## 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	)	Case No. 11-5201-EL-RDR
Cleveland Electric Illuminating Company	)	
and The Toledo Edison Company.	)	

# MOTION FOR PROTECTIVE ORDER BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC") hereby moves <sup>1</sup> the Public Utilities Commission of Ohio ("PUCO") for a protective order regarding information asserted to be confidential by FirstEnergy. <sup>2</sup> As part of discovery in this proceeding, FirstEnergy provided information to OCC, subject to a protective agreement, and FirstEnergy asserts that this information constitutes trade secret information under Ohio law.

OCC hereby requests 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 OCC's *Memorandum Contra Applications for Rehearing of FirstEnergy and Ohio Power Company* ("*Memorandum Contra*") that are asserted to be confidential by FirstEnergy. Subject to OCC's rights under the protective agreement, OCC is filing its *Memorandum Contra* under seal, and is also filing a public version that shows all information not claimed by FirstEnergy to be confidential.

<sup>&</sup>lt;sup>1</sup> This Motion is filed pursuant to Ohio Adm. Code 4901-1-02(E), 4901-1-12 and 4901-1-24(D).

<sup>&</sup>lt;sup>2</sup> "FirstEnergy" means the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company.

By filing the instant Motion, OCC does not concede that the information constitutes trade secret information. However, OCC acknowledges that it has obtained this information pursuant to a protective agreement with FirstEnergy that provides for such information to be treated as confidential and protected (subject to OCC's 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,

BRUCE J. WESTON OHIO CONSUMERS' COUNSEL

/s/ Melissa R. Yost

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

#### Office of the Ohio Consumers' Counsel

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#### MEMORANDUM IN SUPPORT

OCC files this Motion for Protective Order ("Motion") contemporaneously with the filing of its *Memorandum Contra*. In filing this Motion, OCC does not concede that the information in its *Memorandum Contra* is trade secret information pursuant to R.C. 1333.61(D) and does not concede that the information is deserving of protection from public revelation under Ohio Adm. Code 4901-1-24(D).

OCC understands 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). OCC's 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 OCC's *Memorandum Contra* would be appropriate, subject to OCC's rights under its protective agreement with FirstEnergy to initiate a process to determine whether the information should be protected.

In addition, OCC is filing a public version (redacted) of its *Memorandum Contra* 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,

BRUCE J. WESTON OHIO CONSUMERS' COUNSEL

/s/ Melissa R. Yost

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

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Motion for Protective Order* by the Office of the Ohio Consumers' Counsel has been served upon those persons listed below via electronic mail this 16th day of September 2013.

/s/ Melissa R. Yost
Melissa R. Yost
Deputy Consumers' Counsel

### **SERVICE LIST**

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