

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the)
Cleveland Electric Illuminating)
Company for Authority to Issue, Sell, or) Case No. 11-4288-EL-AIS
Enter Into Debt Transactions.)

In the Matter of the Application of Ohio)
Edison Company for Authority to Issue,) Case No. 11-4289-EL-AIS
Sell, or Enter Into Debt Transactions.)

In the Matter of the Application of The)
Toledo Edison Company for Authority to) Case No. 11-4290-EL-AIS
Issue, Sell, or Enter Into Debt)
Transactions.)

ENTRY

The attorney examiner finds:

- (1) On December 2, 2011, The Cleveland Electric Illuminating Company (CEI), Ohio Edison Company (Ohio Edison) and The Toledo Edison Company (Toledo Edison) filed individual motions for protective orders, and memoranda in support, of each respective company's application in the above captioned cases. Each application included, as Attachment A, a capital lease agreement that CEI, Ohio Edison, and Toledo Edison assert contains confidential and proprietary terms. CEI, Ohio Edison, and Toledo Edison add that such terms were agreed upon by the parties to each lease in reliance upon the terms' nondisclosure and confidentiality. CEI, Ohio Edison, and Toledo Edison further contend that public disclosure of such terms could impair and negatively impact their bargaining position in future transactions.
- (2) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade

secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.

- (3) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (4) Ohio law defines a trade secret as "information . . . 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." Section 1333.61(D), Revised Code.
- (5) The attorney examiner has reviewed the information included in each motion for a protective order, as well as the assertions set forth in each supportive memorandum, of CEI, Ohio Edison, and Toledo Edison. Applying the requirements that the information has independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in Attachment A of each application contains trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that the motions for protective orders filed by CEI, Ohio Edison, and Toledo Edison are reasonable and should be granted.
- (6) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until July 10, 2013. Until that date, the

¹ See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

docketing division should maintain, under seal, the information filed confidentially.

- (7) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If CEI, Ohio Edison, or Toledo Edison wish to extend this confidential treatment, it should file an appropriate motion to extend confidential treatment at least 45 days in advance of the expiration date. If no such motion is filed, the Commission may release this information without prior notice to CEI, Ohio Edison, or Toledo Edison.

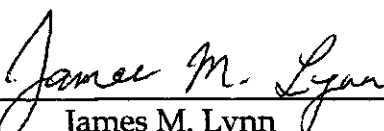
It is, therefore,

ORDERED, That the motions for protective orders filed by CEI, Ohio Edison, and Toledo Edison be granted in accordance with Finding (6). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted versions of Attachment A filed by each applicant in this docket on December 2, 2011, for a period of 18 months from the issuance this entry, ending on July 10, 2013. It is, further,

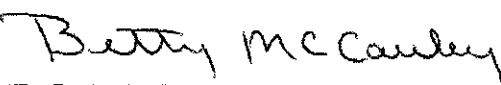
ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: James M. Lynn
Attorney Examiner

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Entered in the Journal
JAN 10 2012


Betty McCauley
Secretary