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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Review of the
Alternative Energy Rider Contained in the
Tariffs of Ohio Edison Company, The
Cleveland Electric Illuminating Company,
and The Toledo Edison Company

Case No. 11-5201-EL-RDR

**MOTION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY FOR A
PROTECTIVE ORDER**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies"), pursuant to Rule 4901-1-24(D), O.A.C., hereby file under seal their Memorandum Contra Applications for Rehearing and move for a protective order to guard the confidentiality of confidential information contained therein because such information is competitively sensitive and was only disclosed during the confidential portions of the hearing in this matter that occurred from February 19 to February 25, 2013. Pursuant to Rules to Rule 4901-1-24(D)(1)-(2), a minimally-redacted version of the Memorandum Contra Applications for Rehearing, and three copies of an unredacted version thereof, have been filed under seal contemporaneously herewith. Accordingly, as set forth in the attached Memorandum in Support, the Companies have filed the unredacted version of their Memorandum Contra Applications for Rehearing under seal and seek a protective order preventing public disclosure of the redacted confidential and proprietary information contained therein.

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DATED: September 16, 2013

Respectfully submitted,

David Kutik 9/16/2013 Per authority TMO

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TOLEDO EDISON COMPANY

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Case No. 11-5201-EL-RDR

**MEMORANDUM IN SUPPORT OF THE MOTION OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO
EDISON COMPANY FOR A PROTECTIVE ORDER**

I. INTRODUCTION

As set forth in the previous motions for protective orders filed by the Companies, the Companies have continuously sought to protect supplier-identifying information and pricing information (the “REC Procurement Data”) from public disclosure. In its Opinion and Order dated August 7, 2013 (“August 7 Order”), the Commission affirmed the Attorney Examiner’s previous findings that the highly confidential and proprietary REC Procurement Data, which is contained in the Confidential Final Report/Performance Audit of the Alternative Energy Resource Rider (Rider AER) of FirstEnergy Ohio Utility Companies for October 2009 through December 31, 2011 (the “Exeter Report”), deserved protection because it constituted a trade secret pursuant to settled Ohio law and Commission precedent.¹

Indeed, during the hearing on this matter, the Attorney Examiner recognized the importance of protecting the REC Procurement Data by bifurcating the proceedings into public

¹ See Case No. 11-5201-EL-RDR, Opinion and Order, 11-12 (Aug. 7, 2013); Case No. 11-5201-EL-RDR, Hearing Tr., 17:13-18:5 (Dec. 4, 2012).

and confidential portions.² On April 15, 2013 and May 16, 2013, respectively the Companies filed their initial post-hearing brief (“Initial Brief”) and their post-hearing reply brief (“Reply Brief”) under seal and moved for a protective order for the confidential and proprietary information contained therein. Likewise, on September 6, 2013, the Companies filed their Application for Rehearing under seal and moved for a protective order for the confidential and proprietary information contained therein.

Accordingly, for the reasons set forth below and in the Companies’ previous motions for protective orders, the Commission should grant a protective order to safeguard the confidential information contained in the Companies’ Memorandum Contra Applications for Rehearing.

II. ARGUMENT

Pursuant to Rule 4901-1-24(D), the Commission routinely grants protective orders regarding post-hearing briefs when they contain proprietary and confidential information and cite confidential portions of hearing transcripts.³ In a hearing on the matter, the Attorney Examiner held that the REC Procurement Data contained in the Exeter Report should be afforded trade secret protection and granted a protective order prohibiting the public disclosure of this information.⁴ The Attorney Examiner also held, “I’d like to emphasize that all parties will maintain the confidentiality of the confidential information contained in the unredacted audit

² Hearing Tr. Vol. I 11:25-12:3 (Feb. 19, 2012).

³ See, e.g., *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, 2012 Ohio PUC LEXIS 738, *20-21 (Aug. 8, 2012) (granting protective orders to several parties and permitting these parties to file their post-hearing briefs under seal because the briefs contained proprietary and confidential information); *In the Matter of Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, 2011 Ohio PUC LEXIS 226, *8-9 (Feb. 23, 2011) (same and noting citation to confidential hearing transcripts).

⁴ Case No. 11-5201-EL-RDR, Hearing Tr., 17:13-18:5 (Dec. 4, 2012).

reports [and] . . . none of that information may be publicly disclosed, and any information containing documents [that contain this information] filed with this Commission will be filed under seal.”⁵

In order to protect the REC Procurement Data during the hearing that occurred from February 19 to February 25, 2013, the proceedings were bifurcated into confidential and public portions. The transcripts of the confidential portions of the hearing were filed under seal. The Companies also filed their Initial Brief, Reply Brief, and Application for Rehearing under seal because they contained the REC Procurement Data and cited various portions of the confidential transcript. In the August 7 Order, the Commission reiterated its previous findings “that the REC procurement data contains trade secret information” and, therefore, “[i]ts release is prohibited under state law.”⁶ Moreover, although the August 7 Order permitted the “generic disclosure” of one of the Companies’ REC suppliers as a successful bidder, the August 7 Order emphasized that any remaining REC Procurement Data “shall continue to be confidential and subject to the protective orders.”⁷

Likewise, the Companies’ Memorandum Contra Applications for Rehearing contains REC Procurement Data , cites to the unredacted version of the Exeter Report, as well as various sections of the confidential transcripts, and references hearing testimony and exhibits from the confidential portion of the proceedings. Accordingly, the Companies have filed their Memorandum Contra Applications for Rehearing under seal and request the Commission to issue a protective order concerning the confidential and proprietary information contained therein.

⁵ *Id.*, 18:19-19:1.

⁶ Case No. 11-5201-EL-RDR, Opinion and Order, 11-12 (Aug. 7, 2013).

⁷ *Id.* at 12.

III. CONCLUSION

For the foregoing reasons, the Companies request that the Commission grant a protective order preventing public disclosure of the redacted confidential information contained in the Companies' Memorandum Contra Applications for Rehearing.

DATED: September 16, 2013

Respectfully submitted,

David Kutik 9/16/2013 Per authority TMO

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered to the following persons by e-mail this 16th day of September, 2013:

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