

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Fuel	)	
Adjustment Clauses for Columbus	)	Case No. 11-5906-EL-FAC
Southern Power Company and Ohio	)	
Power Company and Related Matters.	)	

In the Matter of the Fuel Adjustment	)	
Clauses for Columbus Southern Power	)	Case No. 12-3133-EL-FAC
Company and Ohio Power Company.	)	

In the Matter of the Fuel Adjustment	)	
Clauses for Ohio Power Company.	)	Case No. 13-572-EL-FAC

In the Matter of the Fuel Adjustment	)	
Clauses for Ohio Power Company.	)	Case No. 13-1286-EL-FAC

In the Matter of the Fuel Adjustment	)	
Clauses for Ohio Power Company.	)	Case No. 13-1892-EL-FAC

MOTION FOR PROTECTIVE ORDER OF OHIO POWER COMPANY

Pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4901-1-24, Ohio Power Company d/b/a AEP Ohio (“Company”) hereby moves for a protective order regarding confidential trade secret information of the Company included in the confidential version of the Report of the Management/Performance and Financial Audits of the Fuel and Purchased Power Rider and the Alternative Energy Rider of the Ohio Power Company filed by Staff in this docket on November 30, 2015 (“Audit Report”). Both a public and confidential version of the Audit Report is on file with the Public Utilities Commission of Ohio (“Commission”).

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 was the case with the Company’s previous audit reports.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Rule 4901-1-24(D), O.A.C., 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), O.A.C. As set forth in the Uniform Trade Secrets Act, a trade secret constitutes 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 Audit Report contains confidential, proprietary, competitively sensitive and trade secret information of the Company that should be kept confidential. Specifically, the confidential information includes information related to coal inventories 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, among other items of confidential, proprietary, competitively sensitive and trade secret information of the Company (collectively, the "Confidential Information"). The filing includes data from the Company's supplier, American Electric Power Generating Resources ("AEPGR"), which is a non-regulated company. This relationship raises the bar even further than past cases due to the concern that not only Company, but also third party information is at risk if not properly protected.

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 Company takes steps to protect this information from public disclosure. The Confidential Information is competitively sensitive because competitors may use such data to determine the Company's and AEPGR's current and projected resource costs, detailed information about the operations of facilities, and the price at which coal is secured for plants. The public disclosure of such costs would adversely impact the Company and AEPGR because it would permit competitors an advantage in pricing their services and products, including the coal provided to the facilities. Further, the disclosure of the resource needs and costs could thwart the negotiating

or competitive bidding process by allowing potential suppliers or vendors to know what the 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 to the detriment of the Company, AEPGR and Ohio Power 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 reveal 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 Company. The Company worked with the Auditor and Staff prior to the docketing of the Audit Report to ensure that any and all redacted information was not acquired by the auditor from an independent source, but from the Company as confidential information.

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

The Company, and American Electric Power Service Corporation (“AEPSC”) acting on behalf of the Company, makes reasonable efforts under the circumstances to maintain the secrecy of the Confidential Information. The Company and AEPSC restrict the access of information to only those employees, officers and representatives of the Company and AEPSC who have a need to know about such information due to their job and management responsibilities. The Company and AEPSC limit public access to buildings housing the Confidential Information by use of security guards. Persons not employed by the Company 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 Company's and AEPSC's files containing the Confidential Information are maintained separately from other general records and access to those files is restricted. Within the Company and AEPSC, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of the Company and AEPSC who have a need to know about such information due to their job and management responsibilities. Outside of the Company 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 protective agreement.

The Commission Previously Granted Protection to Similar Information

Confidential treatment has been afforded to similar information contained in the Company's 2009, 2010, and 2011 audit reports. *See* Case No. 09-872-EL-FAC *et al.*, June 29, 2010 Entry; Case No. 10-268-EL-FAC *et al.*, June 16, 2011 Entry; Case No. 11-281-EL-FAC, *et al.*, Nov. 18, 2013, Hearing Transcript Vol. 1 at 11. 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.

In conclusion, pursuant to Rule 4901-1-24(D)(1), O.A.C., only the information that is essential to prevent disclosure of the Confidential Information is redacted. Moreover, 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 protective agreement.

For the foregoing reasons, the Company respectfully requests that the Commission grant this motion for protective order and protect the designated information from public disclosure for a period of eighteen months pursuant to Rule 4901-1-24 (F), O.A.C.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the parties of record in these proceedings by electronic service this 30th day of November, 2015.

/s/ Matthew J. Satterwhite

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