

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission)	
Review of the Capacity Charges of)	Case No. 10-2929-EL-UNC
Ohio Power Company and)	
Columbus Southern Power Company)	

AEP OHIO’S MOTION FOR PROTECTIVE ORDER

Ohio Power Company (“AEP Ohio” or the “Company”)¹, pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, respectfully requests that the Public Utilities Commission of Ohio issue protective orders ordering confidential the portions of the response to Question 27 and Exhibit KMM-5 contained in the direct testimony of Kevin M. Murray, filed on behalf of the Industrial Energy Users Ohio (“IEU”) on April 4, 2012 in this proceeding. The information is considered highly confidential and designated as restricted access information within the Company and with outside parties even under a confidential agreement. The confidential unredacted version of the testimony and exhibit has already been filed under seal with the Commission by IEU. The reasons supporting this motion are provided in the attached memorandum in support.

Respectfully submitted,

/s/ Yazen Alami

Steven T. Nourse
Matthew J. Satterwhite
Yazen Alami
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608

¹ As a result of the Commission’s Opinion and Order in Case Nos. 11-346-EL-SSO et al., Columbus Southern Power and Ohio Power Company were merged effective December 31, 2011. Accordingly, references herein to Ohio Power Company or AEP Ohio, the surviving entity after the merger, include the predecessor interests of Columbus Southern Power.

Facsimile: (614) 716-2950

stnourse@aep.com

mjsatterwhite@aep.com

yalami@aep.com

Counsel for Ohio Power Company

MEMORANDUM IN SUPPORT

On April 4, 2012, the Industrial Energy Users Ohio (“IEU”) filed a motion for protective order and memorandum in support requesting that the Public Utilities Commission of Ohio (“Commission”) “issue a protective order for the confidentiality of the response to Question 27 and Exhibit KMM-5 in the direct testimony of Kevin M. Murray filed on behalf of IEU-Ohio on April 4, 2012 in this proceeding” AEP Ohio supports and requests that the Commission grant IEU’s motion for protective order.

As supported in the attached affidavit of Kelly D. Pearce (Exhibit A), the information for which protection is sought includes restricted access, competitively sensitive information detailing offerings and bilateral transactions for energy and capacity. The information contains third-party information, has been kept confidential and, as a result, retains substantial economic value to AEP Ohio by being kept confidential. Allowing unfettered public access to the information would permit inappropriate access to competitively sensitive business information about the Company and its contracting parties. 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 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, 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 response to Question 27 and Exhibit KMM-5 of IEU's witness Murray demonstrates that protection from disclosure is appropriate. As noted above, the information includes competitively

sensitive information detailing offerings and bilateral transactions for energy and capacity made by the Company.

The information contains sensitive third-party information, has been kept confidential and, as a result, retains substantial economic value to AEP Ohio by being kept confidential. Allowing unfettered public access to the information would permit inappropriate access to competitively sensitive business information about the Company. 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.

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. Moreover, IEU filed unredacted copies of the exhibit and testimony 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's motion for protective order seeking confidential treatment of the response to Question 27 and Exhibit KMM-5 in the direct testimony of Kevin M. Murray filed on behalf of IEU on April 4, 2012 in this proceeding and order that the testimony and exhibit be kept under seal.

Respectfully submitted,

/s/Yazen Alami

Steven T. Nourse

Matthew J. Satterwhite

Yazen Alami

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Telephone: (614) 716-1608

Facsimile: (614) 716-2950

stnourse@aep.com

mjsatterwhite@aep.com

yalami@aep.com

Counsel for 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-listed counsel and Attorney Examiners via electronic mail this 4th day of April, 2012.

/s/ Yazen Alami

Yazen Alami

greta.see@puc.state.oh.us,
jeff.jones@puc.state.oh.us,
Daniel.Shields@puc.state.oh.us,
Tammy.Turkenton@puc.state.oh.us,
Sarah.Parrot@puc.state.ohio.us,
Jodi.Bair@puc.state.oh.us,
Bob.Fortney@puc.state.oh.us,
Doris.McCarter@puc.state.oh.us,
Greg.Price@puc.state.oh.us,
Werner.Margard@puc.state.oh.us,
William.Wright@puc.state.oh.us,
john.jones@puc.state.oh.us,
Kim.Wissman@puc.state.oh.us,
Hisham.Choueiki@puc.state.oh.us,
Dan.Johnson@puc.state.oh.us,
steven.beeler@puc.state.oh.us,
dclark1@aep.com,
grady@occ.state.oh.us,
keith.nusbaum@snrdenton.com,
kpkreider@kmlaw.com,
mjsatterwhite@aep.com,
ned.ford@fuse.net,
pfox@hilliardohio.gov,
ricks@ohanet.org,
stnourse@aep.com,
cathy@theoec.org,
dsullivan@nrhc.org,
aehaedt@jonesday.com,
dakutik@jonesday.com,
haydenm@firstenergycorp.com,
dconway@porterwright.com,
jlang@calfee.com,
lmcbride@calfee.com,
talexander@calfee.com,
etter@occ.state.oh.us,
grady@occ.state.oh.us,
small@occ.state.oh.us,
cynthia.a.fonner@constellation.com,
David.fein@constellation.com,
Dorothy.corbett@duke-energy.com,
Amy.spiller@duke-energy.com,
dboehm@bklawfirm.com,
mkurtz@bklawfirm.com,
ricks@ohanet.org,
tobrien@bricker.com,
jbentine@cwsllaw.com,
myurick@cwsllaw.com,
zkravitz@cwsllaw.com,
jejadwin@aep.com,

mshalz@ohiopoverlylaw.org,
jmaskovyak@ohiopoverlylaw.org,
todonnell@bricker.com,
cmontgomery@bricker.com,
lmcaster@bricker.com,
mwarnock@bricker.com,
gthomas@gtpowergroup.com,
wmassey@cov.com,
henryeckhart@aol.com,
laurac@chappelleconsulting.net,
whitt@whitt-sturtevant.com,
thompson@whitt-sturtevant.com,
sandy.grace@exeloncorp.com,
cmiller@szd.com,
ahaque@szd.com,
gdunn@szd.com,
mhpeticoff@vorys.com,
smhoward@vorys.com,
mjsettineri@vorys.com,
lkalepsclark@vorys.com,
bakahn@vorys.com,
Gary.A.Jeffries@dom.com,
Stephen.chriss@wal-mart.com,
dmeyer@kmlaw.com,
holly@raysmithlaw.com,
barthroyer@aol.com,
philip.sineneng@thompsonhine.com,
carolyn.flahive@thompsonhine.com,
terrance.mebane@thompsonhine.com,
cmooney2@columbus.rr.com,
drinebolt@ohiopartners.org,
trent@theoec.org,
nolan@theoec.org,
gpoulos@enernoc.com,
emma.hand@snrdenton.com,
doug.bonner@snrdenton.com,
clinton.vince@snrdenton.com,
sam@mwncmh.com,
joliker@mwncmh.com,
fdarr@mwncmh.com,
jestes@skadden.com,
paul.wight@skadden.com,
dstahl@eimerstahl.com,
aaragona@eimerstahl.com,
ssolberg@eimerstahl.com,
tsantarelli@elpc.org,
callwein@wamenergy.com,
malina@wexlerwalker.com,
jkooper@hess.com,
kguerry@hess.com,
afreinfeld@viridityenergy.com,
swolfe@viridityenergy.com,
korenergy@insight.rr.com,
sasloan@aep.com,
Dane.Stinson@baileycavalieri.com,
Jeanne.Kingery@duke-energy.com,
zkravitz@taftlaw.com,
rsugarman@keglerbrown.com,
bpbarger@bcslawyers.com,

AFFIDAVIT OF KELLY D. PEARCE

Kelly D. Pearce, being first duly sworn, states as follows:

1. I am over eighteen years of age and am competent to testify regarding the matters set forth herein.
2. I submit this Affidavit in support of AEP Ohio's Motion for Protective Order filed in this proceeding on April 5, 2012.
3. I am currently employed at American Electric Power Service Corporation ("AEPSC") as Director – Contracts and Analysis. In this capacity, I am responsible for performing financial analyses concerning AEP's generation resources and load obligations and regulatory support in areas that relate to commercial operations.
4. I have personal knowledge of the confidential, proprietary, competitively sensitive and trade secret nature of the confidential information addressed in AEP Ohio's Motion for Protective Order. I have personal knowledge of the efforts taken by AEPSC and AEP Ohio to maintain the secrecy of the confidential information through direct contact with this information and through other AEPSC and AEP Ohio employees who work directly with these procedures.
5. The information originating from AEP Ohio and shared in response to the Industrial Energy Users-Ohio's ("IEU") interrogatories in this proceeding includes competitively sensitive information detailing the amount and price of offerings and bilateral transactions for energy and capacity made by the Company.
6. The public release of this confidential information could have a significant and severe impact on the competitive and financial standing of AEP Ohio.

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4/5/2012 4:41:02 PM

in

Case No(s). 10-2929-EL-UNC

Summary: Motion for Protective Order electronically filed by Mr. Yazem Alami on behalf of American Electric Power Service Corporation