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 Approval of Rider FUEL and Related Accounting Authority	**Case Nos. 09-21-EL-ATA 09-22-EL-AEM 09-23-EL-AAM**
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant To R.C. § 4928.143 in the Form of an Electric Security Plan	**Case No. 08-935-EL-SSO**

RECEIVED-DOCKETING DIV
2009 FEB 20 PM 5:24
PUCO

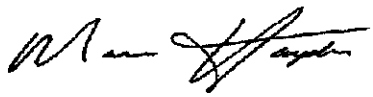
MOTION FOR PROTECTIVE ORDER

Pursuant to the provisions of Ohio Administrative Code § 4901-1-24, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("Companies"), move the Commission to issue an order which protects the confidentiality of and prohibits the disclosure of testimony filed under seal by the Companies in this docket on February 20, 2009. The unredacted testimony at issue contains sensitive and highly proprietary detailed information about the Request for Proposal ("RFP") solicitation process by which the Companies procured wholesale energy and capacity for the provision of retail electric generation service. This testimony was filed under seal and separate from redacted testimony that was filed as required by the February 19, 2009 Entry in this case. Moreover, the Companies filed, and

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician TM Date Processed 2/23/2009

served Parties to this Proceeding, a redacted version of such testimony. The grounds for the instant Motion are more fully set out in the accompanying Memorandum in Support.

Respectfully submitted,



Arthur E. Korkosz, Counsel of Record
James W. Burk
Mark A. Hayden
Ebony L. Miller
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 384-5849
(330) 384-3875 (fax)
korkosza@firstenergycorp.com
burkj@firstenergycorp.com
haydenm@firstenergycorp.com
elmiller@firstenergycorp.com

James F. Lang
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com

David A. Kutik
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)

ATTORNEYS FOR APPLICANTS, OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

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 Approval of Rider FUEL and Related Accounting Authority	)	**Case Nos. 09-21-EL-ATA 09-22-EL-AEM 09-23-EL-AAM**
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for *Authority to Establish a Standard* Service Offer Pursuant To R.C. § 4928.143 in the Form of an Electric Security Plan	)	**Case No. 08-935-EL-SSO**

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

On February 20, 2009, the Companies filed sensitive and highly proprietary detailed testimony about the Request for Proposal ("RFP") solicitation process by which the Companies procured wholesale energy and capacity for the provision of retail electric generation service. This information was filed under seal simultaneously with the filing this Motion. The testimony filed under seal contains sensitive and proprietary information requiring confidential treatment. This information was filed pursuant to the February 19, 2009 Entry ("Entry") requesting that such testimony be filed with this Commission. The Companies request such protective treatment and that the Commission maintain the confidential nature of those documents and that information.

The supply agreement which the Companies and winning bidders entered into as well as the bidding rules which govern the bidding process provide that each party in the process shall

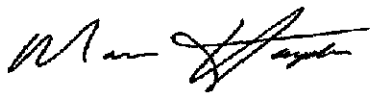
reasonably hold in confidence and not release or disclose information furnished as part of the agreement and process. The sensitive and highly proprietary testimony filed in connection with this Motion is precisely the type of materials that should be held in confidence pursuant to the supply agreement and bidding rules. Upon that basis alone, the Commission should grant the Companies' request to maintain the information under seal. Moreover, public release of the confidential information at issue would result in severe and detrimental consequences affecting potential future procurement processes, as such information, if disclosed to the public and potential bidders, would undermine the bidding process. As a result, the Companies and customers would potentially be subject to higher bid prices and recovery of such higher costs through retail rates.

A review of the testimony in question also demonstrates that it comprises information that falls within the statutory characterization of a trade secret under R.C, §1333.61(D). It is established that information comprising trade secrets is exempted from the requirements of disclosure under that statutory provision. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513 (1997); 88 O. Jur. 3d, Trade Secrets § 27. Requests under the Open Records law for disclosure of the documents filed under seal in this proceeding should be rejected under Revised Code § 149.43(A)(1)(v) as records whose release is prohibited under state and federal law.

Given the highly confidential and proprietary nature of the information filed under seal, the Companies urge the Commission to grant this Motion and issue an appropriate Order or act otherwise so as to assure the nondisclosure of these sensitive materials.[1]

[1] Because the information submitted under seal will be available to the Commission Staff, the Staff's review may take place without the necessity of public disclosure of the confidential information.

Respectfully submitted,



Arthur E. Korkosz, Counsel of Record
James W. Burk
Mark A. Hayden
Ebony L. Miller
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 384-5849
(330) 384-3875 (fax)
korkosza@firstenergycorp.com
burkj@firstenergycorp.com
haydenm@firstenergycorp.com
elmiller@firstenergycorp.com

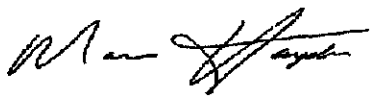
James F. Lang
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com

David A. Kutik
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)

ATTORNEYS FOR APPLICANTS, OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following via regular U.S. Mail, this 20th day of February, 2009. A copy was also served via electronic mail on those parties with email addresses listed below.



One of the Attorneys for the Companies

Service List

Public Utilities Commission of Ohio
Robert Fortney
180 East Broad St.
3rd Floor
Columbus, OH 43215
E-mail: robert.fortney@puc.state.oh.us

Ohio Energy Group (OEG)
Michael L. Kurtz
David F. Boehm
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
mkurtz@ BKLlawfirm.com
dboehm@BKLlawfirm.com

Ohio Consumers' Counsel
Jeffrey L. Small
Gregory J. Poulos
Richard C. Reese
Ohio Consumers' Counsel
10 West Broad Street
18th Floor
Columbus, OH 43215-3485
small@occ.state.oh.us
poulos@ occ.state.oh.us
roberts@occ.state.oh.us
reese@occ.state.oh.us

Kroger Co
John W. Bentine
Mark S. Yurick
Matthew S. White
Chester Wilcox & Saxbe, LLP
65 E. State St., Suite 1000
Columbus, OH 43215
jbentine@cwslaw.com
myurick@cwslaw.com
mwhite@cwslaw.com

Ohio Environmental Council
Barth E. Royer
Nolan Moser
Trent A Dougherty
Bell & Royer, LPA
33 South Grant Avenue
Columbus, OH 43215
barthroyer@aol.com
nmoser@theoec.org
trent@theoec.org

Industrial Energy Users (IEU)
Samuel C. Randazzo
Lisa G. McAlister
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State St., 17th Floor
Columbus, OH 43215
E:mail: sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

Ohio Partners for Affordable Energy
David C. Rinebolt
Colleen L. Mooney
(OPEA)
231 West Lima Street
PO BOX 1793
Columbus, OH 43215
E-mail: drinebolt@aol.com
cmooney2@columbus.rr.com

Nucor Steel Marion, Inc.
Garrett A. Stone
Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201
E-mail: gas@bbrslaw.com
mkl@bbrslaw.com

Northwest Ohio Aggregation Coalition (NOAC)
Toledo
Leslie A. Kovacik
420 Madison Ave., Suite 100
Toledo, OH 43604-1219
Phone: 419.245.1893
Fax: 419.245.1853
E-mail: leslie.kovacik@toledo.oh.gov

Lucas
Lance M. Keiffer
Lucas County Assist Prosecuting Atty
711 Adams St., 2nd Floor
Toledo, OH 43624-1680
Phone: 419.213.2001
Fax: 419.213.2011
E-mail: lkeiffer@co.lucas.oh.us

NOAC- Holland
Paul Skaff
Leatherman Witzler Dombey & Hart

353 Elm St.
Perrysburg, OH 43551
P hone: 419.874.3536
Fax: 419.874.3899
E-mail: paulskaff@justice.com

NOAC- Lake
Thomas R. Hays
Lake Township – Solicitor
3315 Centennial Road, Suite A-2
Sylvania, OH 43560
Phone: 419.843.5355
Fax: 419.843.5350
E-mail: hayslaw@buckeye-express.com

NOAC- Maumee
Sheilah H. McAdams
Marsh & McAdams – Law Director
204 West Wayne Street
Maumee, OH 43547
Phone: 419.893.4880
Fax: 419.893.5891
E-mail: sheilahmca@aol.com

NOAC- Northwood
Brian J. Ballenger
Ballenger & Moore – Law Director
3401 Woodville Rd., Suite C
Toledo, OH 43619
Phone: 419.698.1040
Fax: 419.698.5493
E-mail: ballengerlawbjb@sbcglobal.net

NOAC- Oregon
Paul S. Goldberg
Oregon – Law Director
6800 W. Central Ave.
Toledo, OH 43617-1135
Phone: 419.843.5355
E-mail: pgoldberg@ci.oregon.oh.us

NOAC- Sylvania
James E. Moan
Sylvania – Law Director
4930 Holland-Sylvania Rd
Sylvania, OH 43560
Phone: 419.882.7100
Fax: 419.882.7201
E-mail: jimmoan@hotmail.com

Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc.
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymore and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
E-mail: mhpetricoff@ vorys.com

Cynthia A. Fonner
Constellation Energy Resources, LLC
550 West Washington Blvd., Suite 300
Chicago, IL 60661

David I. Fein
Constellation Energy Group, Inc.
550 West Washington Blvd., Suite 300
Chicago, IL 60661

Integrys Energy Services, Inc,
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymore and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
E-mail: mhpetricoff@ vorys.com

Bobby Singh
300 West Wilson Bridge Road, Suite 350
Worthington, OH 43085
Phone: 614.844.4340
Fax: 614.844.4306
E-mail: bsingh@integrysenergy.com

Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators,
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymore and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
E-mail: mhpetricoff@ vorys.com

Direct Energy Services, LLC
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymore and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
E-mail: mhpetricoff@ vorys.com

Dominion Retail, Inc.
Barth E. Royer

Bell & Royer, LPA
33 South Grant Avenue
Columbus, OH 43215
Email: barthroyer@aol.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburg, PA 15212-5817
Gary.A.Jeffries@dom.com

Ohio Hospital Association
Richard L. Sites
155 E. Broad Street, 15th Floor
Columbus, OH 43215-3620
Phone: (614) 221-7614
Email: ricks@ohanet.org

Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, United Clevelanders Against Poverty, Cleveland Housing Network, The Empowerment Center of Greater Cleveland (Citizens Coalition)
Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
Phone: 216.687.1900
Email: jpmeissn@lascley.org

National Energy Marketers Assoc.
Craig G. Goodman, Esq.
3333 K. Street, NW, Suite 110
Washington, D.C. 20007
Email: cgoodman@energymarketers.com

City of Akron
Sean W. Vollman
161 S. High Street, Suite 202
Akron, OH 44308
Phone: 330.375.2030
Fax: 330.375.2041
E-mail: vollmse@ci.akron.oh.us
munteda@ci.akron.oh.us

The Ohio Manufacturers' Association
Langdon D. Bell
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
Email: lbell33@aol.com

Kevin Schmidt
The Ohio Manufacturers' Association
33 North High Street
Columbus, OH 43215-3005
kschmidt@ohiomfg.com

Ohio Farm Bureau Federation
Larry Gearhardt
Chief Legal Counsel
280 North High Street
Columbus, OH 43218-2383
Email: lgearhardt@ofbf.org

Material Sciences Corporation
Craig I. Smith
2824 Coventry Road
Cleveland, Ohio 44120
Tel. (216) 561-9410
Email: wis29@yahoo.com

FPL Energy Power Marketing, Inc. (PMI/GEXA)
F. Mitchell Dutton
FPL Energy Power Marketing, Inc.
700 Universe Blvd.
Juno Beach, Florida 33408
Email: mitch.dutton@fpl.com

Dane Stinson
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215
Dane.Stinson@BaileyCavalieri.com

The City of Cleveland
Steven Beeler
Gregory J. Dunn
Christopher Miller
Andre T. Porter
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, OH 4321 5
Email: gdunn@szd.com
cmiller@szd.com
aporter@szd.com

OmniSource Corporation
Damon E. Xenopoulos, Esq.
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007
E-Mail: dex@bbrslaw.com

Citizen Power
Theodore S. Robinson
2121 Murray Avenue

Pittsburgh, PA 15217
Email: robinson@citizenpower.com

Ohio Schools Council,
Glenn S. Krassen
E. Brett Breitschwerdt
Bricker & Eckler LLP
1375 E. 9th St., Suite 1500
Cleveland, OH 44114
Email:gkrassen@bricker.com
bbreitschwerdt@bricker.com

NOPEC
Glenn S. Krassen
E. Brett Breitschwerdt
Bricker & Eckler LLP
1375 E. 9th St., Suite 1500
Cleveland, OH 44114
Email: gkrassen@bricker.com
bbreitschwerdt@bricker.com

COSE
Steve Millard
The Higbee Building
100 Public Square, Suite 201
Cleveland, OH 44113
smillard@cose.org

Wal-Mart Stores East LP and Sam's Club East, LP, Macy's Inc., and BJ's Wholesale Club, Inc. (Collectively, the ("Commercial Group")
Douglas M. Mancino
McDermott Will & Emory LLP
2049 Century Park East
Suite 3800
Los Angeles, CA 90067-3218
Email: dmancino@mwe.com

Grace C. Wung
McDermott Will & Emery, LLP
600 Thirteenth Street, N.W.
Washington, DC 20005
gwung@mwe.com

American Wind Energy Association,
Wind on the Wires, Ohio Advanced Energy
Sally W. Bloomfield
Terrence O'Donnell
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
sbloomfield@bricker.com
todonnell@bricker.com

Morgan Stanley Capital Group Inc.
Douglas M. Mancino
McDermott Will & Emory LLP
2049 Century Park East
Suite 3800
Los Angeles, CA 90067-3218
Email: dmancino@mwe.com

Gregory K. Lawrence
28 State Street
McDermott Will & Emory LLP
Boston, MA 02109
Email: glawrence@mwe.com

Natural Resources Defense Council,
Henry W. Eckhart
50 West Broad Street, #2117
Columbus, Ohio 43215
henryeckhart@aol.com

The Sierra Club Ohio Chapter
Henry W. Eckhart
50 West Broad Street, #2117
Columbus, Ohio 43215
henryeckhart@aol.com