

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application)	
Of Ohio Power Company to Update)	Case No. 17-1266-EL-RDR
The Energy Efficiency and Peak)	
Demand Reduction Rider)	

**OHIO POWER COMPANY'S
MOTION FOR PROTECTIVE ORDER**

Ohio Power Company ("AEP Ohio" or the "Company"), pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, respectfully requests that the Public Utilities Commission of Ohio ("Commission") issue a protective order keeping confidential limited information: (1) redacted from the public version of the Application Attachment 1 filed on May 15, 2017 (Schedule 5). These portions of Schedule 5 filed under seal contain confidential and proprietary competitively-sensitive information related to PJM Energy Efficiency Credits and reflect customer-specific proprietary data. That data constitutes trade secrets under Ohio law and, therefore, merits protection from public disclosure. The reasons supporting this motion are provided in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Ohio Power Company (“AEP Ohio” or the “Company”) requests that the Public Utilities Commission of Ohio (“Commission”) issue a protective order keeping confidential the limited information redacted from Schedule 5 of Attachment 1. Schedule 5 implements the Commission’s May 28, 2015 Second Entry on Rehearing in the ESP III (Paragraph 30, Case No. 13-2385-EL-SSO) which ordered as follows: “Ohio should bid the IRP-D related capacity resources into PJM's incremental capacity auctions held during the ESP term, to the extent that such capacity resources have not already been bid by the customer into any of PJM's auctions for the three delivery years of the ESP 3 term. The resulting revenues should be credited back to customers through the EE/PDR rider.”

The redacted portions of Schedule 5 filed under seal contain confidential and proprietary competitively-sensitive information related to PJM Energy Efficiency Credits and reflect customer-specific proprietary data. That data constitutes trade secrets under Ohio law and, therefore, merits protection from public disclosure. The information is the product of original research and development that has been kept confidential, and, as a result, retains substantial economic value by being kept confidential. It would be costly and time-consuming for third parties to replicate the information on their own. Allowing unfettered public access to the information would give third parties inappropriate access to competitively sensitive business information about the affected customer(s). Accordingly, release of the information to the public would significantly reduce, if not eliminate, the value that the information has by being kept confidential and, thus, would cause harm to the affected customer(s).

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order 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 used to determine what the Commission should keep confidential 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 1333.31, 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* O.A.C. § 4901-1-24(A)(7). Ohio's version of the Uniform Trade Secrets Act defines "trade secret" to mean:

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, and now the new entrants who will be providing power, through the Uniform Trade Secrets Act. The 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 *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, *citing Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980), delineated factors to be considered in recognizing 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.

These factors were adopted by the Supreme Court of Ohio in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513,524-525.

Applying these factors to the information contained in the information at issue here, it is clear that protection from disclosure is appropriate. As noted above, the information includes competitively-sensitive confidential information regarding several generating units owned, or partially owned, by AEPGR and AEP Ohio's portion of the OVEC assets, as well as confidential

and proprietary competitively-sensitive information regarding forecasts of future wholesale market energy, capacity, and fuel prices, and forecasted costs including projected costs associated with environmental compliance. The information is the product of original research and development, has been kept confidential, and, as a result, retains substantial economic value to AEP Ohio and AEPGR by being kept confidential. It would be costly and time-consuming for third parties to replicate the information on their own without access to the information.

Allowing unfettered public access to the information would give third parties inappropriate access to competitively sensitive business information about AEP Ohio and AEPGR. Specifically, public disclosure would enable third parties to gain information about the costs and operations of the generation units and forecast prices that could impair AEP Ohio's ability to sell at the best price and, thus, could impair the benefit that customers would realize under the Company's proposed Purchase Power Agreement. Likewise, a disclosure of the costs expected for environmental compliance projects would disclose assumptions related to a future transaction and disclose expected pricing putting the contracting party in an unlevel position when negotiating for favorable pricing for goods and services. The same applies for the fuel price assumptions that are not shared publicly and are the result of proprietary analysis.

Accordingly, release of the information to the public would significantly reduce, if not eliminate, the value that the information has by being kept confidential and, thus, would cause harm to AEP Ohio, AEP Ohio's customers, and AEPGR. The Commission should also be aware that AEP Ohio has taken steps to minimize the amount of information protected from public disclosure as required by O.A.C. 4901-1-24(D).

CONCLUSION

For the reasons provided above, AEP Ohio respectfully requests that the Commission grant its motion for protective order for the limited information redacted from Schedule 5 of Attachment 1.

Respectfully Submitted,

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Summary: Motion - Ohio Power Company's Motion for Protective Order electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company