or the Intervenor Groups may designate as confidential documents, testimony, or other materials produced in this case that contain or that could lead to the disclosure of confidential business or commercial information. The party claiming confidentiality shall mark the document, and each page of the document, with a stamp

identifying it as "Confidential." To the extent confidential documents are obtained from third parties, AMP-Ohio or the Intervenor Groups may also designate such documents as confidential.

6. AMP-Ohio or the Intervenor Groups also may designate "Attorneys' Eyes Only" documents, testimony, or other materials produced in this case that contain or that could lead to the disclosure of confidential business or commercial information. If any document or material falls within this category, the party claiming confidentiality shall mark the document, and each page of the document, with a stamp identifying it as "Attorneys' Eyes Only."

7. If portions of documents or other materials designated "Confidential" or "Attorneys' Eyes Only" are filed with the Board, they shall be filed under seal and in accordance with the procedure set forth in OPSB Rule 4906-7-07(H)(4).

8. At or within thirty days after receipt of the transcript of the deposition of any party or witness in this case, if the questioning is such that AMP-Ohio or the Intervenor Groups determine that the answers disclose confidential information or could lead to the disclosure of confidential information, such party may designate that information Confidential, and, when filed with the Board, the transcript containing this material shall be filed under seal in the manner described in paragraph 7.

9. Confidential or Attorneys' Eyes Only information and documents subject to this Protective Order shall not be filed with the Board or included in whole or in part in pleadings, motions, briefs, etc., filed in this case, except when any portion(s) of such pleadings, motions, briefs, etc., have been filed under seal in the manner described in paragraph 7 above.

10. Use of any information and documents marked "Confidential," including all information derived therefrom, shall be restricted solely to the following persons, who agree to

be bound by the terms of this Protective Order, unless additional persons are stipulated by counsel or authorized by the Board:

- a. Those directors, officers and employees of AMP-Ohio or the Intervenor Groups for whom it is necessary to disclose the confidential information or documents.
- b. Counsel for AMP-Ohio or the Intervenor Groups, attorneys of counsels' law firms and all employees of those firms, including, but not limited to, paralegal assistants, and stenographic and clerical employees.
- c. Any individual retained or specially employed by AMP-Ohio or the Intervenor Groups as an expert either in anticipation of litigation, preparation for hearing or to testify at any hearing, and provided that such individual execute a statement agreeing to be bound by this Protective Order as set forth in Exhibit A, attached hereto.
- d. The Board and its personnel, including, but not limited to, stenographic reporters regularly employed by the Board and stenographic reporters not regularly employed by the Board who are engaged by the Board during the litigation of this action.
- e. The authors and original recipients of the documents.

11. Use of any information, documents, or portions of documents marked "Attorneys' Eyes Only," including all information derived therefrom, shall be restricted solely to the following persons, who agree to be bound by the terms of this Protective Order, unless additional persons are stipulated by counsel or authorized by the Board:

- a. Inside counsel for the Intervenor Groups.

- b. Outside counsel for AMP-Ohio or the Intervenor Groups in the above-captioned litigation, and all employees of outside counsel's firms, including, but not limited to, paralegal assistants, and stenographic and clerical employees.
- c. Any individual retained or specially employed by a party as an expert either in anticipation of litigation, preparation for hearing or to testify at any hearing, for whom it is necessary to disclose the confidential information or documents, provided that such individual execute a statement agreeing to be bound by this Protective Order as set forth in Exhibit A, attached hereto.
- d. The Board and its personnel, including, but not limited to, stenographic reporters regularly employed by the Board and stenographic reporters not regularly employed by the Board who are engaged by the Board during the litigation of this action.
- e. The authors and the original recipients of the documents.

12. Whenever information designated as "Confidential" or "Attorneys' Eyes Only" pursuant to this Protective Order is to be (a) discussed by a party or (b) disclosed in a deposition or other hearing or proceeding, any party claiming confidentiality may exclude from the room any person, other than persons designated in Paragraphs 10 and 11 of this Protective Order, or other parties to this proceeding or their counsel who agree to be bound by this Protective Order, for that portion of the deposition, hearing or proceeding.

13. This Protective Order shall not constitute a waiver of any party's or non-party's right to oppose any discovery request as provided under law. Nothing in this Protective Order shall prejudice any party from seeking amendments to it broadening or restricting the rights of

access to and use of confidential information, or other modifications, subject to order by the Board.

14. Upon the request of the producing party, within thirty (30) days after the entry of a final Entry no longer subject to appeal on the merits of this case, the other party(ies) shall return to every other party or witness all information and documents or any copies subject to this Protective Order. This material shall be delivered in sealed envelopes marked "Confidential" to respective counsel.

15. AMP-Ohio and the Intervenor Groups reserve the right to dispute the confidential status claimed by the other in accordance with this Protective Order. The parties shall first try to resolve any such dispute on an informal basis before presenting the dispute to the Board. Consistent with the requirements of O.A.C. §§ 4906-7-01(B)(8)(c) and 4906-7-07(H)(4)(c), once a designation of confidentiality has been challenged, it is the burden of the party claiming confidentiality to justify that claim.

16. The inadvertent production of privileged material shall not be deemed a waiver of the applicable privilege.

SO ORDERED.

Administrative Law Judge

Stipulated and consented to by:



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EXHIBIT A

**BEFORE THE
OHIO POWER SITING BOARD**

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Compatibility and Public Need for an)	Case No. 06-1358-EL-BGN
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AGREEMENT TO BE BOUND BY AGREED PROTECTIVE ORDER

The undersigned, _____, whose address
is _____, hereby acknowledges
that he or she has received a copy of the Agreed Protective Order entered in this proceeding, has
read it and agrees to be bound by all of the terms thereof.

Date

Signature