

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE  
POWER PURCHASE AGREEMENT RIDER  
OF OHIO POWER COMPANY FOR 2018.

CASE NO. 18-1004-EL-RDR

IN THE MATTER OF THE REVIEW OF THE  
POWER PURCHASE AGREEMENT RIDER  
OF OHIO POWER COMPANY FOR 2019.

CASE NO. 18-1759-EL-RDR

### ENTRY

Entered in the Journal on September 10, 2021

{¶ 1} Ohio Power Company d/b/a AEP Ohio (AEP Ohio) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 3} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period of June 1, 2015, through May 31, 2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015), Fourth Entry on Rehearing (Nov. 3, 2016), Seventh Entry on Rehearing (Apr. 5, 2017). Among other matters, the Commission authorized AEP Ohio to establish a placeholder Power Purchase Agreement (PPA) Rider and required AEP Ohio to justify any future request for cost recovery in a separate proceeding. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

{¶ 4} Subsequently, in Case No. 14-1693-EL-RDR, et al., the Commission modified and approved a stipulation and recommendation pertaining to AEP Ohio's proposal to

populate the placeholder PPA Rider approved in the *ESP 3 Case. In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al. (*PPA Rider Case*), Opinion and Order (Mar. 31, 2016), Second Entry on Rehearing (Nov. 3, 2016), Fifth Entry on Rehearing (Apr. 5, 2017). The Commission directed that the PPA Rider be subject to an annual audit. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 89-90.

{¶ 5} In Case No. 16-1852-EL-SSO, et al., the Commission modified and approved a stipulation and recommendation, which authorized AEP Ohio to implement an ESP for the period of June 1, 2018, through May 31, 2024, and provided for the continuation of the PPA Rider. *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 25, 2018) at ¶ 53.

{¶ 6} By Entry dated January 15, 2020, the Commission directed Staff to issue a request for proposal for the audit services necessary to assist the Commission with the audit of AEP Ohio's PPA Rider for the period of January 1, 2018, through December 31, 2019.

{¶ 7} On March 11, 2020, the Commission selected London Economics International LLC (LEI) to conduct the prudency and performance audit of AEP Ohio's PPA Rider. Confidential and public versions of LEI's audit report were filed on September 16, 2020, in Case No. 18-1004-EL-RDR, and on September 17, 2020, in Case No. 18-1759-EL-RDR.

{¶ 8} Staff filed motions for protective order with respect to the confidential version of LEI's audit report on September 16, 2020, in Case No. 18-1004-EL-RDR, and on September 17, 2020, in Case No. 18-1759-EL-RDR. On September 21, 2020, AEP Ohio also filed a motion for protective order, seeking to protect certain financial and strategic information regarding the operations of the Ohio Valley Electric Corporation, as filed confidentially in LEI's audit report on September 16 and 17, 2020. Specifically, AEP Ohio asserts that the redacted financial and other information found in LEI's audit report constitutes confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61(D), and as

recognized by Ohio Adm.Code 4901-1-24. No memoranda contra the motions for protective order were filed.

{¶ 9} 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 purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term “public records” excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

{¶ 10} Similarly, Ohio Adm.Code 4901-1-24 allows the attorney examiner to issue an order 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

{¶ 11} 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).

{¶ 12} The attorney examiner has reviewed the information that is the subject of AEP Ohio’s and Staff’s motions for protective order, as well as the assertions set forth in the supportive memoranda. 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,<sup>1</sup> the

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<sup>1</sup> See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

attorney examiner finds that the redacted financial and other information contained in LEI's audit report constitutes trade secret information. Its release is, therefore, 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. Therefore, the attorney examiner finds that AEP Ohio's and Staff's unopposed motions for protective order with respect to the confidential information contained in LEI's audit report are reasonable and should be granted.

{¶ 13} 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. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry. Until that date, the Commission's docketing division should maintain, under seal, the information filed confidentially on September 16 and 17, 2020.

{¶ 14} 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 any party wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice.

{¶ 15} On various dates, motions to intervene in these proceedings were filed by Ohio Energy Group (OEG), Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Co. (Kroger), Ohio Partners for Affordable Energy (OPAE), and Natural Resources Defense Council (NRDC). No memoranda contra were filed. The attorney examiner finds that the motions filed by OEG, OMAEG, Kroger, OPAE, and NRDC are reasonable and should be granted.

{¶ 16} Gov.Bar R. XII(2)(A) provides rules governing eligibility to practice pro hac vice in Ohio. Pursuant to Gov.Bar R. XII(2)(A)(7), motions for admission pro hac vice must

be accompanied by a certificate of pro hac vice registration furnished by the Supreme Court Office of Attorney Services.

{¶ 17} On February 24, 2021, as corrected on March 19, 2021, a motion to appear pro hac vice and certificate of pro hac vice registration were filed for Megan Wachspress on behalf of NRDC. The attorney examiner finds that the motion, as corrected, is reasonable and should be granted.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the motions for protective order filed by Staff on September 16 and 17, 2020, and by AEP Ohio on September 21, 2020, be granted. It is, further,

{¶ 20} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed on September 16 and 17, 2020, for a period ending 24 months from the date of this Entry. It is, further,

{¶ 21} ORDERED, That the motions to intervene in these proceedings filed by OEG, OMAEG, Kroger, OP&E, and NRDC be granted. It is, further,

{¶ 22} ORDERED, That the motion to appear pro hac vice of Megan Wachspress, as corrected, be granted. It is, further,

{¶ 23} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Sarah J. Parrot

By: Sarah J. Parrot  
Attorney Examiner

MJA/kck

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

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**in**

**Case No(s). 18-1004-EL-RDR, 18-1759-EL-RDR**

Summary: Attorney Examiner Entry granting the motions for protective order filed by Staff on September 16 and 17, 2020, and by AEP Ohio on September 21, 2020; ordering that the Commission's docketing division maintain, under seal, the confidential information filed on September 16 and 17, 2020, for a period ending 24 months from the date of this Entry; granting the motions to intervene in these proceedings filed by OEG, OMAEG, Kroger, OPAC, and NRDC and granting the motion to appear pro hac vice of Megan Wachspress, as corrected.

electronically filed by Kelli C. King on behalf of Sarah J. Parrot, Attorney Examiner, Public Utilities Commission of Ohio