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DOCKETING DIVISION
PUBLIC UTILITIES COMMISSION OF OHIO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Authority to Establish)
a Competitive Pilot Program)

Case No 92-1743EL-AEC

MOTION FOR A PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT

The Cleveland Electric Illuminating Company moves for a protective order to prevent public disclosure of the proprietary business information and confidential commercial materials within its Competitive Pilot Program, which will assist CEI in stabilizing its customer base affected by the Cleveland Public Power (CPP) expansion in the City of Cleveland. The Competitive Pilot Program is being filed under seal. Further, CEI is moving for a protective order to prevent public disclosure of the Electric Service Agreement, and each Appendix, also being filed under seal, which will be entered into between CEI and its customers under the Competitive Pilot Program.

Specifically, CEI moves the Commission for an entry approving a protective order setting forth the following procedures regarding the contents of the Competitive Pilot Program and agreements entered into pursuant to it:

(a) The Competitive Pilot Program and all agreements entered into pursuant to the program shall be filed under seal with the Commission in this Docket, and shall be supplied to the Commission Staff;

(b) the proprietary business information and confidential commercial material of and pertaining to the Competitive Pilot Program and the agreements entered into pursuant to the program shall not be disclosed by the Commission Staff, except to those persons within their respective organizations, or staff legal counsel, who each shall be subject to this protective order;

(c) the proprietary business information and confidential commercial material of and pertaining to the Competitive Pilot Program and the agreements entered into pursuant to the program shall be safeguarded by the Commission Staff, and those persons within their organizations to prevent disclosure in this or any other jurisdiction; and

(d) the Commission agrees in its decisions, entries, and opinions and orders not to publicly disclose the substance of such confidential and proprietary information.

Past Commission action has denied public release of cost information that would have placed the utility "at an extreme competitive disadvantage" (In Re GTE North Inc., Case No. 89-9343-TP-AEC, Finding and Order, dated December 12, 1989); and the Commission has refused to "take the extreme action" of requiring a utility to give "market information to its direct competitor[1] (In Re Complaint of Allnet Communication Services, Inc., Case No. 86-771-TP-CSS, Entry dated November 16, 1989).

Past Commission action under OAC 4901-1-24 has protected from public disclosure cost studies submitted to support approval of contractual arrangements, which others could use "to enhance their own competitive ends". (In Re App. of Alltel Ohio Inc., Case No. 89-562-TP-ATA, Finding and Order, dated June 20, 1989, pgs. 2, 5)[2]

1.The examiner ruled on basis of relevance, although finding the cost information was proprietary.

2.The Commission, having ruled on other grounds, never addressed a request for a protective order to avoid disclosing cost information on the basis that disclosure would expose the utility "to risk of harm in the marketplace." (In Re Complaint of the Ohio Pay Phone Assoc., Case No. 89-900-TP-CSS, Entry, dated October 31, 1989)

Approval of reasonable contract arrangements under ORC 4905.31, need not use cost of service as the basis for reasonableness since other considerations may be used, such as the price of alternative fuels or the rates of utilities providing a like service.[3] In Re Constitution Gas Transport Co., Case No. 85-1920-GA-AEC, Opinion and Order, June 24, 1986, at pgs. 9-10, citing with approval the Commission's Order in App. of Southeastern Natural Gas Co., Finding and Order, dated February 19, 1986.

Special contracts have created a myriad of customer classifications, such as:

- customers who would not otherwise be served in the absence of the special arrangement. In Re Suburban Fuel Gas, Inc., Case No. 86-1747-GA-CSS, Opinion and Order, dated August 4, 1987, pg. 19. The Commission makes no distinction between retaining present customers and acquiring new customers, since in both circumstances, the utility is attempting to meet competition. Id. at 19.

- vulnerable customers who have alternative energy supplies available to them and who have expressed an interest in accepting an offer from another suplier. In Re East Ohio Gas Co., Case No. 87-304-GA-AEC, Opinion and Order, dated October 6, 1987, at 9.

Also, acting consistent with its policy of encouraging utilities to explore arrangements to retain jobs and bring in new business to Ohio, the Commission has found reasonable customer classifications that:

- encourage production expansion, retain existing load, and provide competitive electric prices. In Re Toledo Edison, Case No. 88-832-EL-AEC, Finding and Order, June 14, 1988.

- encourage economic development for new and present customers that add permanent employees and increase electric use. In Re Dayton Power & Light, Case No. 87-2156-EL-ATA, Finding and Order, January 20, 1988.

- enhance ability of the customer to continue operations in the service area, preserve jobs and to benefit the general economy. In Re Ohio Edison, Case No. 88-112-EL-AEC, Finding and Order, February 9, 1988.

3.The Commission applies cost of service analysis to applications for rate increases under ORC 4909.15. (In Re Constitution Gas Transport Co., supra.)

There are many widely divergent interests of persons who may want access to CEI's proprietary and confidential information within its Competitive Pilot Program and agreements, including:

- competitor utilities of CEI, such as CPP, located inside or outside of its service territory; and
- competitors of Centerior customers.

CEI believes that disclosure of the proprietary business information and confidential commercial materials within its Competitive Pilot Program and the agreements entered into pursuant to the program will place it at a competitive disadvantage by providing detailed information on terms and conditions of commercial transactions, and by divulging proprietary business and/or specific market based information. Economic loss to CEI and its customers that could result from sales displaced by use of information deemed confidential affects the Company's product and service. (See by analogy Atwood Resources, Inc. v. Pub. Util. Comm. (1989), 43 Ohio St. 3d 96.) The Company clearly has a "vital interest" in restricting public scrutiny of confidential information. (See East Ohio Gas Co. v. Pub. Util. Comm. (1988), 39 Ohio St. 3d 295, 298.) Other Company customers also have vital interests in restricting public disclosure because higher costs of service may very well result. Wherefore, the Company prays for an order granting the motion as requested.

Respectfully submitted,

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On Behalf of The Cleveland
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