

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Power Purchase Agreement Rider of)	Case No. 18-1004-EL-RDR
Ohio Power Company for 2018.)	

In the Matter of the Review of the)	
Power Purchase Agreement Rider of)	Case No. 18-1759-EL-RDR
Ohio Power Company for 2019.)	

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 information redacted from the post-hearing briefs of the Office of the Ohio Consumers’ Counsel (“OCC”), Industrial Energy Users- Ohio (“IEU”) and Natural Resources Defense Council (“NRDC”). The redacted information was obtained from confidential information disclosed by AEP Ohio through compulsory discovery subject to a protective agreement with each of those parties, including the unredacted 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”) for the time period of January 1, 2018, through December 31, 2019 as filed on September 16, 2020. The confidential, proprietary, and competitively-sensitive financial information that is the subject of this motion is highlighted in the confidential version of the post-hearing briefs of OCC, IEU and NRDC filed under seal by those parties along with an accompanying motion for protection. The Attorney Examiners have already granted a

protective order covering the same information through a September 10, 2020 Entry and through their rulings during the evidentiary hearing. The additional reasons supporting this motion are set forth in the accompanying memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Introduction

Ohio Power Company (“AEP Ohio” or the “Company”) requests that the Public Utilities Commission of Ohio (“Commission”) issue a protective order keeping confidential information redacted from post-hearing briefs of the Office of the Ohio Consumers’ Counsel (“OCC”), Industrial Energy Users- Ohio (“IEU”) and Natural Resources Defense Council (“NRDC”). The redacted information was obtained from confidential information disclosed by AEP Ohio through compulsory discovery subject to a protective agreement with each of those parties, including the unredacted 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”) for the time period of January 1, 2018, through December 31, 2019, as filed on September 16, 2020. On September 10, 2020, the Attorney Examiners issued an Entry that granted the Company’s request for a protective order encompassing the same categories of information as it related to the confidential OVEC Audit Report.

Both AEP Ohio and OVEC are “public utilities” under applicable Ohio law. The redacted information, all of which was filed under seal and accompanied by motions for protection, consists of confidential, proprietary, and competitively-sensitive financial and strategic information regarding the operations of OVEC, including OVEC’s costs and projections for operations, OVEC’s coal procurement methods and pricing, and the Company’s offers of the OVEC energy and capacity in the annual PJM Base Residual Auction (“BRA”), that if disclosed could impair OVEC’s financial position, as well as market prices for fuel, energy and capacity in the markets in which OVEC participates.

II. Law and Argument

Under Ohio Adm.Code 4901-1-24(A)(7), the Commission may issue an order prohibiting public disclosure of “trade secret or other confidential research, development, commercial, or other information[.]” Additionally, under Ohio Adm.Code 4901-1-24(D), the Commission may issue a 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, including where the information is deemed by the commission * * * 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.”

While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets. *See In re: General Telephony Co.*, Case No. 81-383-TP-AIR, Entry (Feb. 17, 1982) (recognizing the necessity of protecting trade secrets). Likewise, the Commission has facilitated the protection of trade secrets in its rules. Ohio Adm.Code 4901-1-24(A)(7).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"Trade secret" means 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 which is the subject of this motion.

The Ohio Supreme Court has held that not only does the Commission have the authority to protect the trade secrets of a public utility, the trade secret statute creates a duty to protect them. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604, ¶ 26, 904 N.E.2d 853. 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. The following factors are relevant to whether information constitutes a “trade secret” under Ohio law:

(1) The extent to which the information is known outside the business; (2) the extent to which it is known 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.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 3d 513, 524-525, 1997-Ohio-75, 687 N.E.2d 661.

The financial and strategic information regarding the operations of OVEC and the Company’s offers of the OVEC energy and capacity in the annual PJM Base BRA that is the subject of this motion satisfies the foregoing standards and should be maintained under seal and protected from public disclosure. The information that AEP Ohio seeks to protect from disclosure consists of confidential, proprietary, and competitively sensitive data regarding the operations of OVEC, including OVEC’s costs and projections for operations, OVEC’s coal procurement methods and pricing, and the Company’s offers of the OVEC energy and capacity

in the annual PJM BRA. Its disclosure could potentially impair the operations and financial position of OVEC, as well as market prices for fuel, energy, and capacity in the markets in which OVEC participates. This information is generally considered is confidential, proprietary, and competitively sensitive.

The financial information including price and cost data information is generally not disclosed. The information is not available or ascertainable by other parties through normal or proper means. Other parties could not obtain the information through independent research. In light of the confidential and competitively sensitive nature of the information, AEP Ohio and OVEC take all reasonable efforts to protect it from public disclosure. Among the measures taken are limiting access to the information within the Company to only those persons with a legitimate need to access the information, protecting against disclosure outside the Company, and entering into confidentiality agreements to protect against disclosure by persons outside the Company who are afforded access for legitimate purposes.

Public disclosure of the information would be harmful to OVEC and AEP Ohio's customers. Disclosure could give competitors and developers an advantage that would hinder OVEC and AEP Ohio's ability to obtain competitive coal pricing in the future and impair OVEC's and the AEP Ohio's participation in fuel, energy and capacity markets. If the information were to become generally known or readily available, parties with which OVEC may negotiate could use this knowledge to the detriment of OVEC and AEP Ohio's customers. Knowledge of cost and pricing information would establish certain benchmarks in future negotiations, thereby potentially increasing costs incurred by OVEC and AEP Ohio's customers. In sum, this information derives actual, independent economic value to OVEC and AEP Ohio as

a result of its not being generally known or readily ascertainable by other persons who could use it to affect pricing and market participation.

III. Conclusion

For the foregoing reasons, AEP Ohio respectfully requests that the Commission issue a protective order exempting the confidential information contained in the post-hearing briefs of the OCC, IEU and NRDC from public disclosure as confidential, proprietary, competitively-sensitive, and trade secret information.

Respectfully submitted,

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Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 23rd day of March, 2022, via electronic transmission.

/s/ Steven T. Nourse

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