

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Ohio Power Company,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 21-990-EL-CSS
	)	
Nationwide Energy Partners, LLC,	)	
	)	
Respondent.	)	

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

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Ohio Power Company (“AEP Ohio” or “the Company”), pursuant to Oho Adm. Code 4901-1-24, hereby moves the Commission for a protective order regarding confidential information which is being redacted from the public version and included in the confidential/unredacted version of the Initial Brief of Ohio Power Company (“Initial Brief”), being filed under seal. The confidential information contained in AEP Ohio’s Initial Brief includes competitively sensitive, propriety, and confidential information of the Company as well as information claimed by Nationwide Energy Partners, LLC (“NEP”) to be competitively sensitive, propriety, and confidential. The information redacted from AEP Ohio’s Initial Brief was disseminated pursuant to the Amended Protective Agreement in place between the Company and NEP. Moreover, after extensive discussions and negotiations throughout the hearing, and with knowledge and acceptance of the Attorney Examiners, the parties thoroughly vetted and mutually agreed upon the confidential designations in this matter. The confidential, proprietary, and competitively sensitive (including restricted access confidential) information that is the subject of this motion is highlighted in the confidential version of the post-hearing briefs as well as the unredacted version of the admitted exhibits and transcripts of the hearing. AEP Ohio is

filing a redacted version of its Initial Brief and a confidential version under seal in accordance with the Amended Protective Agreement and this Motion. By this motion for protective order, AEP Ohio respectfully requests confidential treatment of the unredacted material filed under seal until and unless otherwise ordered by the Attorney Examiner or the Commission.

Respectfully submitted,

/s/ Steven T. Nourse

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## **MEMORANDUM IN SUPPORT**

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 about 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 information redacted from the public version and included in the confidential/unredacted version of the Initial Brief filed under seal consists of information that

was designated as confidential<sup>1</sup> by both AEP Ohio and NEP and disseminated pursuant to the Amended Protective Agreement between AEP Ohio and NEP. The confidential information contained in AEP Ohio's Initial Brief includes competitively sensitive, propriety, and confidential information of the Company as well as information claimed by NEP to be competitively sensitive, propriety, and confidential. The Company is filing the Initial Brief under seal in accordance with the Amended Protective Agreement in place between AEP Ohio and NEP and the rulings of the Attorney Examiners during the evidentiary hearing.

AEP Ohio's confidential information that is cited as part of the Initial Brief includes but is not limited to proprietary business information, plans, prospects, communications, and practices related to the Company's Submetering Initiative and other corporate objectives, customer accounts, as well as confidential settlement negotiations with third parties. The information consists of internal documentation and settlement communications that are not available or ascertainable by other parties through normal or proper means. Other parties could not obtain the information through independent research, including prohibitions set forth in Ohio Adm. Code 4901:1-10-24 and Ohio Evid R. 408. Considering the confidential and competitively sensitive nature of the information, AEP Ohio takes 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.

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<sup>1</sup> The Amended Protective Agreement provides for three levels of confidential information: (1) CONFIDENTIAL, (2) COMPETITIVELY-SENSITIVE CONFIDENTIAL, and (3) RESTRICTED ACCESS CONFIDENTIAL.

Public disclosure of the AEP Ohio information would be harmful to AEP Ohio and its customers. Disclosure could give third party submetering competitors and real estate developers an advantage that would hinder AEP Ohio's ability to retain its existing customers and serve new customers that locate in within the AEP Ohio service territory. If the information were to become generally known or readily available, third-party submetering companies and multi-unit property owners/real estate developers could use this knowledge to the detriment of AEP Ohio and its customers. Moreover, the disclosure of customer account information and settlement discussions would undermine the protections afforded under Ohio Adm. Code 4901:1-10-24 and Ohio Evid R. 408 and chill settlement discussion in the future.

Finally, and perhaps most importantly, the parties went through extensive discussions and negotiations to minimize the confidential record in this case; ultimately, reaching agreements on each exhibit that was admitted into the record in this case, which was accepted by the Attorney Examiners and admitted as such. (Tr. Vol. IV at 654, 772; Tr. Vol. V at 1019; Tr. Vol. VI at 1149). The parties further agreed on confidentiality designation of the transcript that reflects the agreed upon (and approved) confidential designations of all admitted exhibits. The redaction to AEP Ohio's Initial Brief track and are consistent with those agreed upon confidentiality designations.

For the foregoing reasons, AEP Ohio respectfully requests that the Commission issue a protective order exempting the confidential, competitively sensitive confidential, and restricted

access confidential information contained in the Initial Brief of AEP Ohio from public disclosure as confidential, proprietary, competitively sensitive, and trade secret information.

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 was sent by, or on behalf of, the undersigned counsel to the following parties of record this 16<sup>th</sup> day of December 2022, via email.

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