

**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 Clauses	)	
for Columbus Southern Power Company and	)	Case No. 11-281-EL-FAC
Ohio Power Company.	)	

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

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Columbus Southern Power Company and Ohio Power Company (collectively, the “Companies” 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 Transcripts filed on December 18, 2013, the Post Hearing Briefs of Ohio Power and Office of the Ohio Consumers’ Counsel (OCC)<sup>1</sup> on January 8, 2014 and the Reply Brief of the Industrial Energy Users of Ohio filed on January 21, 2014. The information is the same information contained in the confidential version of the Audit Report of the Management/Performance and Financial Audits of the FAC of Columbus Southern Power Company and Ohio Power Company filed in these dockets respectively on May 26, 2011 (2010 Audit Report”) and the May 24, 2012 (“2011 Audit Report”). Both a public and confidential version of the Audit Reports were also filed with the Commission.

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<sup>1</sup> OCC filed a motion for protective treatment of its filing on January 8, 2014.

As further discussed in the following memorandum in support, the confidential information included in the Audit Reports that are included in the transcript and post-hearing briefs constitute 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. The information was already granted protected status in previous filings and the Company seeks a continuation of that ruling for these documents out of an abundance of caution.

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 confidential information contains confidential, proprietary, competitively sensitive and trade secret information of the Companies that should be kept confidential. Specifically, the confidential information includes information related to coal inventory information on an individual plant and total company basis, specific fuel/consumables contract terms and conditions (including pricing) and planned purchasing information, other competitive financial and cost information, and competitive pricing information for Renewable Energy Certificates and emission allowances (collectively, the "Confidential Information").

**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 competitors may use such data to determine the Companies' current and projected resource costs, 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 of such costs would adversely impact the Companies because it would permit competitors an advantage in pricing their services and products, including the coal provided to the Companies' facilities. Further, the disclosure of the Companies' resource needs and costs 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 price their bids or negotiate 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**

The information included in the post-hearing briefs and the hearing transcript is all information previously granted protected status by the Examiner on November 18, 2013, at page 11 of the hearing transcript at the start of the evidentiary hearing (see excerpt from transcript attached). The Company incorporates by reference the motions and support that led to the protected nature of the information at that time. The Examiner also issues Entries dated June 29, 2010 and June 16, 2011, the Attorney Examiners granting confidential treatment to similar 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 documents were filed in this docket, and copies of the confidential versions were filed under seal with the Commission and shared with those parties who have signed the appropriate protective agreements or are bound by statute to maintain confidentiality.

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 has been served upon the below-named counsel via Email or First Class mail, postage prepaid, this 23<sup>rd</sup> day of April, 2014.

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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 :Case No. 10-269-EL-FAC  
Company 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. :

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PROCEEDINGS

before Ms. Sarah Parrot, Hearing Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11D, Columbus, Ohio, called at 10:00  
a.m. on Monday, November 18, 2013.

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1 broaden the scope of the proceeding will be rejected.

2           Next, on November 12th, 2013, AEP Ohio  
3 filed a motion seeking leave to file out of time the  
4 public version of its testimony as well as leave to  
5 file a motion for protective order with respect to  
6 the testimony of James Henry. Are there any  
7 objections to the motion?

8           (No response.)

9           EXAMINER PARROT: Seeing none, the motion  
10 will be granted.

11           Finally, turning next to the motions that  
12 are pending for protective orders, we have first a  
13 pending motion in Case No. 11-281 filed by AEP Ohio  
14 May 24th, 2012, seeking protection of the  
15 confidential version of the 2011 audit report.

16           There's also a pending motion filed by  
17 AEP Ohio in 10-268, et al., on October 30th, 2012,  
18 seeking renewal of a prior protective order with  
19 regard to information contained in the 2010 audit  
20 report.

21           No memoranda contra were filed to either  
22 of those motions and they will be granted at this  
23 time.

24           All right. More recently we have a  
25 pending motion filed by OCC on November 8th, 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