

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.)

The Environmental Law and Policy Center, Ohio Environmental Council and Sierra Club (“Environmental Intervenors”) hereby move¹ the Public Utilities Commission of Ohio (“PUCO”) for a protective order regarding information asserted to be confidential by FirstEnergy.² As part of discovery in this proceeding, FirstEnergy provided information to various parties, subject to various protective agreements, and FirstEnergy asserts that this information constitutes trade secret information under Ohio law.

The Environmental Intervenors hereby request that, in accordance with Ohio Adm. Code. 4901-1-02(E), the PUCO issue such order as is necessary to protect the undisclosed (redacted) portions of the Environmental Intervenors' *Initial Post Hearing Brief* that are asserted to be confidential by FirstEnergy. Subject to the Environmental Intervenors' rights under the protective agreement, the Environmental Intervenors are

¹ This Motion is filed pursuant to Ohio Adm. Code 4901-1-02(E), 4901-1-12 and 4901-1-24(D).

² “FirstEnergy” means the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company.

filing their *Initial Post Hearing Brief* under seal, and are also filing a public version that shows all information not claimed by FirstEnergy to be confidential.

By filing the instant Motion, the Environmental Intervenors do not concede that the information constitutes trade secret information. However, the Environmental Intervenors acknowledge that they have obtained this information pursuant to a protective agreement with FirstEnergy that provides for such information to be treated as confidential and protected (subject to the Environmental Intervenors' right under the protective agreement to initiate a process for the PUCO to rule whether the information deserves confidential treatment under Ohio law).

The grounds for this Motion are more fully described in the accompanying Memorandum in Support.

Respectfully submitted,

/s/ Nicholas McDaniel

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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MEMORANDUM IN SUPPORT

The Environmental Intervenors file this Motion for Protective Order (“Motion”) contemporaneously with the filing of their *Initial Post Hearing Brief*. In filing this Motion, the Environmental Intervenors do not concede that the information in their *Initial Post Hearing Brief* is trade secret information pursuant to R.C. 1333.61(D) and do not concede that the information is deserving of protection from public revelation under Ohio Adm. Code 4901-1-24(D).

The Environmental Intervenors understand that FirstEnergy considers the undisclosed (redacted) information to be confidential and deserving of the protection of trade secret information as defined in R.C. 1333.61(D). The Environmental Intervenors’ understanding is based on claims by FirstEnergy that the information (1) derives economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by others, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. *See* R.C. 1333.61(D). Under the assertions made by FirstEnergy, at this time, confidential treatment of the redacted information in the Environmental Intervenors’ *Initial Post Hearing Brief* would be appropriate, subject to the Environmental Intervenors’ rights under their protective

agreements with FirstEnergy to initiate a process to determine whether the information should be protected.

In addition, the Environmental Law and Policy Center, Ohio Environmental Council and Sierra Club are filing a public version (redacted) of their *Initial Post Hearing Brief* so that all information not claimed by the FirstEnergy to be confidential is accessible for the public's review. The public version does not contain information that was asserted by FirstEnergy to be confidential.

For the foregoing reasons and subject to the foregoing reservations of rights, this Motion should be granted at this time.

Respectfully submitted,

/s/ Nicholas McDaniel

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Protective Order* by the Environmental Intervenors has been served upon those persons listed below via electronic mail this 15th day of April 2013.

/s/ Christopher J. Allwein

Christopher J. Allwein
Williams Allwein & Moser, LLC

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Summary: Motion for a Protective Order electronically filed by Mr. Christopher J Allwein on behalf of Environmental Law and Policy Center and Ohio Environmental Council and THE SIERRA CLUB