

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Ohio Power)	
Company's Request for Authorization to)	Case No. 13-1427-EL-UNC
Suspend its Service Agreement with)	
FirstEnergy Solutions Corp.)	
)	

FIRSTENERGY SOLUTIONS CORP.'S MOTION FOR PROTECTIVE ORDER

Pursuant to O.A.C. 4901-1-24(D), FirstEnergy Solutions Corp. ("FES") moves for a protective order keeping confidential the unredacted June 3, 2013 correspondence from FES to Ohio Power Company ("AEP Ohio"), which is attached as Exhibit A to FES' Response to AEP Ohio's Request to Suspend. This correspondence contains information that could be used to ascertain FES' customer load data, which information is confidential, proprietary, and a trade secret of FES. Accordingly, FES requests that the Commission grant this Motion and protect from disclosure the confidential and propriety information designated in Exhibit A to FES' Response to AEP Ohio's Request to Suspend.

A Memorandum in Support of this Motion is attached hereto and incorporated herein by reference.

Respectfully submitted,

/s/ Mark A. Hayden

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MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

FirstEnergy Solutions Corp. ("FES") requests that the Commission protect from public disclosure two pieces of information designated on the June 3, 2013 correspondence from FES to AEP Ohio, which is attached as Exhibit A to FES' Response to AEP Ohio's Request to Suspend (along with any and all copies, including electronic copies). The designated information is confidential, proprietary, and a trade secret of FES, in that it could be used to ascertain FES' competitively-sensitive market share or customer load data. Disclosure of such information to FES' competitors will harm FES in the competitive electric services market. As set forth herein, Ohio law and the Commission's rules provide for the protection of such trade secrets and proprietary information.

A. Ohio Law Protects Trade Secrets.

Ohio law defines a "trade secret":

[I]nformation, 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). The law further prohibits the release of information meeting the definition of a trade secret. R.C. §§ 1333.61(D) and 1333.62. Moreover, the General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission's possession; "public records" do not include records the release of which is prohibited by state or federal law. R.C. § 149.43(A)(1).

While the Commission has often expressed its preference for open proceedings, the Commission has long recognized its statutory obligations with regard to the protection of trade secrets. *See In re: General Telephone Co.*, Case No. 81-383-TP-AIR, Entry (Feb.17, 1982) (recognizing necessity of protecting trade secrets). Indeed, the Ohio Supreme Court has held that, not only does the Commission have the authority to protect trade secrets, Ohio law imposes a duty on the Commission to protect them – as such protections are granted through the Uniform Trade Secrets Act to all businesses. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604. Specifically, O.A.C. 4901-1-24(A) provides the Commission may issue:

[A]ny order which is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that: . . .

(7) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.

Pursuant to O.A.C. 4901-1-24(D), the Commission also may issue an order to protect the confidentiality of information contained in documents filed with the Commission 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. Here, the

information FES seeks to protect constitutes proprietary, trade-secrets information that warrants the Commission's protection and non-disclosure is not inconsistent with the purposes of Title 49.

B. The Designated Information Warrants The Commission's Protection.

The information that is the subject of this Motion could be used to ascertain FES' market share or customer load. FES has treated all information regarding its market share and customer load as proprietary, confidential business information and as trade secrets. In the ordinary course of FES' business, this information is protected by FES employees and is not disclosed to third parties. Disclosure of this type of information would harm FES by providing its competitors with confidential, proprietary and competitively-sensitive data. Accordingly, the information constitutes trade secrets protected by Ohio law. Moreover, 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 their statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The necessity of protecting this information is particularly important given FES' status as an electric services company operating in a competitive market. As the Ohio Supreme Court recently noted, the Commission "has a duty to encourage competitive providers of electric generation." *Ohio Consumers' Counsel*, 121 Ohio St.3d 362, 370, 2009-Ohio-604 (affirming Commission's decision to redact information due, in part, to "the volatility and competitiveness of the electric industry"). The court explained that in the competitive and relatively new market in which electric services companies operate, "[e]xposing a competitor's business strategies and pricing points would likely have a negative impact on that provider's viability." *Id.* Here, the information that FES seeks to protect would provide its competitors with specific information regarding FES' customer load in AEP Ohio's service territory. FES' and other CRES providers'

ability to maintain the confidentiality of such information is critical to the proper functioning of the competitive retail electric services market.

C. Conclusion

For the foregoing reasons, FES requests that the information identified on the June 3, 2013 correspondence from FES to AEP Ohio, which is attached as Exhibit A to FES' Response to AEP Ohio's Request to Suspend be protected from public disclosure.

Respectfully submitted,

/s/ Mark A. Hayden

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Motion for Protective Order* and the *Memorandum in Support* thereof was served this 21st day of June, 2013, via electronic mail upon the parties below.

/s/ Laura C. McBride
One of the Attorneys for FirstEnergy Solutions Corp.

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Summary: Motion for Protective Order electronically filed by Ms. Laura C. McBride on behalf of FirstEnergy Solutions Corp.