

FILE

RECEIVED-DOCKETING DIV

2011 JAN 14 AM 11:19

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

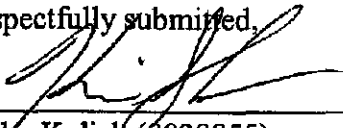
In the matter of the Application of Ohio )  
Edison Company and Discount Drug )  
Mart, Inc. to Commit Energy ) Case No. 10-2081-EL-BEC  
Efficiency/Peak Demand Reduction )  
Programs )

**OHIO EDISON COMPANY'S MOTION FOR PROTECTIVE ORDER**

Ohio Edison Company ("Ohio Edison"), by its attorneys and pursuant to O.A.C. 4901-1-24(D), moves for a protective order keeping confidential the designated confidential and/or proprietary documents supporting the Application of Ohio Edison Company and Discount Drug Mart, Inc. to Commit Energy Efficiency/Peak Demand Reduction Programs ("Application"). The documents are described on Attachment A to this Motion and referenced as confidential in the Application. These documents contain competitively sensitive information of Ohio Edison's customer and constitute trade secrets under Ohio law. The reasons underlying this Motion are detailed in the attached Memorandum in Support.

Respectfully submitted,

/s/

  
Kathy Kolich (0038855)  
Carrie M. Dunn (0076952)  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
(330) 761-7735  
(330) 384-3875 (fax)  
kjkolich@firstenergycorp.com  
cdunn@firstenergycorp.com

James F. Lang (0059668)  
Kevin P. Shannon (0084095)  
CALFEE, HALTER & GRISWOLD LLP

{01011653.DOC2}

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 AW Date Processed 1/14/11

1400 KeyBank Center  
800 Superior Ave.  
Cleveland, OH 44114  
(216) 622-8200  
(216) 241-0816 (fax)  
jlang@calfee.com  
kshannon@calfee.com

ATTORNEYS FOR OHIO EDISON  
COMPANY

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the Application of Ohio	)	
Edison Company and Discount Drug	)	
Mart, Inc. to Commit Energy	)	Case No. 10-2081-EL-EEC
Efficiency/Peak Demand Reduction	)	
Programs	)	

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

Ohio Edison Company ("Ohio Edison") requests that the documents designated on Attachment A hereto as confidential and/or proprietary (along with any and all copies, including electronic copies) be protected from public disclosure.<sup>1</sup> The documents contain confidential information regarding Discount Drug Mart, Inc.'s (the "Customer") current and future energy usage. The documents also contain detailed information regarding the costs of the Customer's energy efficiency projects and the energy savings attributable to the projects. The Customer believes it will suffer competitive harm if this information is made public and is available to the Customer's competitors.

O.A.C. 4901-1-24(D) provides that the 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. As set forth herein, state law prohibits the release of the information which is the subject of this Motion. Moreover, the non-

---

<sup>1</sup> In the Application filed in this docket, Ohio Edison referenced the confidential documents that it seeks protection of by footnote and explained its intention to file these documents under seal with the Commission.

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 their statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. 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. See In re General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets). Likewise, the Commission has facilitated the protection of trade secrets in its rules, O.A.C. § 4901-1-24(A)(7).

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.

R. C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this Motion.

The Ohio Supreme Court has held that not only does the Commission have the authority to protect trade secrets like those at issue here, the trade secret statute creates a duty to protect them. Ohio Consumers' Counsel v. Pub. Util. Comm., 121 Ohio St.3d 362, 2009-Ohio-604

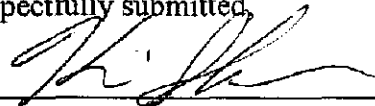
(2009). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); Ohio Bell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

In 1996, the Ohio General Assembly amended R.C. §§ 4901.12 and 4905.07 in order to facilitate the protection of trade secrets in the Commission's possession. The General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission's possession. By referencing R.C. § 149.43, the Commission-specific statutes now incorporate the provision of that statute that excepts from the definition of "public record" records the release of which is prohibited by state or federal law. R.C. § 149.43(A)(1). In turn, state law prohibits the release of information meeting the definition of a trade secret. R.C. §§ 1333.61(D) and 1333.62. The amended statutes also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 because the Commission and its Staff have access to the information; in many cases, the parties to a case may have access under an appropriate protective agreement. The protection of trade secret information as requested herein will not impair the Commission's regulatory responsibilities.

Attachment A to this Memorandum in Support lists the documents which have been omitted from the associated filing and further describes why they should be granted protected status. For the foregoing reasons, Ohio Edison requests that the designated documents be protected from public disclosure.

Respectfully submitted,

/s/

  
Kathy Kolich (0038855)

Carrie M. Dunn (0076952)

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, OH 44308

(330) 761-7735

(330) 384-3875 (fax)

kjkolich@firstenergycorp.com

cdunn@firstenergycorp.com

James F. Lang (0059668)

Kevin P. Shannon (0084095)

CALFEE, HALTER & GRISWOLD LLP

1400 KeyBank Center

800 Superior Ave.

Cleveland, OH 44114

(216) 622-8200

(216) 241-0816 (fax)

jlang@calfee.com

kshannon@calfee.com

ATTORNEYS FOR OHIO EDISON  
COMPANY

## **ATTACHMENT A**

### **1. Identification of Confidential Information**

- Confidential summaries of the energy efficiency savings and costs associated with the Customer's lighting upgrade projects at the Customer's stores located in:
  - Elyria, Ohio
  - Brunswick, Ohio
  - Medina, Ohio
  - Lorain, Ohio
  - Vermillion, Ohio
  - Norwalk, Ohio
  - Ashland, Ohio