

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Columbus  
Southern Power Company for Approval of  
an Electric Security Plan; an Amendment to  
its Corporate Separation Plan; and the Sale or  
Transfer of Certain Generating Assets.**

**Case No. 08-917-EL-SSO**

**In the Matter of the Application of Ohio  
Power Company for Approval of its Electric  
Security Plan; and an Amendment to its  
Corporate Separation Plan.**

**Case No. 08-918-EL-SSO**

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

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Columbus Southern Power Company and Ohio Power Company ("AEP Ohio" or "the Companies"), pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code (O.A.C.), respectfully request that the Public Utilities Commission of Ohio (Commission) issue a protective order for Exhibit KMM-3 contained in the direct testimony of Kevin M. Murray filed on behalf of IEU-Ohio on June 30, 2011 in this proceeding. The reasons supporting this motion (and which also support the motion that IEU-Ohio filed on July 30, 2011, that also requests confidential treatment of Exhibit KMM-3 to Mr. Murray's testimony) are provided in the attached memorandum in support.

Respectfully Submitted,

Steven T. Nourse / *per authorization DRC*

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## **MEMORANDUM IN SUPPORT**

AEP Ohio requests that Exhibit KMM-3 to IEU-Ohio witness Kevin M. Murray's prefiled testimony filed on June 30, 2011, be protected from public disclosure. The information for which protection is sought includes a detailed description of the constrained option model used by AEP Ohio to estimate the risks and costs of providing customers with regulated, stable Standard Service Offer (SSO) generation rates. This model determines the cost of providing customers with the option of leaving their regulated SSO rates when market prices make it attractive to switch to competitive retail electric service providers and, subsequently, to return to their regulated SSO in the event further changes in market prices make it attractive for them to switch back. The information is the product of original research and development, has been kept confidential, and, as a result, retains substantial economic value to the Companies 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 enable third parties to replicate the constrained option model at little or no cost. 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.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Public Utilities Commission of Ohio (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 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 1333.31, 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 (O.A.C. § 4901-1-24(A)(7)). 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, 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); OhioBell 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 St3d 513,524-525.

Applying these factors to the information contained in Exhibit KMM-3 to Mr. Murray's pre-filed testimony demonstrates that protection from disclosure is appropriate. As noted above, the information includes a detailed description of the constrained option model used by the AEP Ohio to estimate the risks and costs of providing customers with the option of leaving their regulated SSO when market prices make it attractive to switch to competitive retail electric service providers and, subsequently, to return to their regulated SSO in the event further changes

in market prices make it attractive for them to switch back. The information is the product of original research and development, has been kept confidential, and, as a result, retains substantial economic value to the Companies 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 enable third parties to replicate the constrained option model at little or no cost. 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.

For the reasons provided above, AEP Ohio requests that the Commission grant its motion, and IEU-Ohio's motion, for a protective order: to maintain the confidentiality of the information contained in Exhibit KMM-3 to Mr. Murray's testimony filed on June 30, 2011, by ordering that it be kept under seal. .

Respectfully Submitted,

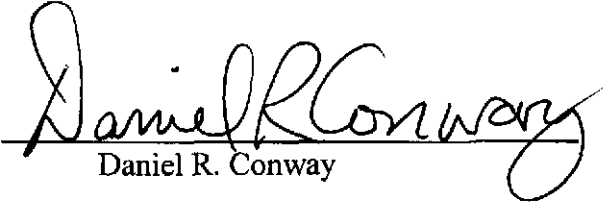
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Counsel for Columbus Southern Power  
Company and Ohio Power Company

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Columbus Southern Power Company's and Ohio Power Company's Motion for Protective Order has been served upon the below-named counsel and Attorney Examiners via electronic mail this 8<sup>th</sup> day of July, 2011.

  
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