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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	) ) ) )	Case No. 10-2376-EL-UNC
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
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders	) ) ) )	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders	) ) ) )	Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	) ) ) )	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	) ) ) ) )	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	) ) ) ) )	Case No. 11-4921-EL-RDR

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

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Columbus Southern Power Company and Ohio Power Company, pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code (O.A.C.), respectfully request that the Public Utilities Commission of Ohio issue protective orders keeping confidential the portions of the Rebuttal Testimony of William A. Allen and portions of an exhibit to that testimony, all filed October 21, 2011. The confidential unredacted version of the testimony and exhibit will be served upon parties that have executed confidentiality or protective agreements. The reasons supporting this motion are provided in the attached memorandum in support.

Respectfully submitted,

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Counsel for Columbus Southern Power  
Company and Ohio Power Company

## MEMORANDUM IN SUPPORT

Columbus Southern Power Company and Ohio Power Company (collectively, “AEP Ohio” or “the Companies”) request that the portions of the Rebuttal Testimony of William A. Allen and portions of an exhibit to that testimony, all filed October 21, 2011, be protected from public disclosure. The information in the text of the testimony appears in Table 1 and Table 2. The information source for that information is found in Exhibit WAA-R2B. The information for which protection is sought includes market sensitive analysis detailing market comparable rates for electric generation and the details of offerings for energy and capacity and fuel costs.

The information is the product of original research and development by AEP Ohio, 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. Allowing unfettered public access to the information would give third parties inappropriate access to competitively sensitive business information about the Companies. 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 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 used to determine what the Commission should keep confidential 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. See O.A.C. § 4901-1-24(A)(7). The Uniform Trade Secrets Act defines “trade secret” to mean:

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 that 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 the relevant portions of the testimony offered by Mr. Allen demonstrates that protection from disclosure is appropriate. As noted above, the information includes market sensitive analysis detailing market comparable rates for electric generation and the details of offerings for energy and capacity and fuel costs. The Attorney Examiner previously granted confidential protection for the same type of information in an August 4, 2011 Entry. Paragraph 7 of that Entry listed “details of offerings for

energy and capacity” and issues related to the costs of fuel in the summary of items subject to the protective order. The information at issue in this request is the same type of information.

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 give third parties inappropriate access to competitively sensitive business information about the Companies. 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.

Again, the information in the text of the testimony appears in Table 1 and Table 2. The information source for that information is found in Exhibit WAA-R2B. Pursuant to O.A.C. 4901-1-24(D)(1), only the information that is essential to prevent disclosure of the confidential information is redacted in both the testimony and exhibit. Likewise, three unredacted copies of the confidential information is being filed under seal with the Commission. The confidential unredacted version of the testimony and exhibit will be served upon parties that have executed confidentiality or protective agreements.

For the reasons provided above, AEP Ohio requests that the Commission grant its motion for protective order to maintain the confidentiality of the information contained in the portions of the Rebuttal Testimony of William A. Allen and portions of an exhibit to that testimony, all filed October 21, 2011, by ordering that the testimony excerpts and exhibits 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 Orders* has been served upon the below-named counsel and Attorney Examiners via electronic mail this 28th day of September, 2011.

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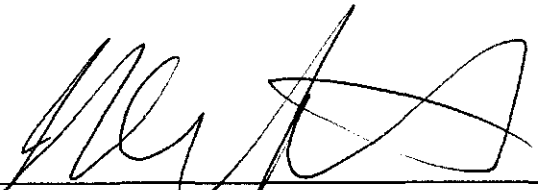
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Counsel for Columbus Southern Power  
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## CERTIFICATE OF SERVICE

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 Orders* has been served upon the below-named counsel and Attorney Examiners via electronic mail this 21th day of October, 2011.



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