

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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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

**MOTION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY 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., hereby file under seal their initial post-hearing brief ("Post-Hearing Brief") and move for a protective order to guard the confidentiality of confidential information contained therein because such information is competitively sensitive and was disclosed during the confidential portions of the hearing in this matter that occurred from February 19 to February 25, 2013. Pursuant to Rules to Rule 4901-1-24(D)(1)-(2), a minimally-redacted version of the Post-Hearing Brief, and three unredacted versions of each (attached hereto as Exhibit A), have been filed contemporaneously herewith. Accordingly, as set forth in the attached Memorandum in Support, the Companies filed the unredacted version of their Post-Hearing Brief under seal and seek a protective order preventing public disclosure of the redacted confidential and proprietary information contained therein.

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DATED: April 15, 2013

Respectfully submitted,

David A. Kutik / per authorizing SET
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 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).] Further, during the hearing on this matter, the Attorney Examiner recognized the importance of protecting the REC Procurement Data by bifurcating the proceedings into public and confidential portions. [*Id.*, Hearing Tr. Vol. I 11:25-12:3 (Feb. 19, 2012).]

Accordingly, for the reasons set forth below and in the Companies’ previous motions for protective orders, the Commission should grant a protective order to safeguard the confidential information contained therein.

II. ARGUMENT

Pursuant to Rule 4901-1-24(D), the Commission routinely grants protective orders regarding such briefs when they contain proprietary and confidential information and cite to confidential portions of hearing transcripts. *See, e.g., In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, 2012 Ohio PUC LEXIS 738, (*20-21) (Aug. 8, 2012) (granting protective orders to several parties and permitting these parties to file their initial briefs under seal because the briefs contained proprietary and confidential information); *In the Matter of Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, 2011 Ohio PUC LEXIS 226, *8-9 (Feb. 23, 2011) (same and explicating noting citation to confidential hearing transcripts).

In a 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.]

In order to protect the REC Procurement Data during the hearing that occurred from February 19 to February 25, 2013, the proceedings were bifurcated into confidential and public portions. The transcripts of the confidential portions of the hearing were filed under seal. In turn, the Companies' Post-Hearing Brief cites to various sections of these confidential transcripts and reference hearing testimony and exhibits from the confidential portion of the proceedings. Accordingly, the Companies filed their Post-Hearing Brief under seal and request the Commission to issue a protective order concerning the confidential and proprietary information contained therein.

III. CONCLUSION

For the foregoing reasons, the Companies request that the Commission grant a protective order preventing public disclosure of the redacted confidential materials contained in the Companies' Post-Hearing Brief.

DATED: April 15, 2013

Respectfully submitted,

David A. Kutik / per authority AEH
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 15th day of April, 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: lmcalister@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.

David A. Nuttall per authority ACH
*An Attorney For Ohio Edison Company, The
Cleveland Electric Illuminating Company, and
The Toledo Edison Company*