

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide for)	
a Standard Service Offer Pursuant to R.C.)	
4928.143 in the Form of An Electric Security)	
Plan)	

MOTION OF FIRSTENERGY SOLUTIONS CORP. FOR A PROTECTIVE ORDER

On March 31, 2015, Sierra Club filed its Subpoena Duces Tecum Directed to FirstEnergy Solutions Corp. (the “Subpoena”). Concurrently with this Motion, FirstEnergy Solutions Corp. (“FES”) is filing its Motion to Quash the Subpoena Duces Tecum of Sierra Club (the “Motion to Quash”). Attached to the Motion to Quash are an exhibit (“Exhibit 2”) and an appendix (“Appendix B”) that contain highly competitively sensitive confidential information related to certain cost and pricing information regarding certain generating assets. Exhibit 2 is a table that lists verbatim interrogatory requests which reference the Proprietary Data. Appendix B contains transcript pages from the confidential portions of various depositions in which the Proprietary Data was discussed. As explained in the attached Memorandum in Support, the dissemination of this information would cause competitive harm to FES. Therefore, pursuant to Rule 4901-1-24(D), FES respectfully moves for a protective order to safeguard the highly competitively sensitive nature information contained in Exhibit 2 and Appendix B which FES has filed under seal with its Motion to Quash.

Date: April 14, 2015

Respectfully submitted,

/s/ Brian J. Knipe

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MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION AND OVERVIEW

On March 31, 2015, Sierra Club filed its Subpoena Duces Tecum Directed to FirstEnergy Solutions Corp. In response, FirstEnergy Solutions Corp. (“FES”) is filing its Motion to Quash concurrently with this Motion. Attached to FES’s Motion to Quash are Exhibit 2 and Appendix B. Exhibit 2 is a table listing verbatim discovery requests that were served on the Companies. These requests contain or make specific reference to the Proprietary Data that was filed with the Companies Application and granted protection pursuant to the December 1, 2014 Entry in this proceeding. Entry at 10-11 (Dec. 1, 2014). Appendix B contains pages from deposition transcripts of the confidential portions of depositions of various witnesses to this proceeding. The deposition transcript pages at issue also contain or make specific reference to the same sort of Proprietary Data.

II. ARGUMENT

As with the Proprietary Data that was filed with the Companies’ Application, and granted protection in the December 1 Entry, the Proprietary Data contained in Exhibit 2 and Appendix B is highly competitively sensitive in nature and proprietary to FES. It thereby warrants continued protection as a trade secret should be allowed to remain under seal accordingly. As

demonstrated below, FES has at all times safeguarded this information. Moreover, the public disclosure of this information would cause competitive harm to FES and place FES at a severe competitive disadvantage.

Pursuant to Rule 4901-1-24(A)(7), the Commission may issue an order to protect trade secrets from public disclosure. *See* Rule 4901-1-24(A)(7). Under Ohio law, the determination of trade secret status is made pursuant to Section 1333.61(D). In pertinent part, Section 1333.61(D) provides that a “trade secret” is:

Information . . . that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. 1333.61(D).

The Commission routinely grants protection to cost, pricing, and forecasting information like the Proprietary Data and protects trade secrets that are contained in deposition transcripts or exhibits to filings from public dissemination. *See, e.g., In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company and Related Matters for 2010*, Case No. 10-268-EL-FAC, 2014 Ohio PUC LEXIS 104 at *20-21 (May 14, 2014) (granting trade secret protection to “competitive cost and financial information” related to coal inventories and contracts); *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review*, Case No. 10-2326-GE-RDR, 2012 Ohio PUC LEXIS 89 at *2-7 (Jan. 25, 2012) (granting protection to growth projections and other forecasting information pursuant to Section 1333.61); *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for*

Authority to Merge and Related Approvals, Case No. 10-2376-EL-UNC, 2011 Ohio PUC LEXIS 1253 (Nov. 18, 2011) (granting trade secret protection to, among other things, the volume of customer load related to generation rates as well as other price and cost information); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 08-709-EL-AIR, 2009 Ohio PUC LEXIS 989 at *3-4 (Nov. 13, 2009) (granting protection to deposition transcripts and exhibits that contained trade secrets).

Here, the information in Exhibit 2 and Appendix B satisfies both prongs of Section 1333.61(D). As noted, Exhibit 2 is comprised of a table that contains a verbatim list of several interrogatory requests that contain or make reference to the Proprietary Data. Likewise, Appendix B contains transcript pages of confidential deposition testimony in which the Proprietary Data is referenced and discussed.

Pursuant to Section 1333.61(D)(1), this information bears “independent economic value.” Its public disclosure would place FES at a severe competitive disadvantage and would cause grievous economic harm to FES. Access to this information by a competitor would provide a window into almost every aspect of FES’s internal business operations related to its generation assets. Further, FES has at all times safeguarded the information related to these topics and access to this information is restricted and not publicly available. The only intervenors who have had access to this information have executed the appropriate protective agreements and it has not otherwise been disclosed. FES has thereby made reasonable efforts to maintain its secrecy. The Proprietary Data contained in Exhibit 2 and Appendix B to FES’s Motion to Quash thus warrants continued Commission protection as a trade secret. *See In re Fuel Adjustment Clauses* at *20-21; *In re Duke Energy Ohio* at *2-7; *In re Ohio Power Company* at *3-4.

III. CONCLUSION

For the foregoing reasons, the Commission should grant FES's Motion for Protective Order.

Date: April 14, 2015

Respectfully submitted,

/s/ Brian J. Knipe

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ATTORNEYS FOR FIRSTENERGY
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion for Protective Order has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on April 14, 2015.

/s/ Brian J. Knipe

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Summary: Motion for Protective Order electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp.