

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 Edison Company for)	Case No. 14-1297-EL-SSO
Authority to Provide for a Standard Service)	
Offer Pursuant to R.C. §4928.143 in the Form of)	
an Electric Security Plan.)	

JOINT MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code, the PJM Power Providers Group (“P3”) and the Electric Power Supply Association (“EPSA”) jointly file this motion for a protective order seeking confidential treatment of certain information included in and attached to the second supplemental testimony of their witness, Joseph P. Kalt, which is being filed in this case by P3 and EPSA this same day. This joint motion seeks confidential treatment of information deemed confidential by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company. The underlying reasons are detailed in the attached memorandum. Consistent with the above-cited rule, two unredacted copies of the testimony are being submitted under seal.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT
OF THE JOINT MOTION FOR PROTECTIVE ORDER**

The PJM Power Providers Group (“P3”) and the Electric Power Supply Association (“EPSA”) respectfully request that certain information included in and attached to the second supplemental testimony of their witness, Joseph P. Kalt, be protected from public disclosure. The information for which protection is sought describes and discusses or is derived from information that Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively “FirstEnergy”) asserts is confidential and proprietary and would harm FirstEnergy if released to the public. In addition, this information has been given confidential treatment by the Attorney Examiners already in this proceeding.

Rule 4901-1-24(D), Ohio Administrative Code, provides that the Public Utilities Commission of Ohio (“Commission”) or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission’s Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect certain types of information that are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the “public records” statute must also be read in pari materia with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR, Entry (February 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules. *See*, Rule 4901-1-24(A)(7), Ohio Administrative Code.

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“Trade secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, 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.

Section 1333.61(D), Revised Code. This definition clearly reflects the state policy favoring the protection of trade secrets such as the financial information which is the subject of this motion.

In *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, the Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

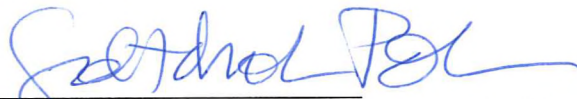
- (1) The extent to which the information is known outside the business,
- (2) The extent to which it is known to those inside the business, i.e., by the employees,
- (3) The precautions taken by the holder of the trade secret to guard the secrecy of the information,
- (4) The savings effected and the value to the holder in having the information as against competitors,
- (5) The amount of effort or money expended in obtaining and developing the information, and
- (6) The amount of time and expense it would take for others to acquire and duplicate the information.

Id. at 524-525, quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Accepting FirstEnergy's claims of confidentiality, noting that the Attorney Examiners have afforded this information confidential treatment already, and applying these factors to the redacted portion of the testimony of P3 and EPSA witness Dr. Kalt warrants the granting of the requested protective order. The information relates to details in FirstEnergy's forecast of energy prices and projected output from the involved plants, which were found by the Attorney Examiners to warrant confidential treatment during the earlier phase of this proceeding. Thus, the information included and attached to Dr. Kalt's second supplemental testimony contain information that FirstEnergy asserts is confidential and proprietary and would harm FirstEnergy if released to the public.

WHEREFORE, for the above reasons, P3 and EPSA respectfully request that the Commission grant their joint motion for protective order and maintain the subject portions of this testimony under seal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 30th day of December, 2015.



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Summary: Motion Joint Motion for Protective Order electronically filed by Mrs. Gretchen L. Petrucci on behalf of PJM Power Providers Group and Electric Power Supply Association