

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Fuel Adjustment )  
Clause of Columbus Southern Power ) Case No. 09-872-EL-FAC  
Company and Ohio Power Company and ) Case No. 09-873-EL-FAC  
Related Matters for 2010. )

In the Matter of the Fuel Adjustment )  
Clause of Columbus Southern Power ) Case No. 10-268-EL-FAC  
Company and Ohio Power Company and ) Case No. 10-269-EL-FAC  
Related Matters for 2010. )

In the Matter of the Fuel Adjustment )  
Clause of Columbus Southern Power ) Case No. 10-870-EL-FAC  
Company and Ohio Power Company and ) Case No. 10-871-EL-FAC  
Related Matters for 2010. )

In the Matter of the Fuel Adjustment )  
Clause of Columbus Southern Power ) Case No. 10-1286-EL-FAC  
Company and Ohio Power Company and ) Case No. 10-1288-EL-FAC  
Related Matters for 2010. )

ENTRY

The attorney examiner finds:

- (1) By opinion and order issued March 18, 2009, in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, *In re AEP-Ohio ESP cases* (ESP cases), the Commission approved the establishment of fuel adjustment clause (FAC) mechanisms, under which Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively AEP-Ohio or Companies) can recover prudently incurred costs associated with fuel, including consumables related to environmental compliance, purchased power costs, emission allowances, and costs associated with carbon-based taxes and other carbon-related regulations. The Commission affirmed the establishment of the FAC in its July 23, 2009, entry on rehearing in the ESP cases.
- (2) The Commission established in the ESP cases an annual audit to approve the appropriateness of the accounting of the FAC costs and the prudence of decisions made. Energy Ventures

Analysis, Inc. (EVA) and its subcontractor, Larkin & Associates PLLC (Larkin), were selected by the Commission to perform the management/performance and financial audits of the Companies for 2009, 2010, and 2011.

- (3) By entry issued January 25, 2011, the attorney examiner directed that EVA's final audit report on the 2010 FAC cases be filed no later than May 26, 2011.
- (4) On May 26, 2011, consistent with the Commission's order in the ESP cases, the 2010 FAC report of AEP-Ohio's management/performance and financial audit (2010 report) was filed in Case Nos. 10-268-EL-FAC (10-268), 10-269-EL-FAC (10-269), 10-870-EL-FAC (10-870), 10-871-EL-FAC (10-871), 10-1286-EL-FAC (10-1286), and 10-1288-EL-FAC (10-1288). In order to ensure administrative efficiency, the attorney examiner finds that all CSP quarterly updates (i.e., Case Nos. 09-872-EL-FAC, 10-268, 10-870, and 10-1286) should be consolidated under 10-268. Likewise, the attorney examiner determines that all OP quarterly filings (i.e., Case Nos. 09-873-EL-FAC, 10-269, 10-871, and 10-1288) should be consolidated under 10-269.
- (5) On June 1, 2011, AEP-Ohio filed a motion for protective order, claiming that certain information provided in the confidential version of the 2010 report constitutes confidential trade secret information under Ohio law.
- (6) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.
- (7) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to

constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

- (8) Ohio law defines a trade secret as "information . . . 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." Section 1333.61(D), Revised Code.
- (9) The attorney examiner has examined the information covered by the motion for protective order filed by AEP-Ohio, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,<sup>1</sup> the attorney examiner finds that the information redacted from the confidential version of the report constitutes trade secret information. Release of this information is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that AEP-Ohio's motion for protective order is reasonable with regard to the information redacted from the confidential version of the report.
- (10) Rule 4901-1-24(F), O.A.C., provides for protective orders relating to trade secrets to automatically expire 18 months after the date of issuance. Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If AEP-Ohio wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion is filed, the Commission may release this information to the public upon expiration of the protective order, without prior notification to AEP-Ohio.

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<sup>1</sup> See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

- (11) On February 25, 2011, the Office of the Ohio Consumers' Counsel (OCC) filed motions to intervene in 10-268, 10-269, 10-870, 10-871, 10-1286, and 10-1288 asserting that OCC has a substantial interest in these proceedings, and that the disposition of the proceedings may impair or impede OCC's ability to protect that interest.
- (12) On March 10, 2011, the Ohio Manufacturers' Association Energy Group (OMAEG) filed a motion to intervene in 10-1286 and 10-1288 asserting that the OMAEG has a substantial interest in these proceedings, and that the disposition of the proceedings may impair or impede the OMAEG's ability to protect that interest.
- (13) On June 1, 2011, the Industrial Energy Users-Ohio (IEU-Ohio) filed a motion to intervene in 10-268, 10-269, 10-870, 10-871, 10-1286, and 10-1288 asserting that IEU-Ohio has a substantial interest in these proceedings, and that the disposition of the proceedings may impair or impede IEU-Ohio's ability to protect that interest.
- (14) No memoranda in opposition to the intervention of OCC, the OMAEG, or IEU-Ohio were filed.
- (15) The attorney examiner finds that OCC, the OMAEG, and IEU-Ohio have set forth reasonable grounds for intervention. Accordingly, their motions to intervene should be granted.
- (16) Having reviewed the report, the attorney examiner finds that this matter should be set for hearing. Accordingly, the following procedural schedule shall be set:

July 6, 2011	Intervention deadline
September 7, 2011	Prehearing conference Pre-filed testimony deadline
September 14, 2011	Hearing commences

As stated above, the hearing will commence on September 14, 2011, and will proceed through September 16, 2011, if necessary. Both the prehearing conference and the hearing will commence at 10:00 a.m., at the offices of the Commission, 180

East Broad Street, 11th Floor, Hearing Room 11-A, Columbus,  
Ohio 43215-3793.

It is, therefore,

ORDERED, That the motion for protective treatment filed by the Companies be granted in accordance with finding 9. It is, further,

ORDERED, That the motions to intervene filed by OCC, the OMAEG, and IEU-Ohio be granted in accordance with finding 15. It is, further,

ORDERED, That the procedural schedule set forth in finding 16 be adopted. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: Jeffrey R. Jones  
Jeffrey R. Jones  
Attorney Examiner

/vrm B

Entered in the Journal  
JUN 16 2011

Betty McCauley  
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Secretary