

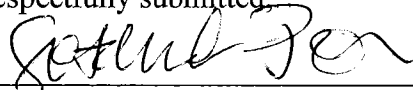
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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.)	

AMENDED JOINT MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code, Constellation NewEnergy Inc. and Exelon Generation Company LLC (collectively "Exelon") jointly file this amended motion for a protective order seeking confidential treatment of certain limited information included in the second supplemental testimony of Lael Campbell, which was filed on December 30, 2015, on behalf of Exelon in this case. This amended joint motion seeks confidential treatment of information deemed confidential not only by the Companies in this proceeding but also deemed confidential by Exelon. The underlying reasons are detailed in the attached memorandum in support. Consistent with the above-cited rule, two unredacted copies of the testimony were previously submitted under seal with the filing of the initial December 30, 2015 motion.

Respectfully submitted,



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

Constellation NewEnergy Inc. and Exelon Generation Company LLC (collectively “Exelon”) respectfully request that certain information included in the second supplemental testimony of their witness, Lael Campbell, be protected from public disclosure. The limited information for which protection is sought is (a) information that Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively “FirstEnergy”) assert is confidential and proprietary and has been given confidential treatment already in this proceeding, (b) information that could be used to derive FirstEnergy’s confidential and proprietary information and (c) information related to Exelon’s forward-looking view of the commercial markets. Disclosure of this information would harm FirstEnergy and/or Exelon if released to the public. Exelon’s initial motion for protective order filed December 30, 2015, omitted the reasons for confidentiality as to Exelon’s confidential information contained in the testimony filed under seal.

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 that 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).

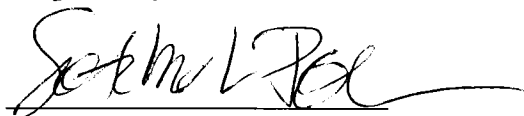
Accepting FirstEnergy's claims of confidentiality, the Attorney Examiners' prior confidential treatment of this type of information, and applying these factors to the redacted portion of the second supplemental testimony of Mr. Campbell warrant the granting of a protective order. The information included in Mr. Campbell's testimony is projected output of the plants involved in the power purchase agreement proposal, which FirstEnergy asserts is confidential and proprietary and would harm FirstEnergy if released to the public. Moreover, this information already has been granted confidential treatment by the Attorney Examiners in this proceeding.¹ In addition, Exelon is also requesting that other information in its calculations should be kept under seal too because, otherwise, it could be used to derive the confidential and proprietary FirstEnergy information.

Lastly, Exelon is requesting that the information regarding Exelon's competitive offer as discussed in the testimony submitted under seal remain confidential. That information represents proprietary and trade secret information regarding Exelon's forward looking view of the commercial markets. Exelon goes to great lengths to protect that information, and in this proceeding has entered into protective agreements with both the Companies and other parties in this proceeding specific to Exelon's confidential information. Protective treatment of Exelon's confidential information is reasonable and justified.

¹ For example, FirstEnergy Exhibit 25 contains similar information and was admitted under seal.

WHEREFORE, for the above reasons, Exelon respectfully requests that the Commission grant this joint motion for protective order and maintain the limited portion of Mr. Campbell's second supplemental testimony under seal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Howard Petricoff", with a long horizontal flourish extending to the right.

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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 19th day of January 2016.


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Summary: Motion Amended Joint Motion for Protective Order electronically filed by Mrs. Gretchen L. Petrucci on behalf of Constellation NewEnergy, Inc. and Exelon Generation Company LLC