

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Fuel Adjustment)	Case No. 10-268-EL-FAC
Clauses for Columbus Southern Power)	Case No. 10-269-EL-FAC
Company and Ohio Power Company.)	
)	Case No. 10-870-EL-FAC
)	Case No. 10-871-EL-FAC
)	
)	Case No. 10-1286-EL-FAC
)	Case No. 10-1288-EL-FAC

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**COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER COMPANY'S
MOTION FOR PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT**

Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, the "Companies" or "AEP Ohio"), pursuant to Rule 4901-1-24, Ohio Admin. Code, hereby move the Commission for a protective order regarding confidential trade secret information of the Companies included in the confidential version of the Audit Report of the Management/Performance and Financial Audits of the FAC Columbus Southern Power Company and Ohio Power Company (Audit Report) filed in these cases on May 26, 2011. The Commission has both redacted and confidential documents on file and in the control of Staff.

The Auditor in the case requested confidential treatment of the filing in a May 26, 2011 filing on behalf of the Companies. This motion and memorandum in support also seeks confidential treatment to ensure the Commission has adequate information to make a finding of confidentiality. The confidential information included in the Audit Report constitutes trade secrets under Ohio law and merit protection from disclosure as done with the previous Audit Report.

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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").

Description Of The Confidential Information.

The Confidential Information includes certain information contained throughout the confidential version of the Audit Report. A public version of the Audit Report from which the Confidential Information was redacted has also been filed in this case. As may be seen even by a review of the redacted "public" version of the Audit Report, the Confidential Information includes coal inventory information on an individual plant and total company basis, specific fuel/consumables contract terms and conditions (including pricing) and planned purchasing information, other competitive financial and cost information, and competitive pricing information for Renewable Energy Certificates and emission allowances.

The Companies worked with the Auditor and Staff prior to the docketing of the report to ensure that any and all redacted information was not acquired by the Auditor from an independent source but from the Companies as confidential information. It was only upon verification of this fact did the Staff move forward with docketing of the Audit Report.

The Confidential Information Derives Independent Economic Value By Reason Of The Fact That It Is Not Publicly Available.

The Confidential Information is not readily available in the public domain and the Companies take steps to protect this information from public disclosure. Such information is competitively sensitive and a trade secret because competitors may use such data to determine the Companies' current and projected resource costs, detailed information about the operations of

CSP's and OPCo's facilities and the price at which the Companies have secured coal for their plants. The disclosure of such costs would adversely impact the Companies because it would permit competitors to better determine how to price their services and products, including the coal provided to the Companies' facilities. Further, the disclosure of the Companies' resource needs and costs would disincite the negotiation or competitive bidding process by allowing potential suppliers or vendors to know what the Companies' expectations are with respect to their resource needs and costs. Thus, these suppliers or vendors would have the advantage of knowing how to price their bids or negotiate to provide resources if they had access to the Confidential Information.

The Information Is Neither Generally Known, Nor Readily Ascertainable By Proper Means By Other Persons Who Can Obtain Economic Value From Its Disclosure Or Use.

The Confidential Information is not available or ascertainable by other parties through normal or proper means; and that no reasonable amount of proper independent research could yield this information to other parties.

The Information Is The Subject Of Efforts Reasonable Under The Circumstances To Maintain Its Secrecy.

The Companies and American Electric Power Service Corporation (AEPSC) acting on behalf of the Companies make reasonable efforts under the circumstances that have been taken to maintain the secrecy of the Confidential Information. The Companies and AEPSC restrict the access of information to only those employees, officers and representatives of the Companies and AEPSC who have a need to know about such information due to their job and management responsibilities. The Companies and AEPSC limit public access to buildings housing the Confidential Information by use of security guards. Persons not employed by the Companies 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. The Companies' and AEPSC's files containing the Confidential Information are maintained separately from CSP's, OPCo's and AEPSC's general records and access to those files is restricted. Within the Companies and AEPSC, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of the Companies and AEPSC who have a need to know about such information due to their job and management responsibilities. Outside CSP, OPCo and AEPSC, this information is only provided to certain persons who have a legitimate need to review the information to participate in this proceeding and who sign a confidentiality agreement.

Applicable Law

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.

The Commission Previously Granted Protection to Similar Information

The Examiner in the 2009 audit granted confidential treatment to similar information. In an Entry dated June 29, 2010, the Attorney Examiner found that the items in the Audit Report of calendar year 2009 that the information redacted from the confidential version of the report constituted trade secret information, and prohibited disclosure. (Case Nos. 09-872-EL-FAC and 09-873-EL-FAC, June 29, 2010 Entry). The information currently redacted covered many of the same information of that prior report as items subject to the scope of the Commission ordered audit.

Applying these factors, and the Commission's precedent, to the Companies' 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. The previous approval was for the eighteen-month period contemplated by Rule 4901-1-24 (F), Ohio Admin. Code. The Companies would prefer a longer period but will accept the same treatment as the prior audit report with the right to extend the confidentiality in a later filing.

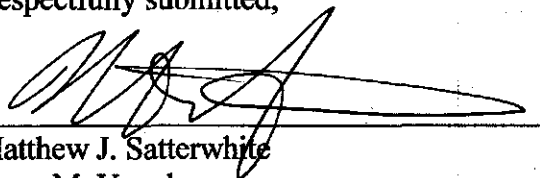
Public disclosure of such information could impair the Companies' efforts to procure fuel for their generating plants on a competitive basis, and could adversely affect their ability to obtain terms, conditions and prices for their fuel supplies as advantageous as those that would

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 Companies have already executed protective agreements with the Ohio Consumers' Counsel and the Industrial Energy Users-Ohio and provided the confidential version of the report to those entities. The Companies also provided a copy of a protective agreement to the OMA Energy Group for execution.

Conclusion

For the above reasons the Companies request that the Commission grant its motion to protect the redacted portions of the Audit Report.

Respectfully submitted,



Matthew J. Satterwhite

Anne M. Vogel

American Electric Power Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215-2373

Telephone: (614) 716-1608

Facsimile: (614) 716-2950

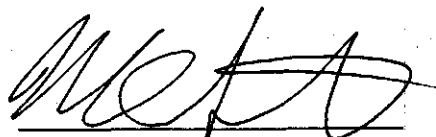
mjsatterwhite@aep.com

amvogel@aep.com

Counsel for Columbus Southern Power
Company and Ohio Power Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon the below-named counsel via First Class mail, postage prepaid, this 1st day of June, 2011.



Matthew J. Satterwhite

Terry Etter
Office of the Ohio Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, Ohio 43215

Lisa G. McAlister
Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291