

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Fuel Adjustment )  
Clause of Columbus Southern Power ) Case No. 10-268-EL-FAC  
Company and Ohio Power Company ) Case No. 10-269-EL-FAC  
And Related Matters for 2010 )

In the Matter of the Fuel Adjustment )  
Clause of Columbus Southern Power ) Case No. 11-281-EL-FAC  
Company and Ohio Power Company )  
And Related Matters for 2011 )

**OHIO POWER COMPANY’S MOTION FOR PROTECTIVE ORDER AND  
MEMORANDUM IN SUPPORT**

Ohio Power Company<sup>1</sup> (“Company” or “AEP Ohio”), pursuant to Ohio Admin. Code Rule 4901-1-24, hereby move the Commission for a protective order regarding confidential trade secret information of the Companies included in the confidential version of the Pre-Filed Direct testimony of Office of the Ohio Consumers’ Counsel (OCC) witness Dr. Daniel Duann. The information sought to be treated as confidential relates directly to the same information in the 2010 and 2011 FAC Audit reports that the Company previously sought confidential treatment on May 24, 2012 through a motion filed by the Company seeking a protective order for information contained in the Audit Report of the Management/Performance and Financial Audits of the FAC of Columbus Southern Power Company and Ohio Power Company filed in this docket on May 24, 2012 (“Audit Report”). The prior motion was not yet ruled upon in the record necessitating another filing to accompany the filing of this testimony. The testimony also includes confidential information previously considered confidential by the Commission in the 2010

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<sup>1</sup> Columbus Southern Power Company merged with Ohio Power Company in December of 2012 and the two entities are currently a single legal entity.

Audit Report. That information was granted protective treatment in an Entry on June 16, 2011 and requested again in a motion filed October 30, 2012.

As further discussed in the following memorandum in support, the confidential information included in the Audit Report constitutes confidential, proprietary, competitively sensitive and trade secret information under Ohio law and merits protection from disclosure as done with previous audit reports of the Companies.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

Rule 4901-1-24(D) of the Ohio Admin. Code 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.

The criteria for determining 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 1333.61, 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* Rule 4901-1-24(A)(7), Ohio Admin. Code). 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 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. This 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); *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 7, 1990). In *State ex rel. The Plain Dealer v. Ohio Dept of Ins.*, 80 Ohio St3d 513, 524-525 (1997), the Supreme Court of Ohio adopted the following factors to be considered in determining 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.

Applying these factors to the confidential information contained in the Audit Report demonstrates that protection from disclosure is appropriate.

### **Description Of The Confidential Information.**

The testimony of OCC witness Duann contains confidential, proprietary, competitively sensitive and trade secret information of the Companies that derived from the 2010 and 2011 FAC Audit Reports being considered in this case that should be kept confidential. Specifically, the confidential information includes information related to dollar amounts at issue in the recommendations related to confidential information in the Audit Reports (collectively, the "Confidential Information").

The Companies worked with the auditor and Staff prior to the docketing of the 2011 Audit Report to ensure that any and all redacted information was not acquired by the auditor from an independent source but from the Companies as confidential information. It was only upon verification of this fact did the Staff move forward with docketing of the Audit Report. The Company then sought protective treatment of this and other information in the 2011 Report on May 24, 2012, a motion not yet ruled upon by the Examiner.

### **The Confidential Information Derives Independent Economic Value By Reason Of The Fact That It Is Not Publicly Available.**

The Confidential Information is not readily available in the public domain and the Companies take steps to protect this information from public disclosure. The Confidential Information is competitively sensitive and a trade secret because it involves strategies and issues with parties the Company is in direct negotiations and competitors may use such data to determine detailed information about the operations of the Companies' facilities and the price at which the Companies have secured coal for their plants. The public disclosure would adversely impact the Companies because it would disadvantage the Company in negotiations and permit competitors an advantage in pricing their services and products, including the coal provided to the Companies' facilities. Further, the disclosure could thwart the negotiating or competitive

bidding process by allowing potential suppliers or vendors to know what the Companies' expectations are with respect to their resource needs and costs. Thus, these suppliers or vendors would have the advantage of knowing how to interact with the Company to provide resources if they had access to the Confidential Information, potentially to the detriment of the Companies and their customers.

**The Information Is Neither Generally Known, Nor Readily Ascertainable By Proper Means By Other Persons Who Can Obtain Economic Value From Its Disclosure Or Use.**

The Confidential Information is not available or ascertainable by other parties through normal or proper means and no reasonable amount of proper independent research could yield this information to other parties. Public disclosure of the Confidential Information would significantly reduce, if not eliminate, the value that the information has by being kept confidential and would cause harm to the Companies.

**The Information Is The Subject Of Efforts Reasonable Under The Circumstances To Maintain Its Secrecy.**

The Companies, and American Electric Power Service Corporation (“AEPSC”) acting on behalf of the Companies, make reasonable efforts under the circumstances to maintain the secrecy of the Confidential Information. The Companies and AEPSC restrict the access of information to only those employees, officers and representatives of the Companies and AEPSC who have a need to know about such information due to their job and management responsibilities. The Companies and AEPSC limit public access to buildings housing the Confidential Information by use of security guards. Persons not employed by the Companies and AEPSC who are allowed past security guards at buildings where Confidential Information is kept are not permitted to walk within such buildings without an escort. The Companies' and AEPSC's files containing the Confidential Information are maintained separately from other general

records and access to those files is restricted. Within the Companies and AEPSC, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of the Companies and AEPSC who have a need to know about such information due to their job and management responsibilities. Outside of the Companies and AEPSC, this information is only provided to certain persons who have a legitimate need to review the information to participate in this proceeding and who sign a confidentiality agreement.

### **The Commission Previously Granted Protection to Similar Information**

In Entries dated June 29, 2010 and June 16, 2011, the Attorney Examiners granted confidential treatment to Audit Report information contained in the Companies' 2009 and 2010 audit reports. The Attorney Examiners found that the items redacted from the confidential versions of the Companies' 2009 and 2010 audit reports constituted confidential and trade secret information and prohibited disclosure accordingly. (See Case Nos. 09-872-EL-FAC et al, June 29, 2010 Entry; Case Nos. 10-268-EL-FAC et al, June 16, 2011 Entry). The Confidential Information for which protection is being sought in this motion is similar to the confidential information contained in the prior audit reports that the Commission previously found to be confidential.

The previous approvals of confidentiality treatment for the confidential information contained in the Companies' prior audit reports was for a period of eighteen months, as contemplated by Ohio Admin. Code Rule 4901-1-24 (F). The Companies would prefer a longer period of time but will accept the same treatment here with the right to extend the confidentiality in a later filing.

As discussed above, public disclosure of the Confidential Information would impair the Companies' efforts to procure fuel for their generating plants on a competitive basis, and could

adversely affect their ability to obtain terms, conditions and prices for their fuel supplies as advantageous as those that would otherwise be possible.

Furthermore, pursuant to Ohio Admin. Code Rule 4901-1-24(D)(1), only the information that is essential to prevent disclosure of the Confidential Information is redacted. A public version of the Audit Report has been filed in this docket, and copies of the confidential version of the Audit Report have been filed under seal with the Commission and will be shared with those parties who have a legitimate need to review the information to participate in this filing and who sign a confidentiality agreement.

For the foregoing reasons, the Companies request that the Commission grant this motion for protective order and protect the designated information from public disclosure.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic mail upon the below-listed counsel this 18<sup>th</sup> day of November, 2013.

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Summary: Motion for Protective Order and Memorandum in Support electronically filed by Mr. Matthew J Satterwhite on behalf of Ohio Power Company