

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF  
REPUBLIC STEEL,

COMPLAINANT,

v.

CASE NO. 17-2115-EL-CSS

OHIO POWER COMPANY, D/B/A AEP  
OHIO,

RESPONDENT.

## ENTRY

Entered in the Journal on December 31, 2019

{¶ 1} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 2} Ohio Power Company, d/b/a AEP Ohio (AEP Ohio or the Company) is an electric light company and public utility as defined in R.C. 4905.03 and R.C. 4905.02, respectively. As such, AEP Ohio is subject to the Commission's jurisdiction.

{¶ 3} On October 11, 2017, Republic Steel (Republic) filed a complaint against AEP Ohio alleging that the Company assessed excessive, unlawful, unreasonable, and discriminatory deposit charges and delayed payment fees against Republic and threatened disconnection in the event those charges were not paid. Republic simultaneously filed a motion for protective order with its complaint, in which Republic requested that certain attachments, and portions of other attachments, to its complaint be recognized and treated as confidential because they contain sensitive, proprietary, and trade secret information.

{¶ 4} On November 13, 2017, AEP Ohio filed its answer to the complaint, denying a majority of the allegations set forth in the complaint and asserting several affirmative defenses.

{¶ 5} By Entry issued January 5, 2018, the attorney examiner granted the motion for protective order for a period of 24 months. Moreover, the attorney examiner directed that any requests for an extension of that protective treatment be filed at least 45 days in advance of the expiration date, adding that, if no such request was filed, the Commission may release the information without prior notice.

{¶ 6} On December 30, 2019, Republic filed a motion to extend protective treatment for Attachments A and B, as well as certain portions of Attachments C through Q, to its complaint, noting that these attachments continue to contain sensitive, proprietary, and trade secret information. Republic avers this information is not generally disseminated or available to the public and contains customer-specific data, such as account numbers and banking information. Republic requests that the Commission grant its motion and maintain the confidentiality of this information, consistent with Commission precedent and Ohio statutes that afford this type of information a level of heightened protection.

{¶ 7} Furthermore, Republic requests a limited waiver of Ohio Adm.Code 4901-1-24(F) to the extent the rule requires any motion to extend a protective order be filed at least 45 days in advance of the expiration date. Republic acknowledges that, due to a calendaring error, Republic's counsel believe the motion to extend protective treatment was required to be filed on January 5, 2020, which is, instead, the expiration date for protective treatment. Republic adds that its request will not prejudice any party and, given the importance of maintaining the confidential nature of this information, good cause exists to grant such a waiver. Finally, Republic requests that its motion for extension be considered on an expedited basis, pursuant to Ohio Adm.Code 4901-1-12(C), as the current protective order is set to expire on January 5, 2020. Republic avers that no party to this proceeding opposes expedited treatment.

{¶ 8} Initially, the attorney examiner agrees that good cause exists to grant a limited waiver of Ohio Adm.Code 4901-1-24(F). However, as noted below, the limited waiver will

only apply to this additional extension request and any future requests to extend the protective order should be filed in compliance with the Commission's rule.

{¶ 9} The attorney examiner further notes that R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purpose of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 2000-Ohio-207, 732 N.E.2d 373. Similarly, Ohio Adm.Code 4901-1-24 allows the Commission to protect the confidentiality of information contained in a filed document "to the extent that state or federal law prohibits release of the information, including where the information is deemed \* \* \* to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." Moreover, Ohio law defines a trade secret as "information \* \* \* 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).

{¶ 10} Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court in *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 1997-Ohio-75, 687 N.E.2d 661, the attorney examiner finds that the documents and information filed under seal in this docket continue to contain trade secret information. Their release, therefore, is prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Accordingly, the attorney

examiner finds that the motion to extend the existing protective order is reasonable and should be granted.

{¶ 11} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. The attorney examiner finds that confidential treatment shall be afforded to the information filed under seal for 24 months from the date of this Entry. Until that time, the Docketing Division shall maintain, under seal, the information filed confidentially on October 11, 2017. Further, Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If a party wishes to extend its confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend the confidential treatment is filed, the Commission may release the information without prior notice.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That Republic's motions to extend the protective order and for a limited waiver of Ohio Adm.Code 4901-1-24(F) be granted, in accordance with this Entry. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Megan J. Addison

By: Megan J. Addison  
Attorney Examiner

GP/kck

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/31/2019 2:50:33 PM**

**in**

**Case No(s). 17-2115-EL-CSS**

Summary: Attorney Examiner Entry ordering Republic's motions to extend the protective order and for a limited waiver of Ohio Adm. Code 4901-1-24(F) be granted. electronically filed by Mrs. Kelli C King on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio