

FILE

5

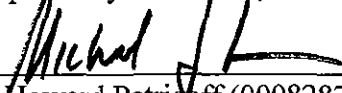
BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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.)

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code, Dynegy Inc. ("Dynegy") files this motion for a protective order seeking confidential treatment of certain information referenced in the Reply Brief of Dynegy which is being filed in this case the same day. This 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 Reply Brief of Dynegy are being submitted under seal.

Respectfully submitted,



M. Howard Petricoff (0008287), Counsel of Record
Michael J. Settineri (0073369)
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
614-464-5414
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com

Attorneys for Dynegy Inc.

RECEIVED-DOCKETING DIV
2016 FEB 26 PM 4:41
PUCO

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician le Date Processed FEB 26 2016

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

Dynegy Inc. (“Dynegy”) respectfully requests that certain information referenced its Reply Brief, namely, certain testimony of Dr. Joseph Kalt and information from confidential portions of the hearing be protected from public disclosure consistent with the prior treatment of that information in this proceeding. 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”) has asserted 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 portions of the Reply Brief of Dynegy warrant the granting of the requested protective order. The information referenced in the Dynegy Reply Brief have been found by the Attorney Examiners to warrant confidential treatment earlier in this proceeding. Thus, the information referenced in the Reply Brief of Dynegy may be maintained as confidential.

WHEREFORE, for the above reasons, Dynegy respectfully requests that the Commission grant its motion for protective order and maintain the subject portions of its Reply Brief under seal.

Respectfully submitted,

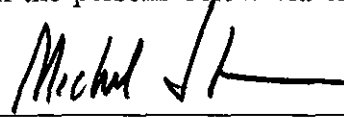


M. Howard Petricoff (0008287), Counsel of Record
Michael J. Settineri (0073369)
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
614-464-5414
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com

Attorneys for Dynegy Inc.

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 26th day of February, 2016.



Michael J. Settineri

burkj@firstenergycorp.com
cdunn@firstenergycorp.com
ilang@calfee.com
tallexander@calfee.com
dakutik@jonesday.com
cmooney@ohiopartners.org
drinebolt@ohiopartners.org
tdoughtery@theoec.org
ghull@eckertseamans.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
larry.sauer@occ.ohio.gov
Maureen.grady@occ.ohio.gov
joliker@igsenergy.com
schmidt@sppgrp.com
ricks@ohanet.org
tobrien@bricker.com
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
jfinnigan@edf.org
wttplmc@aol.com
mkl@smxblaw.com
gas@smxblaw.com

lhawrot@spilmanlaw.com
dwilliamson@spilmanlaw.com
meissnerjoseph@yahoo.com
trhayslaw@gmail.com
lesliekovacic@toledo.oh.gov
cynthia.brady@exeloncorp.com
david.fein@exeloncorp.com
lael.campbell@exeloncorp.com
christopher.miller@icemiller.com
gregory.dunn@icemiller.com
jeremy.grayem@icemiller.com
BarthRoyer@aol.com
athompson@taftlaw.com
Marilyn@wflawfirm.com
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us
bojko@carpenterlipps.com
gkrassen@bricker.com
dstinson@bricker.com
dborchers@bricker.com
mkimbrough@keglerbrown.com
mfleisher@elpc.org
matt@matthewcoxlaw.com
todonnell@dickinsonwright.com
jeffrey.mayes@monitoringanalytics.com
twilliams@snhsllaw.com
sechler@carpenterlipps.com
gpoulos@enernoc.com

mhpetricoff@vorys.com
missetineri@vorys.com
glpetrucci@vorys.com
thomas.mcnamee@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
sfisk@earthjustice.org
msoules@earthjustice.org
tony.mendoza@sierraclub.org
laurac@chappelleconsulting.net
gthomas@gtpowergroup.com
stheodore@epsa.org
mdortch@kravitzllc.com
rparsons@kravitzllc.com
dparram@taftlaw.com
charris@spilmanlaw.com
dwolff@crowell.com
rlehfeldt@crowell.com
dfolk@akronohio.gov
Kevin.moore@occ.ohio.gov
William.michael@oc.ohio.gov
rsahli@columbus.rr.com
ajay.kumar@occ.ohio.gov
callwein@keglerbrown.com
mkimbrough@keglerbrown.com
ghiloni@carpenterlipps.com
jennifer.spinosi@directenergy.com
kristin.henry@sierraclub.org
rkelter@elpc.org