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**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 Provide)
For a Standard Service Offer Pursuant to)
R.C. §4928.143 in the Form of)
An Electric Security Plan)

Case No. 12-1230-EL-SSO

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY'S
MOTION FOR A PROTECTIVE ORDER**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies"), pursuant to O.A.C. 4901-1-24(D), move for a protective order to guard the confidentiality of its Response to the Sierra Club's Request for Production No. 1. The Response was initially provided to the parties pursuant to the terms of a Protective Agreement. Subsequently, it was referenced in the Companies' Memorandum Contra AEP Retail Energy Partners LLC's ("AEPR") Motion to Extend the Procedural Schedule. The Response was not attached to the Memorandum Contra due to its confidential nature, but was instead filed with the Commission under seal. The Response contains a commercially sensitive and trade secret Measurement & Verification Plan ("M&V Plan") that was filed on a confidential basis with PJM Interconnection, Inc. ("PJM") in connection with PJM's May 7-11, 2012, base residual auction ("BRA"). PJM does not release M&V Plans to the public. Disclosure could cause the Companies competitive harm at the hands of other entities that wish to submit an M&V Plan and begin participating in PJM's BRA. Accordingly, as set forth in the attached Memorandum in Support, the Companies seek a protective order preventing public disclosure of their Response and request that the Commission maintain the Response under seal.

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Dated: May 31, 2012

Respectfully submitted,

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TOLEDO EDISON COMPANY

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY'S
MEMORANDUM IN SUPPORT OF MOTION FOR A PROTECTIVE ORDER**

I. INTRODUCTION

In connection with its current ESP case ("ESP 3"), the Companies served a Response to the Sierra Club's Request for Production No. 1 on the parties that had entered into a Protective Agreement. That same Response was later referenced in the Companies' Memorandum Contra AEPR's Motion to Extend the Procedural Schedule. The Response contains a commercially sensitive and trade secret Measurement & Verification Plan ("M&V Plan") that was filed on a confidential basis with PJM Interconnection, Inc. ("PJM") in connection with PJM's May 7-11, 2012, base residual auction ("BRA"). Because release of the M&V Plan could cause the Companies to suffer competitive harm in future BRAs, the Companies have filed the Response with the Commission under seal. The Companies respectfully request a protective order and that the Commission continue to maintain the Request under seal to protect its confidential content.

II. ARGUMENT

The Commission and Ohio law have long protected trade-secret information. Pursuant to R.C. § 1333.61(D), a "trade secret" is:

[A]ny 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. [And]

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Ohio law grants special protections to such trade secrets, including statutory causes of action for an injunction precluding the misappropriation of trade secrets. *See* R.C. § 1333.62. The Commission has recognized the statutory obligation to protect trade secrets, even in the context of its preference for open proceedings and has previously carried out its obligations in this regard in numerous proceedings. *See In re: General Telephone Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets); *See, e.g., Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

The Commission should protect the Companies' Response to the Sierra Club's Request for Production No. 1, which is referenced in the Companies' Memorandum Contra a Motion to Extend the Procedural Schedule filed by AEPR, for two reasons. First, PJM treats the information contained in the Response as confidential. Before any utility may bid its Energy Efficiency ("EE") resources into PJM's BRA, it must submit an M&V Plan to PJM. The M&V plan is a utility's ticket to the BRA—absent PJM approval of the M&V Plan, the utility cannot bid its EE resources into the auction. M&V Plans are not publicly available. In fact, when the Companies contacted PJM for an example of an M&V Plan, the Companies were told that PJM confidentially maintains M&V Plans and will not distribute them to other entities or the public.

In short, PJM maintains M&V Plans in its confidential files. As a result, the Commission should not make the Companies' M&V Plan available to the public.

Second, the M&V Plan contained in the Response is a trade secret with independent economic value. Any entity wishing to bid in EE resources in the BRA must create an M&V Plan. Generally, entities submit their first M&V Plan "blind" without the benefit of an M&V Plan from another entity to mimic. If an entity wishing to join the BRA for the first time were to gain access to the Companies' M&V Plan, they could easily use it as a template, substitute their own figures, and easily pass muster with PJM. That would allow that new entity to quickly and easily bid their EE resources into the BRA alongside the Companies. In short, the Companies' M&V Plan has economic value because it is not available to other entities wishing to submit an M&V Plan and join in the PJM BRA. The value of the Companies' M&V Plan can only be protected if it is guarded from public disclosure and maintained under seal.

III. CONCLUSION

For the foregoing reasons, the Companies request that their Response to the Sierra Club's Request for Production No. 1, which is referenced in the Companies' Memorandum Contra AEPR's Motion to Extend the Procedural Schedule, be placed under a protective order to prevent it from being disclosed publicly and that the Commission maintain it under seal.

Dated: May 31, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra AEP Retail Energy Partners LLC's Motion to Compel Discovery Responses was sent to the following by e-mail this 31st day of May, 2012:

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