

**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 Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan

Case No. 14-1297-EL-SSO

**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(A)(7), O.A.C., and Rule 4901-1-24(D), O.A.C., hereby file under seal their Post-Hearing Brief and move for a protective order to guard the confidentiality of proprietary business information contained therein. Such information is highly competitively sensitive and has been protected throughout this proceeding. The information sought to be protected was only disclosed during the confidential portions of the hearing in this matter and through discovery with parties that have executed a protective agreement with the Companies. Pursuant to Rules to Rule 4901-1-24(D)(1)-(2), a minimally-redacted version of the Post-Hearing Brief, and two copies of an unredacted version thereof, have been filed under seal contemporaneously herewith. Accordingly, as set forth in the attached Memorandum in Support, the Companies seek a protective order to prevent the public disclosure of the redacted confidential and proprietary business information contained in their Post-Hearing Brief.

Date: February 16, 2016

Respectfully submitted,

/s James W. Burk

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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

Pursuant to Rules 4901-1-24(A)(7) and 4901-1-24(D), the Companies respectfully request that the Commission grant a protective order to guard the confidential and proprietary business information contained in their brief. In an Entry dated December 1, 2014, an Attorney Examiner in this proceeding granted protection to the same or similar information that had been filed with the Companies' application for approval of their electric security plan. Pursuant to Rule 4901-1-24(D)(1), the Companies have filed a minimally redacted public version of their brief on the Commission docket for this proceeding. For the reasons that follow, the Commission should grant the Companies' motion for a protective order.

II. ARGUMENT

A. The Commission Regularly Protects Competitively Sensitive Material From Public Disclosure.

Pursuant to Rules 4901-1-24(A)(7) and 4901-1-24(D), the Commission may issue an order to protect trade secrets from public disclosure, including proprietary information that is contained in a party's post-hearing briefing. *See* Rules 4901-1-24(A)(7); 4901-1-24(D), O.A.C..

Under Ohio law, the determination of trade secret status is made pursuant to Section 1333.61(D) of the Ohio Revised Code. 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.

The Commission routinely grants trade secret protection to cost, pricing, and forecasting information. *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).

The Commission also permits parties to a Commission proceeding to file post-hearing briefs under seal to protect trade secrets contained therein. *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 those parties to file their post-hearing 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 noting citation to confidential hearing transcripts).

B. The Information That The Companies Seek To Protect Should Be Protected.

On August 4, 2014, the Companies filed their Application in this proceeding. On the same day, and pursuant to Section 1333.61(D), the Companies moved for a protective order to protect proprietary information contained in their Application (the “August 4 Motion”). As demonstrated in the August 4 Motion, that proprietary information fell into two categories relevant here: (1) confidential business information belonging to FirstEnergy Solutions Corp. (“FES”), including forecasted cost and revenue information related to specific generating assets; and (2) confidential business information belonging to ICF Resources Incorporated (“ICF”), including forecasts of energy and capacity prices, and forecasts of natural gas, coal, and CO₂ prices generated using ICF’s proprietary models and databases.¹ August 4 Motion at 6. In an Entry dated December 1, 2014 (the “December 1 Entry”), the Attorney Examiner granted protection to the FES and ICF confidential business information. December 1 Entry at 11. The

¹ In their August 4 Motion the Companies also sought protection of the identity of individual transmission circuits associated with operating electric generation plants that was contained in the Direct Testimony of Gavin L. Cunningham (since adopted by Company witness Phillips). See August 4 Motion at 5. The Commission also granted protection to this information. See December 1 Entry at 11.

Attorney Examiner found that this information warranted protection under Section 1333.61(D).
Id.

So too here. The proprietary information contained in the Companies' Post-Hearing Brief is the same as, or similar to, the competitively sensitive revenue, cost, and forecasting information belonging to FES and ICF that was granted protection in the December 1 Entry. The FES and ICF information here bears independent economic value and its disclosure would harm FES and ICF. Such information provides a window into FES's internal business operations as related to its generating assets and its public disclosure would place FES at a competitive disadvantage. Likewise, the forecasting information belonging to ICF was generated through the use of proprietary models and databases belonging to ICF. Its public disclosure would undermine the proprietary integrity of those models and databases and place ICF at a competitive disadvantage. The confidential business information contained in the Post-Hearing Brief thus satisfies the first prong of Section 1333.61(D).

Further, the Companies have made reasonable efforts to maintain the secrecy of the FES and ICF information. The proceedings in this matter were bifurcated into confidential and public sessions. The confidential portions of the transcripts have been filed under seal with the Commission and are only accessible to parties that have executed a protective agreement with the Companies and representatives of those parties who have executed non-disclosure certificates regarding competitively sensitive information. Likewise, such information was only provided in discovery to parties that had executed a protective agreement with the Companies. It has not been disclosed otherwise. The confidential information contained in the Companies' Post-Hearing Brief thus satisfies the second prong of Section 1333.61(D).

Therefore, the proprietary information contained in the Companies' Post-Hearing Brief warrants protection as a trade secret. Pursuant to Rules 4901-1-24(A)(7) and 4901-1-24(D), the December 1 Entry, and the settled Commission precedent cited above, the Commission should grant trade secret protection to the confidential and proprietary business information contained in their Post-Hearing Brief.

III. CONCLUSION

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

Date: February 16, 2016

Respectfully submitted,

/s James W. Burk

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following parties via electronic mail on February 16, 2016.

/s/ James F. Lang

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Summary: Motion for Protective Order electronically filed by Mr. Nathaniel Trevor Alexander on behalf of Ohio Edison Company and The Cleveland Illuminating Company and The Toledo Edison Company