

IN THE SUPREME COURT OF OHIO

Ohio Power Company,)	Supreme Court Case No. 2012-1484
)	
Appellant/Cross-Appellee,)	Appeal from the Public Utilities
)	Commission of Ohio
v.)	
)	
The Public Utilities Commission of)	Public Utilities Commission of Ohio
Ohio,)	Case Nos. 09-872-EL-FAC and
)	09-873-EL-FAC
Appellee.)	

FILED
 JAN 14 2013
 CLERK OF COURT
 SUPREME COURT OF OHIO

**OHIO POWER COMPANY'S MEMORANDUM IN SUPPORT OF
 MOTION FOR PROTECTIVE ORDER FILED BY APPELLEE/CROSS-
 APPELLANT INDUSTRIAL ENERGY USERS-OHIO ON JANUARY 2, 2013**

On January 2, 2013, Industrial Energy Users-Ohio ("IEU") filed a Motion for Protective Order and Memorandum in Support seeking confidential treatment of its Second Merit Brief and Second Supplement thereto. The information for which IEU seeks confidential treatment consists of confidential information of Ohio Power Company ("AEP Ohio" or the "Company") that constitutes trade secrets under Ohio law and that merits protection from public disclosure. AEP Ohio is the Appellant and Cross-Appellee in this action. Accordingly, AEP Ohio respectfully requests that IEU's Motion for Protective Order be granted.

Confidential information of the Company is contained throughout IEU's Second Merit Brief. The confidential information includes coal inventory information on an individual plant and total company basis, specific coal contract terms and conditions (including pricing) and other competitive financial and cost information of the Company. For example, IEU's Second Merit Brief (at 13-16) includes information concerning the

amount of coal delivered and price paid under certain of the Company's coal contracts. Throughout IEU's Second Merit Brief specific contract terms are discussed, such as repricing, and specific information concerning spot coal purchases of the Company are referenced. In addition, the confidential terms of the Peabody settlement are disclosed, including the valuation of the coal reserve the Company received as part of that settlement, throughout IEU's Second Merit Brief.

IEU's Second Supplement also contains confidential information of AEP Ohio, including excerpts from confidential versions of testimony discussing that information and excerpts of the transcript for the hearing below during which the confidential information was discussed. Specifically, IEU's Second Supplement (at 1-29) contains excerpts from the confidential version of the Report of The Management Performance and Financial Audits of the Columbus Southern Power Company and AEP Ohio (May 14, 2010) ("Audit Report"). Further, the Second Supplement contains excerpts from the clearly-marked confidential versions of the Direct Testimony of Timothy M. Dooley and Direct Testimony of J. Edward Hess. Finally, the Second Supplement also contains (at 43-78) excerpts of the transcript for the hearing held on August 23 and 24, 2010 with the designation "Confidential Proceedings".

On May 14, 2010, in the proceedings below conducted before the Public Utilities Commission of Ohio ("Commission"), AEP Ohio filed a Motion for Protective Order and Memorandum in Support seeking confidential treatment of confidential trade secret information of the Company included in the confidential version of the Audit Report. In the Entry granting the Company's Motion for Protective Order, the Commission-assigned Attorney Examiner, after applying the six-factor test set forth by this Court in *State ex*

rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St.3d 513, 524-525, found that certain information contained in the confidential version of the Audit Report constitutes trade secret information under Ohio law (specifically, Section 1333.61(D), Revised Code) and that nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Ohio Revised Code.¹ The information deemed a trade secret and thus redacted from the public version of the Audit Report includes coal inventory information on an individual plant and total company basis, specific contract terms and conditions (including pricing) and other competitive financial and cost information of the Company—the same confidential information of the Company included in IEU’s Second Merit Brief and Second Supplement.

Consistent with the protective order, the testimony of witnesses discussing the confidential information, including witnesses Dooley and Hess, was redacted and filed under seal with the Commission. Similarly, those portions of the August 23 and 24, 2010 hearing in which the confidential information was discussed were held in closed proceedings and the Attorney Examiners designated the associated portions of the hearing transcript as confidential.

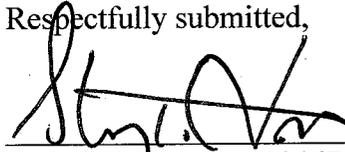
The confidential information of the Company contained in IEU’s Second Merit Brief and Second Supplement was found by the Commission to constitute confidential trade secret information under Ohio law that merits protection from disclosure. The information previously found to be confidential, proprietary, and competitively sensitive by the Attorney Examiner, and accordingly filed under seal and prohibited from public

¹ *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case Nos. 09-872-EL-FAC, *et al.*, Entry at ¶7 (June 29, 2010).

disclosure, should remain confidential throughout these proceedings. The confidential information of the Company included in IEU's Second Merit Brief and Second Supplement remains competitively sensitive. Likewise, coal inventory information on an individual plant and total company basis and other competitive financial and cost information of the Company remains highly confidential; release of such information would create a significant disadvantage for the Company in future negotiations. Issuance of a protective order by this Court would protect the same confidential information protected by the Commission below and preserves on appeal the Commission's procedural authority over its proceedings.

For the foregoing reasons, AEP Ohio respectfully requests that IEU's Motion for Protective Order be granted.

Respectfully submitted,



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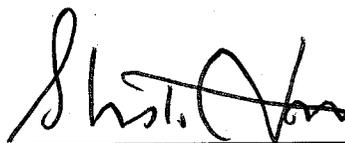
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing *Ohio Power Company's Memorandum In Support Of The Motion For Protective Order Filed By Appellee/Cross-Appellant Industrial Energy Users-Ohio* On January 2, 2013 was served by First-Class U.S. Mail upon the following counsel of record this 14th day of January 2013.



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