

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) By opinion and order issued on March 18, 2009, in Case No. 08-917-EL-SSO, *et al.*, the Commission approved the establishment of fuel adjustment clause (FAC) mechanisms under which Columbus Southern Power Company and Ohio Power Company (jointly, AEP Ohio)¹ recovered 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 also established an annual audit of the FAC mechanisms. Energy Ventures Analysis, Inc. and its subcontractor, Larkin & Associates PLLC, were selected by the Commission to perform the management/performance and financial audits of AEP Ohio for 2009, 2010, and 2011.
- (2) On October 5, 2011, and March 21, 2013, AEP Ohio filed motions for protective order, seeking to extend protection granted by entry on June 29, 2010, for certain information contained in the confidential version of the May 14, 2010, FAC audit report, as well as to protect testimony, briefs, and transcripts that contain the confidential information from the May 14, 2010, FAC audit report, which were filed under seal on August 16, 2010, August 23, 2010, September 8, 2010, September 23, 2010, and October 15, 2010. AEP Ohio claims that the confidential information from the May 14, 2010, FAC audit report constitutes trade secret information under Ohio law. No memoranda contra the motions for protective order were filed.

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company. *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.

- (3) 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*, 89 Ohio St. 3d 396, 399, 732 N.E.2d 373 (2000).
- (4) Similarly, Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), allows an attorney examiner 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.”
- (5) 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.
- (6) The attorney examiner has reviewed the information covered by the motions for protective order filed by AEP Ohio, as well as the assertions set forth in the memoranda in support. 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,² the attorney examiner finds that the information redacted from the confidential version of the May 14, 2010, FAC audit report constitutes trade secret information. Release of this information is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of

² See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 524-525, 687 N.E.2d 661 (1997).

this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that AEP Ohio's motions for protective order are reasonable with regard to the information redacted from the confidential version of the May 14, 2010, FAC audit report, and should be granted.

- (7) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry, or until November 17, 2014. Until that date, the docketing division should maintain, under seal, the information filed confidentially.
- (8) 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 the information without prior notice to AEP Ohio.

It is, therefore,

ORDERED, That the motions for protective order filed by AEP Ohio be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed under seal on May 14, 2010, August 16, 2010, August 23, 2010, September 8, 2010, September 23, 2010, and October 15, 2010, for a period of 18 months, ending on November 17, 2014. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Sarah Parrot

By: Sarah J. Parrot

Attorney Examiner

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in

Case No(s). 09-0872-EL-FAC, 09-0873-EL-FAC

Summary: Attorney Examiner Entry grants AEP Ohio's motion for protective order. -
electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public
Utilities Commission of Ohio