

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
 Edison Company, The Cleveland Electric)
 Illuminating Company and The Toledo)
 Edison Company for Authority to) Case No. 08-935-EL-SSO
 Establish a Standard Service Offer)
 Pursuant to R.C. 4928.143 in the Form of)
 an Electric Security Plan.)

**MOTION FOR PROTECTIVE ORDER REGARDING THE TESTIMONY OF
DAVID W. CLEAVER
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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 PUCO

Pursuant to Ohio Adm. Code 4901-1-24, the Office of the Ohio Consumers' Counsel ("OCC") hereby moves the Public Utilities Commission ("PUCO" or "Commission") for a protective order regarding certain of the information asserted to be confidential by the above-captioned operating companies of FirstEnergy Corp. ("FirstEnergy EDUs" or "Companies"). As part of discovery in these proceedings, the FirstEnergy EDUs provided information to the OCC, subject to a protective agreement, and asserts that this information constitutes trade secrets under Ohio law, and that non-disclosure is not inconsistent with the purposes of R.C. Title 49. In the OCC's progressive discovery efforts, OCC has obtained information regarding reliability measures for all three FirstEnergy EDUs, and accordingly, the OCC hereby requests that the Commission issue such order as is necessary to protect the redacted portions of the testimony of David W. Cleaver (i.e. portions of the testimony as well as Attachment

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DWC-3) that were deemed confidential. The OCC is filing this document under seal, subject to the OCC's rights under the protective agreements.

By this motion ("Motion"), the OCC does not concede that the information does indeed constitute trade secrets. However, the OCC acknowledges that it has obtained this information pursuant to a protective agreement with the FirstEnergy EDUs that provides for such information to be treated under a protected status (subject to OCC's right under the protective agreements to initiate a process for the PUCO to rule whether the information deserves confidential treatment under Ohio law).

The grounds for this motion are more fully described in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
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MEMORANDUM IN SUPPORT

Contemporaneously with the filing of this Motion, the testimony of David W. Cleaver is being filed in this matter. The Public Version of Mr. Cleaver's testimony and exhibits is being filed for viewing by the public. The Public Version reflects the redaction of information that was deemed by the FirstEnergy EDUs to be confidential as part of the discovery process, pursuant to the protective agreement with the Companies.


Without conceding that the information gained during discovery meets the standard for trade secrets and deserves protection from public revelation under R.C. 1333.61(D), the OCC files the instant Motion to protect the information provided by the Companies pending such a determination at a later point in time in the event OCC exercises its right to initiate the process for the PUCO to decide if confidential treatment is appropriate. Accordingly, the OCC hereby requests that the Commission issue such order as is necessary to protect the redacted testimony and the attached exhibit to the testimony of David W. Cleaver that was deemed confidential, subject to the OCC's rights under the protective agreements.

The OCC understands that the FirstEnergy EDUs consider the redacted information to be confidential and deserving of the status of trade secrets as defined in R.C. 1333.61(D). Such assertions would be based on claims by the Companies that the information (1) derives economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by others, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Under the assertions made by the Companies, confidential treatment of the attachment and related testimony would be appropriate, subject to the OCC's rights under the protective agreements to initiate a process for the PUCO to decide whether the information is subject to protection. Granting this Motion will speed progress in this case.

For the foregoing reasons and subject to the foregoing reservations of rights, this Motion for Protective Order should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Protective Order by the Office of the Ohio Consumers' Counsel has been served upon those persons listed below via first class U.S. Mail, prepaid, this 29th day of September, 2008.


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