BEFORE 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

MOTION OF OHIO POWER COMPANY FOR PROTECTIVE ORDER

Ohio Power Company ("AEP Ohio" or the "Company") respectfully moves, pursuant to Ohio Adm.Code 4901-1-12 and 4901-1-24(D), that the Public Utilities Commission of Ohio ("Commission") issue a protective order keeping confidential an earlier draft of the Audit Report that LEI eventually filed in these proceedings on September 16, 2020, consistent with the Attorney Examiners' rulings at hearing. The reasons supporting this motion are set forth in the accompanying memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Introduction

AEP Ohio requests that the Commission issue a protective order to keep confidential an early draft of the Audit Report of the Ohio Valley Electric Corporation ("OVEC") Power Purchase Agreement Rider of Ohio Power Company ("OVEC Audit Report"), prepared by London Economics International, LLC ("LEI"), that was ultimately filed in these proceedings on September 16, 2020, and admitted into evidence as Staff Exhibits 1 and 1A.

After hearing, counsel for the Office of the Ohio Consumers' Counsel ("OCC") contacted the Commission's counsel and asked for a copy of the September 1, 2020 draft of LEI's OVEC Audit Report. Well after the evidentiary hearing concluded in this case, the Staff provided the Company a copy of the September 1, 2020 draft Audit Report; that was the first time the Company had received the draft report. Because OCC and AEP Ohio have a protective agreement in place, the Commission's counsel worked with AEP Ohio to provide OCC with both an unredacted, confidential version and a redacted version of that September 1, 2020 draft OVEC Audit Report. Pursuant to the parties' protective agreement, OCC subsequently informed AEP Ohio that it wished to use the redacted version of the September 1, 2020 draft Audit Report in a manner that might require disclosure. AEP Ohio now moves the Commission to keep that draft Audit Report confidential.

II. Law and Argument

Under Ohio Adm.Code 4901-1-24(D), the Commission may issue any protective order "which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits the release of the information * * * and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

Section 4905.13 of the Ohio Revised Code states, in relevant part, that "[t]he commission shall at all times have access to all accounts kept by such public utilities or railroads and may designate any of its officers or employees to inspect and examine any such accounts." Section 4901.16 of the Ohio Revised Code, in turn, "prevents employees or agents of the commission who examine the accounts, records, or memoranda kept by public utilities pursuant to R.C. 4905.13 from divulging information regarding 'the transaction, property, or business' of the public utility other than in reports to the PUCO or in testimony in court or commission proceedings." *Vectren Energy Delivery of Ohio, Inc. v. PUC*, 113 Ohio St.3d 180, 2007-Ohio-1386, 863 N.E.2d 599, ¶ 52 (quoting R.C. 4901.16). Auditors are considered agents of the Commission for purposes of this statute. *See* Entry ¶ 11 (Mar. 11, 2020) ("LEI is subject to the Commission's statutory duty under R.C. 4901.16"). Accordingly, state law (R.C. 4901.16) prohibits the release of information gathered by LEI from the accounts, records, or memoranda of public utilities such as OVEC and AEP Ohio, except when that information is released in reports to the Commission or in testimony.

In the hearing in these proceedings, OCC moved to admit an excerpt of a September 9, 2020 draft of LEI's OVEC Audit Report (OCC Exhibit 17). After extensive argument, Attorney Examiner Parrot denied OCC's motion, explaining:

> I have afforded the parties what I feel is a full and fair opportunity to ask questions about the audit process. Dr. Fagan has explained that the views that are reflected in the final report are the views of LEI as the auditor in this case. As a draft, I do not believe it has been established this is relevant to the proceedings as it does not reflect the final views of the auditor in these matters.

Tr. Vol. III at 682-683. The same logic applies to the earlier, September 1, 2020 draft of LEI's OVEC Audit Report. The September 1, 2020 draft that OCC seeks to release to the public is not LEI's "final report" and "does not reflect the final views of the auditor in these matters." *Id.* In

other words, the September 1, 2020 draft is not LEI's "report to the public utilities commission." R.C. 4901.16. Accordingly, Ohio prohibits the public release of that draft report.

In Ohio Power's 2011-2013 fuel adjustment clause proceedings, the Commission held that R.C. 4901.16 did not prevent the release of a draft audit report to OCC in response to a public records request. *See In the Matter of the Application of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case Nos. 11-5906-EL-FAC et al., Entry (Feb. 3, 2016). The Commission's Entry in that proceeding stated, however, that the Commission's decision was "limited to the specific facts of these proceedings and should not be construed as precedent in any other case." *Id.* at ¶ 18.

The facts before the Commission here are different from the facts in the fuel adjustment clause proceedings. In this case, AEP Ohio is not seeking to prevent the Commission from releasing a copy of the September 1, 2020 draft OVEC Audit Report. AEP Ohio already worked with Staff to provide that draft Audit Report to OCC. AEP Ohio is only seeking to preserve the confidentiality of that draft Audit Report for purposes of post-hearing briefing, and to prevent any other public disclosure of the draft report's contents that OCC might contemplate in connection with the pending case before the Commission. Given the irrelevance of the draft report to the issues before the Commission; the fact that it was not offered into evidence by any party at the hearing in these proceedings; and the important protections given to information in the possession of the Commission's auditors under R.C. 4901.16, OCC should not be permitted to make the contents of the September 1, 2020 draft OVEC Audit Report public.

III. Conclusion

For the reasons provided above, AEP Ohio respectfully requests that the Commission grant its motion for protective order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Ohio Power Company's Motion for Protective Order* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 17th day of March, 2022, via electronic transmission.

/s/ *Steven T. Nourse*
Steven T. Nourse

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

Summary: Motion Motion for protective Order electronically filed by Mr. Steven T. Nourse on behalf of Ohio Power Company