

In the Matter of the Review of The)
Alternative Energy Rider Contained in)
The Tariffs of Ohio Edison Company, The) Case No. 11-5201-EL-RDR
Cleveland Electric Illuminating Company)
and The Toledo Edison Company.)

In the interest of a transparent regulatory process, this Memorandum Contra is filed to oppose the Motion for a Protective Order submitted by Ohio Edison, The Cleveland Electric Illuminating Company and The Toledo Edison Company (“FirstEnergy”), on January 23, 2013. By way of background, on September 20, 2011, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) ordered an audit to review FirstEnergy’s “procurement of renewable energy credits for purposes of compliance with Section 4928.64, Revised Code.” Exeter Associates, Inc. (“Exeter”) conducted the audit, and a Final Report was filed under seal with the Commission on August 15, 2012. A redacted copy of the Final Report, whereby FirstEnergy omitted information containing the pricing and identities of alternative energy credit bids, was also filed with the Commission and made available for public inspection.

1

Order, finding that the redacted portions of the Final Report were trade secrets subject to protective order.

In accordance with the procedural schedule, FirstEnergy filed its testimony with the Commission on January 23, 2013. In addition to the four pieces of direct testimony, FirstEnergy also filed a Motion for Protective Order (“Third Motion for Protective Order”).¹ In its Third Motion for Protective Order, FirstEnergy requests that the Commission grant a protective order preventing public disclosure of those portions of direct testimony of the Companies’ witnesses Dean W. Stathis and Daniel R. Bradley, which contain “supplier-identifying and price information.”² FirstEnergy exclusively argues that because Mr. Stathis and Mr. Bradley’s direct testimony contains “the identical highly competitive sensitive and confidential information” that the Attorney Examiner previously found to be “proprietary in nature and warrants trade secret protection, the Commission should make the same finding here.”³

Therefore, the OCC renews and incorporates by reference the arguments set forth in the Joint Memorandum Contra to FirstEnergy’s First Motion for Protective Agreement (“Joint Memorandum Contra”), which was filed on October 18, 2012. For the reasons more fully explained in the Joint Memorandum Contra, the Commission should deny FirstEnergy’s Third Motion for Protective Order.

¹ FirstEnergy’s “Second Motion for Protective Order” was filed in response to a public records request that OCC issued to the PUCO. After learning that FirstEnergy provided edits to the Exeter audit before the Final Report was filed with the Commission, OCC filed public records request with the PUCO seeking “any and all records that reflect edits or comments on draft version of the Audit Report by employees, outside consultants and/or counsel of [FirstEnergy].” The PUCO has yet to respond to OCC’s public records request or rule on FirstEnergy’s Second Motion for Protective Order.

² FirstEnergy Third Motion for Protective Order at 1.

³ Id. at 5-6.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ *Melissa R. Yost*

Melissa R. Yost, Counsel of Record
Deputy Consumers' Counsel
Edmund "Tad" Berger
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-1291 – Telephone (Yost)

(614) 466-1292 – Telephone (Berger)

yost@occ.state.oh.us

serio@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Memorandum Contra* was served on the persons listed below via electronic mail this 7th day of February, 2013.

/s/ Melissa R. Yost

Melissa R. Yost
Deputy Consumers' Counsel

SERVICE

william.wright@puc.state.oh.us
Thomas.lindgren@puc.state.oh.us
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com
cdunn@firstenergycorp.com
dakutik@jonesday.com
burkj@firstenergycorp.com
trent@theOEC.org
cathy@theOEC.org
NMcDaniel@elpc.org

mkl@bbrslaw.com
todonnell@bricker.com
tsiwo@bricker.com
cathy@theoec.org
trent@theoec.org
robinson@citizenpower.com
callwein@wamenergylaw.com
mhpeticoff@vorys.com
lkalepsclark@vorys.com
mjsettineri@vorys.com
fmerrill@bricker.com
mwarnock@bricker.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/7/2013 3:03:39 PM

in

Case No(s). 11-5201-EL-RDR

Summary: Memorandum Memorandum Contra FirstEnergy's Motion for Protective Order by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Yost, Melissa Ms.