

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of S. G.)	
Foods, Inc.; Miles Management Corp., et al.;)	
Allianz US Global Risk Insurance Company,)	
et al.; and Lexington Insurance Company, et)	
al.,)	
)	
Complainants,)	
)	
v.)	Case Nos. 04-28-EL-CSS
)	05-803-EL-CSS
The Cleveland Electric Illuminating)	05-1011-EL-CSS
Company, the Ohio Edison Company,)	05-1012-EL-CSS
Toledo Edison Company, and American)	
Transmission Systems, Inc.,)	
)	
Respondents.)	

ENTRY

The attorney examiner finds:

- (1) The complainants in these consolidated proceedings filed their complaints on January 12, 2004, June 21, 2005, and August 15, 2005. In each case, the complainants allege, *inter alia*, that the Cleveland Electric Illuminating Company, the Ohio Edison Company, Toledo Edison Company, and/or American Transmission Systems, Inc., (collectively, the respondents) failed to furnish necessary and adequate service and facilities to the complainants and that the service and/or facilities provided by one or more of those respondents were at least partially responsible for causing a widespread blackout on August 14, 2003, thereby causing financial harm to the complainants.
- (2) On January 24, 2008, complainants Allianz US Global Risk Insurance Company, *et al.*, and Lexington Insurance Company, *et al.*, and respondents the Cleveland Electric Illuminating Company, Ohio Edison Company, Toledo Edison Company, and American Transmission Systems, Inc. (collectively, the movants), filed a joint motion for withdrawal of all prefiled testimony and exhibits; a protective order under Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), with regard to all prefiled

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testimony and exhibits; and an order granting respondents' November 14, 2007, motion to strike complainants' filing of depositions and for a protective order. Specifically, the movants state that they are in the process of attempting to resolve the issues in these proceedings and that, as a part of that attempt, they jointly request withdrawal of all prefiled testimony and exhibits filed in these matters. Secondly, they jointly stipulate that, under the terms of their protective agreement, all prefiled testimony, deposition testimony, and exhibits should be treated as confidential and should, therefore, be subject to a protective order. Thirdly, the motion jointly requests that the Commission grant the motion previously filed by the respondents on November 14, 2007. That prior motion had requested that complainants' filing of depositions be stricken and that either the complainants be ordered to take custody of those deposition transcripts or that such transcripts be treated as confidential under a protective order.

- (3) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399 (2000).
- (4) Similarly, Rule 4901-1-24, O.A.C., allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (5) Ohio law defines a trade secret as "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." Section 1333.61(D), Revised Code. The Ohio Supreme Court has adopted the following six factors to be used in analyzing a claim that information is a trade secret under that section:

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

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-525 (1997).

- (6) The attorney examiner has reviewed the assertions set forth in the joint motion and memorandum in support. In addition, the attorney examiner has reviewed the content of the protective agreement attached to the motion. Under the terms of that document, the parties agreed that each party would only designate, as confidential, materials that would be a trade secret under Section 1333.61(D)(1) and (2), Revised Code. Therefore, in light of the movants' declaration that they are attempting to resolve their dispute, the volume of documents in question, and the agreed trade secret nature of those documents, the examiner finds that it is reasonable to grant a protective order for all prefiled testimony, all deposition testimony, and all exhibits thereto. Those items should receive protected status for an 18-

month period from the date of this entry, and should remain under seal in the docketing division for that time period. The movants should note that Rule 4901-1-24(F), O.A.C., provides that protective orders under Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. However, that same rule provides that, "[a] party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least forty-five days in advance of the expiration date." If one of the movants wishes to extend that protection, it may file an appropriate motion at least forty-five days in advance of the expiration date of this order.

- (7) Accordingly, the docketing division should maintain under seal, for a period of 18 months from the date of this entry, all prefiled testimony in these proceedings, all deposition testimony in these proceedings, and all exhibits thereto.
- (8) As noted above, the movants have also requested withdrawal of all prefiled testimony and exhibits and striking of depositions. Following that, the movants request that the complainants be ordered to take custody of the deposition transcripts or that the transcripts be subject to a protective order. The attorney examiner will, in light of the settlement efforts currently underway, allow the withdrawal of all prefiled testimony and exhibits from the record, and will grant the motion to strike the deposition transcripts, such that such documents will not be part of the case record. However, the examiner would note that the fact of the documents having been filed will not be altered by this action, and that fact will still be reflected in the docket of these proceedings. With regard to the request that the complainants take custody of the documents in question, the examiner notes that the Commission is required to retain documents that have been filed with it. However, as only one set of documents is necessary, extra copies may be reclaimed by any of the movants if they so desire.

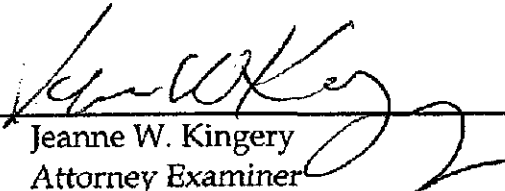
It is, therefore,

ORDERED, That the motion for a protective order be granted. All deposition transcripts, testimony, and exhibits thereto shall remain under seal in the Commission's docketing division for a period 18 months from the date of this entry. It is, further,

ORDERED, That the motion for withdrawal of prefiled testimony and exhibits and the motion strike the filing of depositions be granted, to the extent set forth in finding (8). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: 
Jeanne W. Kingery
Attorney Examiner

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geb

Entered in the Journal

JAN 29 2008



Renee J. Jenkins
Secretary