

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the  
Alternative Energy Rider Contained in the  
Tariffs of Ohio Edison Company, The  
Cleveland Electric Illuminating Company,  
and the Toledo Edison Company

Case No. 11-5201-EL-RDR

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**MOTION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY TO  
FILE TESTIMONY UNDER SEAL AND FOR A PROTECTIVE ORDER**

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Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies"), pursuant to Rule 4901-1-24(D), O.A.C., move for permission to file the testimony of the Companies' witnesses Dean W. Stathis and Daniel R. Bradley under seal and further move for a protective order to guard the confidentiality of supplier-identifying and price information contained therein because it constitutes a trade secret. Pursuant to Rule 4901-1-24(D)(1)-(2), a minimally-redacted version of the testimony, and three unredacted versions of each (attached hereto as Exhibit A), have been filed contemporaneously herewith. Disclosure of the information that is currently redacted could cause the Companies and their suppliers' competitive harm. Accordingly, as set forth in the attached Memorandum in Support, the Companies seek permission to file unredacted versions of the testimony of the Companies' witnesses Dean W. Stathis and Daniel R. Bradley under seal and further seek a protective order preventing public disclosure of the redacted supplier-identifying and pricing information contained therein.

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DATED: January 23, 2013

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE MOTION OF OHIO EDISON COMPANY,  
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PROTECTIVE ORDER**

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**I. STATEMENT OF FACTS**

Section 4928.64 of the Ohio Revised Code governs the acquisition of renewable energy credits (“RECs”) by electric utility companies to meet their mandatory alternative energy benchmark requirements. *See* R.C. § 4928.64. From 2009 through 2011, the Companies held a series of requests for proposals (“RFPs”) whereby the Companies relied upon a competitive bidding process to procure RECs from various suppliers in order to meet their alternative energy compliance obligations. On September 20, 2011, the Commission initiated the present proceeding to audit the Companies’ recovery of costs associated with the REC RFP process. Exeter Associates, Inc. (“Exeter”) was selected as an external auditor to assist the Commission Staff with the audit. Case No. 11-5201-EL-RDR, Entry, p. 3 (Feb. 23, 2012).

On August 15, 2012, the Commission filed the Confidential Final Report/Performance Audit of the Alternative Energy Resource Rider (Rider AER) of FirstEnergy Ohio Utility Companies for October 2009 through December 31, 2011 (the “Exeter Report”) under seal. On that same day, the Commission also filed a public version of the report in which commercially sensitive and trade secret information related to suppliers was redacted, specifically supplier-identifying information and pricing information (the “REC Procurement Data”). On October 3,

2012, the Companies moved to have the REC Procurement Data kept under seal because it was highly competitively sensitive proprietary information of the Companies and its REC suppliers, thereby warranting trade secret protection. On October 18, 2012, the Ohio Office of Consumers' Counsel ("OCC") moved to have the unredacted version of the Exeter Report made public.

During a hearing on November 20, 2012, the Attorney Examiner agreed with the Companies and denied OCC's motion to permit the dissemination of the REC Procurement Data contained in the unredacted version of the Exeter Report. [*See* Case No. 11-5201-EL-RDR, Hearing Tr., 17:13-18:5 (Dec. 4, 2012).] Specifically, the Attorney Examiner found that the highly confidential and proprietary REC Procurement Data contained in the Exeter Report deserved Commission protection because it constituted a trade secret pursuant to settled Ohio law and Commission precedent. [*Id.*] The Stathis and Bradley testimony makes frequent reference to the same REC Procurement Data; namely, the pricing and supplier-identifying information that the Commission has already deemed worthy of trade secret protection.

For the reasons that follow and pursuant to Rule 4901-1-24(D), the Companies respectfully request permission to file the direct testimony of the Companies' witnesses Stahis and Bradley under seal. The Companies further request a protective order regarding the same to safeguard the proprietary and highly confidential content contained therein, which the Commission has previously found constituted trade secrets.

## **II. ARGUMENT**

Pursuant to Rule 4901-1-24(D), the Commission routinely permits parties to file the direct testimony of their witnesses under seal and grants protective orders regarding such testimony when it contains trade secrets. *See, e.g., In the Matter of the Application of Duke*

*Energy Ohio, Inc. to Establish its Fuel and Economy Purchased Power Component of its Market-Based Standard Service Offer for 2011 In the Matter of the Application of Duke Energy Ohio, Inc. to Establish its System Reliability Tracker of its Market-Based Standard Service Offer for 2011*, Case No. 11-974-EL-FAC, 2012 Ohio PUC LEXIS 830, \*6-7 (November 28, 2012) (permitting the filing under seal of the direct testimony of utility's witness pursuant to Rule 4901-1-24(D) because the testimony contained trade secrets); *In the Matter of the Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc., and Verizon Communications Inc. for Consent and Approval of a Change in Control*, Case No. 09-454-TP-ACO, 2011 Ohio PUC LEXIS 1129, \*3-4 (Oct. 17, 2011) (same and extending trade secret protection for an additional 18 months); *In the Matter of the Complaints of S. G. Foods, Inc. et al*, Case No. 04-28-EL-CSS, 2008 Ohio PUC LEXIS 76, \*5-6 (Jan. 29, 2008) (same).

In its hearing on the matter, the Attorney Examiner agreed with the Companies that the REC Procurement Data contained in the Exeter Report should be afforded trade secret protection. Specifically, the Attorney Examiner held:

The commission has generally ruled that bidder-specific information including prices, quantities, and the identify of bidders [the REC Procurement Data] to be trade secret information. The Examiner finds that the redacted portions of the auditor reports have independent economic value and the information was subject to reasonable efforts to maintain its secrecy. Further, the Examiner finds the redacted portions of the auditor's reports meet the six-factor test specified by the Supreme Court. Therefore, the Examiner finds that the redacted portions of the auditor's reports are trade secrets and a protective order should be granted pursuant to Rule 4901-1-24 of the Ohio Administrative Code. [Case No. 11-5201-EL-RDR, Hearing Tr., 17:13-18:5 (Dec. 4, 2012).]

Here, the identical highly competitively sensitive and confidential information is at stake, the disclosure of which would again likely cause both the Companies and their REC suppliers competitive harm. As with the Exeter Report, the direct testimony of the Companies' witnesses

Stathis and Bradley contains the same REC Procurement Data, namely detailed pricing and supplier-identifying information. Given that the Attorney Examiner previously found that this very same information is proprietary in nature and warrants trade secret protection, the Commission should make the same finding here. [*Id.*] Pursuant to Rule 4901-1-24(D), the Commission should thus permit the Companies to file the Stathis and Bradley testimony under seal and issue a protective order concerning the REC Procurement Data contained therein. Further, a minimally redacted public version of the testimony at issue has been filed with the Commission contemporaneously with this Motion, and unredacted versions have been served on all parties to this proceeding who have executed a protective agreement with the Companies.

### **III. CONCLUSION**

For the foregoing reasons, the Companies request that the Commission permit the Companies to file the direct testimony of the Companies' witnesses Dean W. Stathis and Daniel R. Bradley under seal and grant a protective order preventing public disclosure of the redacted highly competitively sensitive and confidential pricing and supplier identifying information contained therein.

DATED: January 23, 2013

Respectfully submitted,

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I hereby certify that a copy of the foregoing was delivered to the following persons by e-mail this 23d day of January, 2013:

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