

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Authority to)
Establish a Standard Service Offer)
Pursuant to §4928.143, Ohio Rev. Code,)
in the Form of an Electric Security Plan.)

Case No. 11-346-EL-SSO
Case No. 11-348-EL-SSO

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Approval of)
Certain Accounting Authority.)

Case No. 11-349-EL-AAM
Case No. 11-350-EL-AAM

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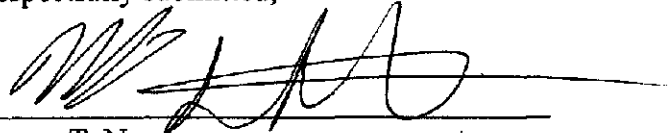
MOTION OF COLUMBUS SOUTHERN POWER COMAPNY AND OHIO POWER
COMPANY TO PROTECT CONFIDENTIAL INFORMATION
PURSUANT TO OHIO ADMINISTRATIVE CODE SECTION 4901-1-24

Columbus Southern Power Company and the Ohio Power Company (collectively
“Company”) moves, under O.A.C. 4901-1-24, that the Commission issues a protective order so
that certain confidential information is exempted from public disclosure as confidential,
proprietary, competitively sensitive and trade secret information. The information is included in
the exhibits of Company witness Jay F. Godfrey in these cases. A memorandum in support
detailing the sensitivity and confidentiality of the information is attached with an affidavit of
Company witness Jay F. Godfrey and wind developer representative Steve Irvin, supporting this
motion.

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Three copies of the unredacted information are being provided to the Commission confidentially pursuant to O.A.C. 4901-1-24. As a courtesy the Company attempted to highlight the confidential information on the confidential versions filed with this document.

Respectfully submitted,



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**Counsel for Columbus Southern Power
Company and Ohio Power Company**

MEMORANDUM IN SUPPORT

The Companies' motion requests that certain confidential information contained in the Audit Report be exempted from public disclosure as confidential, proprietary, competitively sensitive and trade secret information (the "Confidential Information").

Rule 4901-1-24(D), Ohio Admin. Code, provides that the Commission or certain designated employees may issue an order which is necessary 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 for determining what should be kept confidential by the Commission 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 1333.61, 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 (Rule 4901-1-24(A)(7), Ohio Admin. Code). The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act: "Trade secret" means 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 which 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, through the Uniform Trade Secrets Act.

This 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), has 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.

Description of the Confidential Information

The Confidential Information includes certain information relating to pricing for different renewable power contracts/supporting information and key terms in those contracts that indicate negotiation strategies. A public version of the exhibits is attached to this filing as well as with the testimony of Company witness Godfrey filed in this case. Specifically the “Confidential Information” subject to this request is:

- (a) *JFG-2B Timber Road Wind REPA Summary.* This document constitutes the term sheet for the 20-year, 99 MW Renewable Energy Purchase Agreement (“REPA”) entered into between Ohio Power Company and Paulding Wind Farm II, LLC (Paulding) as well as Columbus Southern Power Company and Paulding at the Timber Road facility. The redacted portions of Exhibit JFG-2B include the highly confidential price of the renewable energy as well as a key term reached in negotiations when negotiating terms of REPA’s.
- (b) *JFG-3B Timber Road Wind REPA for Ohio Power.* The redacted portions of Exhibit JFG-3B include the actual contract terms of the final REPA entered into between Paulding and Ohio Power Company.
- (c) *JFG-4B Timber Road Wind REPA for Columbus Southern Power Company.* The redacted portions of Exhibit JFG-4B include the actual contract terms of the final REPA entered into between Paulding and Columbus Southern Power Company.

The Information Is Generally Recognized As Confidential And Proprietary

As Company witness Godfrey affirms in the attached affidavit, the Confidential Information is generally considered confidential and proprietary. Affidavit of Jay F. Godfrey at ¶ 6 ("Godfrey Affidavit"); Affidavit of Steve Irvin at ¶ 6 (Irvin Affidavit). The Confidential Information is not available to or ascertainable by, persons outside the parties to the contract by proper means other than on a confidential basis. Godfrey Affidavit at ¶6; Irvin Affidavit at ¶ 5. Indeed, the Confidential Information derives economic value from the fact it is not generally known to persons who can obtain value from its disclosure. Godfrey Affidavit at ¶5; Irvin Affidavit at ¶ 4.

In light of the confidential and proprietary nature of the information, Paulding, American Electric Power Service Corporation ("AEPSC"), Columbus Southern Power Company and Ohio Power Company take all reasonable efforts to protect it from public disclosure. Godfrey Affidavit at ¶7; Irvin Affidavit at ¶6. Among the measures taken are limiting access to the information within the companies to only those persons with a legitimate need to access the information, protecting against disclosure outside the Company, and entering into confidentiality agreements to protect against disclosure by persons outside the Companies who are afforded access for legitimate purposes. Godfrey Affidavit at 7; Irvin Affidavit at ¶6.

The renewable energy market is extremely competitive. Information such as headings, which can indicate a purchaser or seller's willingness to enter into a particular type of provision, could affect the bargaining between potential sellers and purchasers, and provide competitors of the contracting parties with an unfair competitive advantage even if the specific terms are not disclosed. Other state commission's considering similar contracts have protected this type of information as confidential and proprietary information, and that their disclosure can cause

competitive harm. For example, the Indiana Utility Regulatory Commission in *Verified Petition of Indiana Michigan Power Company, An Indiana Corporation, For Approval Pursuant To Ind. Code 8-1-2-42(a), 8-1-8.8-11 And To the Extent Necessary 8-1-2.5-6 Of A Renewable Energy Purchase Agreement With Fowler Ridge II Wind Farm, LLC, Including Time Cost Recovery*, Case No. 43750 (Ind. P.U.C. September 1, 2009). The West Virginia Commission has repeatedly ordered confidential protection of similar terms and conditions (*Joint Petition for consent and approval of wind power purchase agreements between Appalachian Power Company and Wheeling Power Company, dba American Electric Power and Grand Ridge Energy II L,LC and Grand Ridge Energy II I LLC*. Case No. 09-0305-E-PC (PSC of West Virginia, April 29,2009); *Joint petition for consent and approval of a wind power purchase agreement between Appalachian Power Company and Wheeling Power Company, dba American Electric Power and Beech Ridge Energy LLC and a joint motion for non-disclosure and protective order of certain exhibits with the filing*, Case No. 08- 1600-E-PC (PSC of West Virginia, December 11, 2008) and *Petition for consent and approval of the purchase of power produced by a renewable wind energy resource and for an Assurance of Rate Recovery*, Case No. 07- 173 1 -E-PC (PSC of West Virginia, December 4, 2007). The Virginia Corporation Commission also afforded confidential treatment to the terms and conditions of a similar Wind purchase power agreement (*For Approval Pursuant To Section 56-585:2 Of The Virginia Code Of Purchase Power Agreements As Par of Its Participation In The Virginia Renewable Energy Portfolio Standard Program*, Case No. 2009-00 102 (Virginia S.C.C. October 14,2009). The Kentucky Public Service Commission protected similar redactions in *The Application for Approval of a Renewable Energy Purchase Agreement for Wind Energy*

Resources Between Kentucky Power Company and FPL Illinois Wind, LLC, Case No. 2009-545
(KPSC Approval Letter February 11, 2010).

Disclosure Of The Confidential Information Will Result in An Unfair Competitive Advantage To The Competitors Of Columbus Southern Power Company, Ohio Power Company and Paulding

The Confidential Information, if disclosed to competitors of Paulding, Columbus Southern Power Company, or Ohio Power Company, or otherwise made publicly available, would provide an unfair competitive advantage to competitors of the parties to the contract. The Confidential Information therefore is entitled to protection from disclosure by the Commission. Specifically, the public disclosure of the Confidential Information would:

- (a) Establish certain benchmarks in future negotiations, thereby potentially increasing costs incurred by customers of Columbus Southern Power Company and Ohio Power and its affiliates. Godfrey Affidavit at ¶ 5.
- (b) Will permit other purchasers to benefit from Columbus Southern Power Company's and Ohio Power's efforts in negotiating the REPA and "cherry-pick" the most advantageous contracts and terms to the utilities' competitive disadvantage. Godfrey Affidavit at ¶ 5.
- (c) Adversely affect Paulding's ability to negotiate future renewable energy power agreements. Godfrey Affidavit at ¶7; Irvin Affidavit at ¶4. Paulding has an understanding that its information will not be publicly disclosed. Godfrey Affidavit at ¶7; Irvin Affidavit at ¶6.

The Protective Order Should Be Granted For Sixty Months

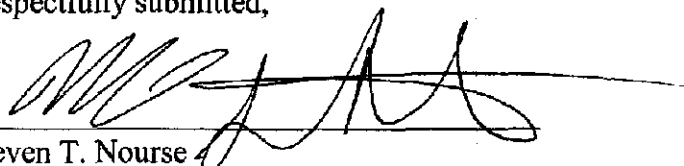
Applying these factors to the Confidential Information, it is clear that a protective order should be granted. It is precisely the kind of information which companies go to great lengths to

keep confidential. Moreover, because the commercial value of the Confidential Information will continue well beyond the eighteen-month period contemplated by Rule 4901-1-24 (F), Ohio Admin. Code, the Companies request that the Commission's order granting this motion prohibit public disclosure for sixty months.

Further, public disclosure of such information could impair the Companies' efforts to procure fuel for their generating plants on a competitive basis, and could adversely affect their ability to obtain terms, conditions and prices for their fuel supplies as advantageous as those that would otherwise be possible. On the other hand, public disclosure of this information is not likely to assist the Commission in carrying out its duties. The pricing and terms in need of protection in this case are not likely to be stale in sixty months and it is expected a new request to further the timeframe will be requested near the end of the sixty month term. Alternatively, the Commission could grant protection for the term of the contract, 20 years.

Wherefore, Columbus Southern Power Company and Ohio Power Company respectfully request the Commission to order the Confidential Information redacted in this docket and described in this motion and memorandum in support be exempted from public disclosure as confidential, proprietary, competitively sensitive and trade secret information for a minimum initial term of sixty months.

Respectfully submitted,



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**Counsel for Columbus Southern Power
Company and Ohio Power Company**

ATTACHMENT

AFFIDAVIT OF JAY F. GODFREY

Jay F. Godfrey, first being duly sworn, states:

1. I am of the age of majority and competent to make this affidavit. I have personal knowledge of the matters set forth in this affidavit.
2. I am employed by American Electric Power Service Corporation (AEPSC), a wholly owned subsidiary of American Electric Power Company, Inc. (AEP). AEP is the parent company of Columbus Southern Power Company and Ohio Power Company (collectively "AEP Ohio"). I am employed as a Managing Director - Renewable Energy. In that capacity, I am responsible for managing AEP's and its subsidiaries' portfolio of Renewable Energy Purchase Agreements (REPAs) and related long-term structured emission reduction offset agreements. This includes potential new wind project development. I am familiar with the terms and other confidential information relating to the Renewable Energy Purchase Agreement ("REPA") entered into between Ohio Power Company and Paulding Wind Farm II, LLC (Paulding) as well as Columbus Southern Power Company and Paulding at the Timber Road facility.
3. I have specific personal knowledge of the confidential, proprietary, competitively sensitive and trade secret nature of the confidential information addressed in this Affidavit through direct contact with this information and through my investigation with other AEPSC and AEP Ohio employees who work directly with the confidential information. I have personal knowledge of efforts taken by AEP Ohio and AEPSC to maintain the secrecy of the confidential information through direct involvement in these efforts, and through my investigation of these efforts with other employees who work directly with these procedures. Finally, I have personal knowledge through my

investigation, along with other AEPSC and AEP Ohio employees who work directly with the confidential information, of the effect the public disclosure of the confidential information would have on AEP Ohio's competitive efforts in securing such contracts.

**Description of the Confidential Information for Which Protection
is Sought**

4. AEP Ohio is requesting certain information included in the REPA and other confidential information included in the summary of the transaction protected from public disclosure. More specifically, the "Confidential Information" includes the price per MWh and certain other negotiated commercial terms of the Wind REPA that are confidential, proprietary, competitively sensitive and a trade secret. These exhibits have been identified as Exhibits JFG-2B, JFG-3B, and JFG-4B. This information is generally considered confidential and proprietary.

**The Information Contained in Confidential Information Derives
Independent Economic Value By Reason of the Fact that it is Not
Publicly Available**

5. AEP Ohio and its affiliates may negotiate other similar contracts with other suppliers in the future. If the prices and terms included in the Wind REPA and related cost analysis became generally known or readily available, parties with which AEP Ohio and its affiliates may negotiate could use this knowledge to the detriment of AEP Ohio, its stakeholders and affiliates. Knowledge of these terms by other potential suppliers would establish certain benchmarks in future negotiations, thereby potentially increasing costs incurred by ratepayers, shareholders and AEP Ohio and its affiliates. The Confidential Information also could be used by other purchasers competing for such contracts to "cherry-pick" the most favorable contracts, thereby depriving AEP Ohio of the ability to

obtain the most advantageous prices for its customers. Finally, Public disclosure would impact Paulding's ability to negotiate future renewable power agreements. In other words, other suppliers would insist on the same or better terms as those negotiated in this purchase agreement. Furthermore, knowledge of the provisions by potential power supply competitors could enable them to gain an unfair advantage in future competitive situations. In sum, AEP Ohio and Paulding both garner economic benefit from this Confidential Information not being generally known or publicly available.

The Information is Not Generally Known, Readily Ascertainable by Proper Means by Other Persons Who Can Obtain Economic Value from its Disclosure or Use

6. The Confidential Information is not available or ascertainable by other parties through normal or proper means. No reasonable amount of independent research could yield this information to other parties. The Confidential Information is generally considered confidential and proprietary.

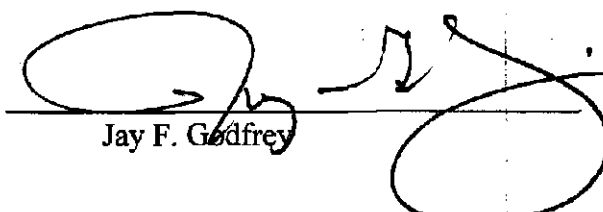
The Information is the Subject of Efforts Reasonable Under The Circumstances to Maintain Its Secrecy

7. The Confidential Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. A confidentiality agreement has been signed between AEP Ohio, and Paulding to restrict the access of information to only those employees, officers and representatives of AEP Ohio and AEPSC who have a need to know about such information due to their job and management responsibilities. Paulding has an understanding that AEP Ohio will not publicly disclose this information. AEP Ohio and AEPSC limit public access to buildings housing the Confidential Information by use of security guards. Persons not employed by AEP Ohio and AEPSC who are allowed past security guards at buildings where Confidential Information is kept are not

permitted to walk within such buildings without an escort. AEP Ohio's and AEPSC's files containing the Confidential Information are maintained separately from AEP Ohio's and AEPSC's general records and access to those files is restricted. Within AEP Ohio and AEPSC, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of AEP Ohio and AEPSC who have a need to know about such information due to their job and management responsibilities. Outside AEP Ohio and AEPSC, this information is only provided to certain persons who have a legitimate need to review the information to participate in this Cause and who sign a confidentiality agreement.

8. Further the Affiant sayeth nothing more.

Dated: 1-21-11


Jay F. Godfrey

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

Subscribed and sworn to before me, a Notary Public, in and for said County and State this
21st day of January 2011.


Notary Public

I am a resident of Franklin County, Ohio

My commission expires: 1/4/2014


DONNA J. STEPHENS
Notary Public, State of Ohio
My Commission Expires 01-04-2014

**Affidavit
Of
Steve Irvin**

Steve Irvin, upon his oath deposes and states:

1. I am Chief Commercial Officer of Paulding Wind Farm II, LLC (Paulding Wind Farm). I have personal knowledge of the operation of these companies, relative to practices concerning confidential information.
2. This affidavit is being filed with the Public Utilities Commission of Ohio (Commission) in support of a Motion for a Protective Order filed by Columbus Southern Power Company and Ohio Power Company (collectively "AEP Ohio") and with an affidavit of Jay F. Godfrey supporting the confidential nature of the information included concerning the contract between Paulding Wind Farm and AEP Ohio.

**Description of the Confidential Information for Which Protection is
Sought**

3. I understand that AEP Ohio is requesting that certain information contained in the Wind REPA in this case be treated as confidential, proprietary, competitively sensitive, and trade secret information. This information includes the price per MWh in the Wind PPA and certain other proprietary terms of the Wind REPA which constitutes competitively sensitive information (the Confidential Information).

The Information Contained in Confidential Information Derives Independent Economic Value by Reason of the Fact that it is not Publicly Available

4. Public disclosure of the Confidential Information could harm Paulding Wind Farm. The Wind REPA was the product of arms-length, confidential negotiations, and the Confidential Information constitutes competitively sensitive information. For Paulding Wind Farm, the public disclosure of the Confidential Information could result in a competitive disadvantage with respect to other potential purchased power buyers for this project or other projects that Paulding Wind Farm is developing, and put Paulding Wind Farm at a competitive disadvantage in future transactions. The Confidential Information derives actual or potential economic value from not being generally known to other persons who can obtain economic value from its disclosure or use and, to my knowledge, such information is not readily ascertainable on a non-confidential basis by third parties by proper means.

The Confidential Information is Not Generally Known, Readily Ascertainable by Proper Means by Other Persons Who Can Obtain Economic Value from its Disclosure or Use


5. To my knowledge, the Confidential Information is not available or ascertainable on a non-confidential basis by other parties through normal or proper means.

The Confidential Information is the Subject of Efforts Reasonable Under the Circumstances to Maintain Its Secrecy

6. Paulding Wind Farm submitted the Confidential Information based upon the understanding that the Confidential Information will not be publicly disclosed, and that AEPSC and affiliated companies will take all necessary to protect against its public disclosure. The Confidential Information has been the subject of efforts

7. Further the Affiant sayeth nothing more.

Dated: 21/11


Steve Irvin

State of Texas)
County of Harris) ss

Steve Irvin
Chief Commercial Officer

Subscribed and sworn to before me, a Notary Public, in and for said
County and State this 21st day of January ~~2011~~, 2011

Lisa K. Broomes
Notary Public

I am a resident of Montgomery County, TX State.
My Commission expires: 7-1-2011

