

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	
Proposal to Enter into an Affiliate Power)	Case No. 14-1693-EL-RDR
Purchase Agreement for Inclusion in the)	
Power Purchase Agreement Rider.)	

In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 14-1694-EL-AAM
Accounting Authority.)	

JOINT MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code, the PJM Power Providers Group ("P3") and the Electric Power Supply Association ("EPSA") jointly file this motion for a protective order seeking confidential treatment of information on two pages (pages 6 and 19) and one Attachment (Attachment AJC-4) within the testimony of A. Joseph Cavicchi which was filed earlier on behalf of P3 and EPSA in this case. This joint motion seeks confidential treatment of information deemed confidential by Ohio Power Company. The underlying reasons are detailed in the attached memorandum. Consistent with the above-cited rule, two unredacted copies of the testimony are submitted under seal.

Respectfully submitted,



M. Howard Petricoff (0008287), Counsel of Record
Michael J. Settineri (0073369)
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
614-464-5414
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com

*Attorneys for the PJM Power Providers Group and the
Electric Power Supply Association*

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

PJM Power Providers Group (“P3”) and the Electric Power Supply Association (“EPSA”) respectfully request that information on two pages (pages 6 and 19) and one Attachment (Attachment AJC-4) within the testimony of their witness, A. Joseph Cavicchi, be protected from public disclosure. The information for which protection is sought describes and discusses information that Ohio Power Company (“AEP Ohio”) asserts is confidential and proprietary and would harm AEP Ohio if released to the public.

Rule 4901-1-24(D), Ohio Administrative Code, provides that the Public Utilities Commission of Ohio (“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. State law recognizes the need to protect certain types of information that are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. 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 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*, Rule 4901-1-24(A)(7), Ohio Administrative 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.

Section 1333.61(D), Revised Code. This definition clearly reflects the state policy favoring the protection of trade secrets such as the financial information which is the subject of this motion.

In *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, the Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

- (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.

Id. at 524-525, quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Applying these factors to the redacted portion of the testimony of P3 and EPSA witness Mr. Cavicchi, it is clear that a protective order should be granted. The redacted testimony and Attachment AJC-4 contain information that AEP Ohio asserts is confidential and proprietary and would harm AEP Ohio if released to the public.

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 and new entrants who will be providing power through the Uniform Trade Secrets Act.

WHEREFORE, for the above reasons, P3 and EPSA respectfully request that the Commission grant their joint motion for protective order and maintain the subject portions of this testimony under seal.

Respectfully submitted,



M. Howard Petricoff (0008287), Counsel of Record

Michael J. Settineri (0073369)

Gretchen L. Petrucci (0046608)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

Columbus, OH 43215

614-464-5414

mhpeticoff@vorys.com

mjsettineri@vorys.com

glpetrucci@vorys.com

*Attorneys for the PJM Power Providers Group and the
Electric Power Supply Association*

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 11th day of September 2015.



Gretchen L. Petrucci

stnourse@aep.com
mjsatterwhite@aep.com
msmckenzie@aep.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
myurick@taftlaw.com;
mkurtz@bkllawfirm.com
dboehm@bkllawfirm.com
jkyler@bkllawfirm.com
tony.mendoza@sierraclub.org;
schmidt@sppgrp.com
tdougherty@theoec.org
joliker@igsenergy.com
ghull@eckertseamans.com
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com
tobrien@bricker.com
jlang@calfee.com
talexander@calfee.com
jeffrey.mayes@monitoringanalytics.com
todonnell@dickinsonwright.com
lhawrot@spilmanlaw.com
dwilliamson@spilmanlaw.com
kurt.helfrich@thompsonhine.com
scott.campbell@thompsonhine.com
stephanie.chmiel@thompsonhine.com
ricks@ohanet.org
scott.campbell@thompsonhine.com
stephanie.chmiel@thompsonhine.com

ricks@ohanet.org
bojko@carpenterlipps.com
kristen.henry@sierraclub.org
msoules@earthjustice.org
sfisk@earthjustice.org
William.michael@occ.ohio.gov
Jodi.bair@occ.ohio.gov
Kevin.moore@occ.gov
DStinson@bricker.com
laurac@chappelleconsulting.net
gthomas@gtpowergroup.com
stheodore@epsa.org
mdortch@kravitzllc.com
msmalz@ohiopoveritylaw.org
mfleisher@elpc.org
cmooney@ohiopartners.org
mhowardpetricoff@vorys.com
missettineri@vorys.com
glpetrucci@vorys.com
werner.margard@puc.state.oh.us
steven.beeler@puc.state.oh.us
twilliams@snhslaw.com
rsahli@columbus.rr.com
charris@spilmanlaw.com
hussey@carpenterlipps.com
sechler@carpenterlipps.com
gpoulos@enernoc.com
chris@envlaw.com
laurie.williams@sierraclub.org
jennifer.spinosi@directenergy.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/11/2015 5:20:18 PM

in

Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM

Summary: Motion Joint Motion for Protective Order electronically filed by Mrs. Gretchen L. Petrucci on behalf of PJM Power Providers Group and Electric Power Supply Association