



**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Commission's Review of the FirstEnergy Corp. Report Filed Pursuant to Rule 4901:1-10-26, Ohio Administrative Code</b>	) ) ) ) )	<b>Case No. 10-997-EL-ESS</b>
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**MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

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Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") seek a Protective Order to protect the confidential and proprietary information provided by the Companies as part of their Report (referenced in the above-captioned case) filed pursuant to Section 4901:1-10-26, OAC, more specifically information provided pursuant to Section 4901:1-10-26(B)(3)(c) and (d). Sections 4901:1-10-26(B)(3)(c) and (d) require the Companies to provide specific financial data and company-specific cost allocation information pertaining to their respective transmission and distribution infrastructure which is confidential, proprietary information not available to the public (the "Confidential Information"). The marketplace for such transmission and distribution services and equipment is a highly competitive one and the Confidential Information at issue is highly sensitive.<sup>1</sup>

Specifically, the confidential and proprietary financial data and company-specific cost allocation information contained in the Companies' Reports includes data identifying precise categories for expenditures, precise amounts the Companies planned to spend for such specific categories, precise amounts of how much the Companies actually spent, and amounts of how

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<sup>1</sup> As also noted by American Electric Power in their initial comments filed on August 12, 2008 in Case No. 06-653-EL-ORD.

much the Companies plan to spend in the upcoming year. The disclosure of such information publicly would make it extremely difficult if not impossible for the Companies to minimize their costs by negotiating favorable rates for distribution and transmission services and equipment with various third party suppliers. Moreover, third party suppliers would have knowledge on how much the Companies plan to spend and have no real incentive to negotiate or provide the Companies' special rates.

The Companies have used their best efforts to maintain the confidentiality of the Confidential Information. The information has not previously been disclosed or released to the public. If such a release were to occur, this Confidential Information would have significant value to the Companies' suppliers and would subject the Companies to the risk of unfair economic and competitive disadvantage and other business injury. The Companies would be materially and adversely affected for all the reasons explained herein.

Section 4901-1-24(D), OAC, sets forth the procedure for protecting confidential information. This provision authorizes the Commission "upon motion of any party or person with regard to the filing of a document . . . relative to a case before the commission . . . [to] issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits the release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." State law recognizes the need to protect information that is confidential in nature, as is the financial data and company-specific cost allocation information contained in the Companies' Reports, and the Commission has the statutory authority to protect confidential

information.<sup>2</sup> Further, non-disclosure of the Confidential Information will not impair the purposes of Title 49 as the Commission and its Staff will have full access to the Confidential Information in order to complete their review process.

The Confidential Information set forth in the Companies' Reports constitutes "trade secrets". The statute expressly recognizes that where information constitutes a "trade secret" under state or federal law, the Commission may issue an order protecting the confidentiality of such information. Specifically, Section 1333.61(D) of the Revised Code defines a "trade secret" as including financial information, business information or plans if:

- (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 Companies' Confidential Information falls squarely within the four corners of this definition. As explained supra, the Companies Confidential Information contains commercially sensitive information that would offer significant benefit to any supplier of the Companies. As stated above, the Companies have used their best efforts to maintain the confidentiality of the Confidential Information and such information has never been provided to the public. Finally, the Companies have limited the information for which they seek protection so as to minimize the information that will not be publicly disclosed.

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<sup>2</sup> See Sections 4901.12, 4905.07, and 149.43, Revised Code.

For all the above reasons, the Companies respectfully request that the Commission grant the Companies' Motion for a Protective Order pursuant to OAC Section 4901-1-24(D).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ebony L. Miller", is written over a horizontal line.

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