

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
Columbus Southern Power Company and	)	Case Nos. 11-346-EL-SSO
Ohio Power Company for Authority to	)	11-348-EL-SSO
Establish a Standard Service Offer Pursuant	)	
to Section 4928.143, Revised Code, in the	)	
Form of an Electric Security Plan.	)	

In the Matter of the Application of	)	
Columbus Southern Power Company and	)	Case Nos. 11-349-EL-AAM
Ohio Power Company for Approval of	)	11-350-EL-AAM
Certain Accounting Authority	)	

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**MOTION FOR PROTECTIVE ORDER**

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Exelon Generation Company, LLC ("Exelon"), by its attorneys and pursuant to Section 4901-1-24(D) of the Commission's rules (O.A.C. § 4901-1-24(D)) move for a protective order keeping confidential certain designated confidential and/or proprietary information contained on pages 17-18 of the direct testimony of David I. Fein. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of Section 4901-1-24(D) of the Commission's rules, three unredacted copies of the confidential information which is the subject of this motion have been filed under seal.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER**

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Exelon requests that portions of the direct testimony of David I. Fein be designated as confidential and be protected from public disclosure. The information for which protection is sought includes information which was exchanged between Ohio Power Company and Exelon pursuant to a protective agreement. This information is confidential and proprietary. Ohio Power Company has asserted that the public release of this information would cause harm to it and both Ohio Power and Exelon are requiring that this information remain confidential and protected and not subject to public disclosure.

Section 4901-1-24(D) of the Commission's rules 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. As set forth herein, the information described above has been represented as confidential sensitive business information by Columbus Southern Power Company and Ohio Power Company and have provided Exelon this information subject to protective agreements. Therefore, Exelon requests that this data be protected from disclosure.

While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari material 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)). Columbus Southern Power Company and Ohio Power Company in providing the data for which Exelon is requesting a protective order have asserted their data includes trade secrets.

The Commission has previously granted protective orders in other telecommunications 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 17, 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.

Ohio Power Company and Exelon agree that this information necessitates protection.

Exelon has agreed to take measures to protect this data.

For the foregoing reasons, Exelon requests that the designated information be protected from public disclosure.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 4<sup>th</sup> day of May, 2012 by electronic mail, upon the persons listed below.

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Summary: Motion Motion for Protective Order electronically filed by M HOWARD PETRICOFF  
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