

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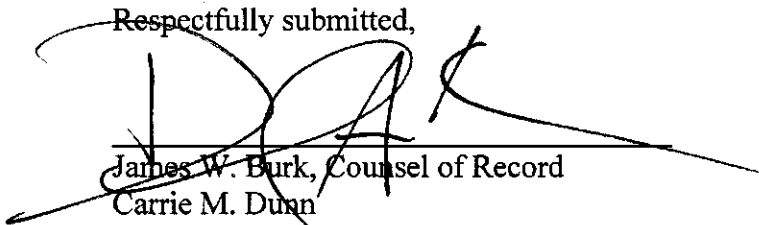
**MOTION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY TO
FILE REBUTTAL TESTIMONY UNDER SEAL AND FOR A PROTECTIVE ORDER**

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 under seal the rebuttal testimony of Companies’ witness Eileen M. Mikkelsen and further move for a protective order to guard the confidentiality of pricing information contained therein because such information constitutes a trade secret. Pursuant to Rules 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 pricing 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’ witness Eileen M. Mikkelsen under seal and further seek a protective order preventing public disclosure of the redacted pricing information contained therein.

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Technician TN Date Processed **FEB 22 2012**

DATED: February 22, 2013

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Burk', is written over the typed name and company information.

James W. Burk, Counsel of Record

Carrie M. Dunn

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, Ohio 44308

Phone: (330) 761-7735

Facsimile: (330) 761-7735

E-mail: burkj@firstenergycorp.com

cdunn@firstenergycorp.com

David A. Kutik

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114-1190

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

E-mail: dakutik@jonesday.com

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

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

I. INTRODUCTION

As set forth in the previous motions for protective orders filed by the Companies, the Companies have continuously sought to protect supplier- identifying information and pricing information (the “REC Procurement Data”) from public disclosure. The Attorney Examiner has already found that the highly confidential and proprietary REC Procurement Data, which is contained in 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”), deserved protection because it constituted a trade secret pursuant to settled Ohio law and Commission precedent. [See Case No. 11-5201-EL-RDR, Hearing Tr., 17:13-18:5 (Dec. 4, 2012).]

The Mikkelsen rebuttal testimony makes reference to the same REC Procurement Data; specifically, the pricing information that the Commission has already deemed worthy of trade secret protection. Accordingly, for the reasons set forth below and in the Companies’ previous motions for protective orders, the Commission should permit the Companies to file the rebuttal testimony of the Companies’ witness Mikkelsen under seal and grant a protective order to safeguard the proprietary and highly confidential pricing information contained therein.

II. ARGUMENT

Pursuant to Rule 4901-1-24(D), the Commission routinely permits parties to file the 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 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, *2-4 (granting motion for protective order and filing under seal of rebuttal testimony pursuant to Rule 4901-1-24(D), O.A.C., because it contained trade secrets) (Oct. 17, 2011); *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 testimony of utility's witness pursuant to Rule 4901-1-24(D), O.A.C., because the testimony contained trade secrets).

In its hearing on the matter, the Attorney Examiner held that the REC Procurement Data contained in the Exeter Report should be afforded trade secret protection and granted a protective order prohibiting the public disclosure of this information. [Case No. 11-5201-EL-RDR, Hearing Tr., 17:13-18:5 (Dec. 4, 2012).] The Attorney Examiner also held, "I'd like to emphasize that all parties will maintain the confidentiality of the confidential information contained in the unredacted audit reports [and] . . . none of that information may be publicly disclosed, and any information containing documents [that contain this information] filed with this Commission will be filed under seal." [*Id.*, 18:19-19:1.]

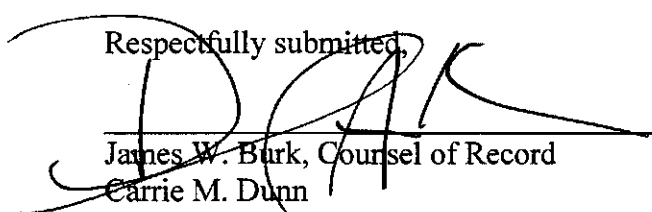
Here, the identical highly competitively sensitive and confidential pricing information is at stake, the disclosure of which would again likely cause both the Companies and their REC suppliers competitive harm. The Commission should thus make the same finding here. [*Id.*] Accordingly, the Commission should permit the Companies to file the Mikkelsen rebuttal testimony under seal and issue a protective order concerning the REC Procurement Data contained therein.

III. CONCLUSION

For the foregoing reasons, the Companies request that the Commission permit the Companies to file the rebuttal testimony of the Companies' witness Eileen Mikkelsen under seal and grant a protective order preventing public disclosure of the redacted highly competitively sensitive and confidential pricing information contained therein.

DATED: February 22, 2013

Respectfully submitted,


James W. Burk, Counsel of Record

Carrie M. Dunn

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, Ohio 44308

Phone: (330) 761-7735

Facsimile: (330) 761-7735

E-mail: burkj@firstenergycorp.com

David A. Kutik

Lydia M. Floyd

JONES DAY

901 Lakeside Avenue

Cleveland, Ohio 44114-1190

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

E-mail: dakutik@jonesday.com

ATTORNEYS FOR OHIO EDISON

COMPANY, THE CLEVELAND ELECTRIC

ILLUMINATING COMPANY, AND THE

TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered to the following persons by e-mail this 22nd day of February, 2013:

Terrence O'Donnell
J. Thomas Siwo
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2345
Facsimile: (614) 227-2390
E-mail: todonnell@bricker.com
tsiwo@bricker.com

Attorneys for Mid-Atlantic Renewable Energy Coalition

William Wright
Chief, Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, OH 43215
E-mail: William.wright@puc.state.oh.us

Attorneys for the Staff of the Public Utilities Commission of Ohio

Christopher J. Allwein
Williams, Allwein & Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, OH 43212
Telephone: (614) 429-3092
Facsimile: (614) 670-8896
E-mail: callwein@wamenergylaw.com

Attorney for the Sierra Club

Bruce J. Weston
Melissa Yost
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Telephone: (Serio) (614) 466-9565
Facsimile: (614) 466-9475
E-mail: yost@occ.state.oh.us

Attorneys for Office of the Ohio Consumers' Counsel

David F. Boehm
Michael L Kurtz
Jody M. Kyler
Boehm Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
Telephone: (513) 421-2255
Facsimile: (513) 421-2764
E-mail: dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com

Attorneys for The Ohio Energy Group

Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone PC
1025 Thomas Jefferson Street NW
8th Floor West Tower
Washington, DC 20007
Telephone: (202) 342-0800
Facsimile: (202) 342-0807
E-mail: mkl@bbrslaw.com

Attorney for Nucor Steel Marion, Inc.

Cathryn Loucas
Trent A. Dougherty
Ohio Environment Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
Telephone: (614) 487-7506
Facsimile: (614) 487-7510
E-mail: cathy@theoec.org
trent@theoec.org

Attorneys for the OEC

Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: lmcaster@bricker.com
mwarnock@bricker.com

Attorneys for The OMA Energy Group

Nicholas McDaniel
ENVIRONMENTAL LAW &
POLICY CENTER
1207 Grandview Ave., Suite 201
Columbus, OH 43212
NMCDaniel@elpc.org

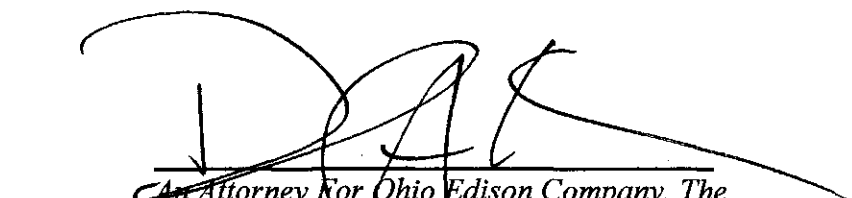
Attorney for ELPC

Theodore S. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
Telephone: (412) 421-7029
Facsimile: (412) 421-6162
E-mail: robinson@citizenpower.com

Attorney for Citizen Power

M. Howard Petricoff
Michael J. Settineri
Lija Caleps-Clark
VORYS, SATER, SEYMOUR AND PEASE
LLP
52 East Gay Street
Columbus, OH 43215
Telephone: (614) 464-5414
mhpetricoff@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com

Attorneys for Interstate Gas Supply, Inc.



*An Attorney For Ohio Edison Company, The
Cleveland Electric Illuminating Company, and
The Toledo Edison Company*