

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of:)	
)	
Central Ohio Technical College,)	
Cleveland State University,)	
Kent State University,)	
Northwest State Community College,)	
Ohio University,)	
University of Akron, and)	
University of Toledo)	
)	
v.)	Case No. 15-0455-EL-CSS
)	
FirstEnergy Solutions Corp.,)	
The Toledo Edison Company,)	
Ohio Edison Company,)	
The Cleveland Electric Illuminating)	
Company, and)	
Ohio Power Company)	
)	
Relative to Alleged Unlawful Pass-Through)	
of RTO Expense Surcharges.)	

**JOINT MOTION FOR PROTECTIVE ORDER, JOINT MOTION FOR SPECIAL
SERVICE OF THE COMPLAINT, AND MEMORANDUM IN SUPPORT
OF CENTRAL OHIO TECHNICAL COLLEGE
CLEVELAND STATE UNIVERSITY
KENT STATE UNIVERSITY
NORTHWEST STATE COMMUNITY COLLEGE
OHIO UNIVERSITY
UNIVERSITY OF AKRON
AND
UNIVERSITY OF TOLEDO**

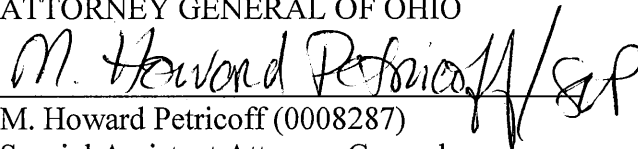
Pursuant to Rule 4901-1-24(D), Ohio Administrative Code, Central Ohio Technical College, Cleveland State University, Kent State University, Northwest State Community College, Ohio University, University of Akron, and University of Toledo (collectively “Universities”) jointly move for a protective order to keep certain confidential information

contained in their complaint filed this same day in Case No. 15-0455-EL-CSS against FirstEnergy Solutions Corp., The Toledo Edison Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and Ohio Power Company ("Ohio Power") as confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above-cited rule, two (2) unredacted copies of the complaint have been submitted under seal by the Universities.

WHEREFORE, the Universities respectfully request that this joint motion for a protective order be granted and that the unredacted versions of paragraphs 13 and 14 of the complaint and Exhibits A, B and C to the complaint remain under seal. Also, the Universities respectfully request that Commission should serve only the public redacted version of the complaint upon FirstEnergy Solutions Corp, The Toledo Edison Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and Ohio Power Company, until notified that a confidentiality agreement has been executed.

Respectfully submitted,

MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO


M. Howard Petricoff (0008287)
Special Assistant Attorney General
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5414 Telephone
(614) 719-4904 Facsimile
mhpetricoff@vorys.com

*Attorneys for Central Ohio Technical College,
Cleveland State University, Kent State University,
Northwest State Community College, Ohio University,
University of Akron, and University of Toledo*

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

Central Ohio Technical College, Cleveland State University, Kent State University, Northwest State Community College, Ohio University, University of Akron, and University of Toledo (collectively “Universities”) each entered into a Customer Supply Agreement, pursuant to which FirstEnergy Solutions Corp. supplies them with generation service.

The Toledo Edison Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and Ohio Power Company supply to the Universities electric distribution service and consolidated billing (which includes the charges for the generation service provided by FirstEnergy Solutions Corp.) as follows:

University	Utility Supplying Electric Distribution Service and Consolidated Billing
University of Akron	Ohio Edison Company
Kent State University	Ohio Edison Company
University of Toledo	The Toledo Edison Company
Northwest State Community College	The Toledo Edison Company
Cleveland State University	The Cleveland Electric Illuminating Company
Central Ohio Technical College	Ohio Power Company
Ohio University	Ohio Power Company

On February 24, 2015, in Case No. 15-0455-EL-CSS, the Universities filed a complaint against FirstEnergy Solutions Corp., The Toledo Edison Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and Ohio Power Company, based on the Customer Supply Agreements and certain consolidated bills received. Included with the complaint are the individual Customer Supply Agreements, certain bills, and dispute letters, all of which contain proprietary and confidential information. More specifically, the complaint contains the following proprietary and confidential information:

- **Paragraphs 13 and 14** of the complaint contain quotes from the Universities' Customer Supply Agreements with FirstEnergy Solutions Corp. Paragraph 33 of the Customer Supply Agreements provides that the terms and conditions of these agreements are confidential.
- **Exhibit A** to the complaint is a compilation of the Universities' Customer Supply Agreements with FirstEnergy Solutions Corp. Paragraph 33 of the Customer Supply Agreements provides that the terms and conditions of these agreements are confidential. The agreements also contain the prices for generation service and customer account numbers.
- **Exhibit B** to the complaint is a compilation of the bills containing wrongful charges. These bills contain customer account numbers, meter numbers, account identifiers, prices for generation service, usage data, and other information that is not publicly available.
- **Exhibit C** to the complaint contains copies of two letters disputing the wrongful charges. Those letters identify the specific customer account numbers involved. Also, one letter includes quotes from the Customer Supply Agreements with FirstEnergy Solutions Corp.

The information in paragraphs 13 and 14, and Exhibits A, B and C is confidential, sensitive, and proprietary. The information constitutes trade secret information for which the Universities are seeking a protective order. The confidential information contained in paragraphs 13 and 14, and in Exhibits A, B and C to the complaint, if released to the public, would harm the Universities.

Rule 4901-1-24(D), Ohio Administrative Code ("O.A.C."), provides that the Commission or certain designated employees may issue an order 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. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and the Attorney Examiner will 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 recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the “public records” statute must also be read in pari materia with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR, Entry (February 17, 1982.) Likewise, the Commission has facilitated the protection of trade secrets in its rules. *See, e.g.*, Rule 4901-1-24(A)(7), O.A.C.

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.

Section 1333.61(D), Revised Code. This definition clearly reflects the state policy favoring the protection of trade secrets, such as the sensitive information which is the subject of this motion.

In *State ex rel The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, *i.e.*, by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

Id. at 524-525, quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Applying these factors to the confidential information that the Universities seek to protect, it is clear that a protective order should be granted as requested. The information redacted from paragraphs 13 and 14 and Exhibit A describes the pricing and other terms and conditions under which FirstEnergy Solutions Corp. provides generation service to the Universities. Similarly, one letter in Exhibit C includes quotes from the Customer Supply Agreement with FirstEnergy Solutions Corp. Given that the agreements reflect that the pricing and terms and conditions should be treated confidentially, the Universities seek protective treatment. Moreover, disclosure will disclose the Universities' business strategies and the prices at which they agreed to receive generation service from FirstEnergy Solutions Corp. Disclosure would place the Universities at a competitive disadvantage and would likely harm them in future negotiations of similar agreements. Furthermore, there is Commission precedent for finding the

contract information in paragraphs 13 and 14 and Exhibits A and C to be a trade secret. An Attorney Examiner ruled in September 2014 that another supply agreement with FirstEnergy Solutions Corp. constitutes a trade secret and would be kept confidential pursuant to protective order. *In the Matter of Ohio Schools Council, et al. v. FirstEnergy Solutions Corp.*, Case No. 14-1182-EL-CSS, Entry (September 4, 2014).

In addition, Exhibits A, B and C contain the customer account numbers. The Commission has recently affirmed its administrative rule (Rule 4901:1-21-10, O.A.C.) prohibiting disclosure of electric customer account numbers except in limited circumstances that are not involved here.¹

Also, Exhibits B and C contain other customer account information that is not publicly available, such as meter numbers, special account identifiers, prices for generation service, usage data. This information is not known outside the electric distribution and supply businesses, is not readily available, and precautions are taken to guard the information.

Moreover, courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities.

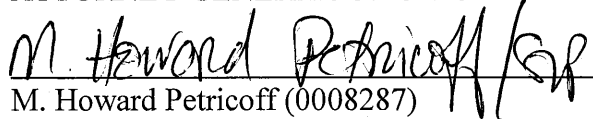
¹ Those unrelated limited circumstances are when (a) a customer consents, (b) disclosure is for a CRES provider's collections and credit reporting activities; (c) disclosure is for participation in programs funded by the universal service fund, pursuant to section 4928.52 of the Revised Code, such as the percentage of income payment plan programs; and (d) disclosure for governmental aggregation, pursuant to section 4928.20 of the Revised Code; and (e) assigning a customer contract to another CRES provider. *In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD, Finding and Order (December 18, 2013) and Entry on Rehearing (February 26, 2014).

Finally, the Universities request that the Commission first serve the public redacted version of the complaint upon FirstEnergy Solutions Corp, The Toledo Edison Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and Ohio Power Company so that the Universities and each of the companies have an opportunity to enter into a confidentiality agreement. Once a confidentiality agreement is executed, the Universities will notify the Commission and request that the confidential version of the complaint be served forthwith.

WHEREFORE, for the above reasons, the Universities request that the Commission grant their joint motion for protective order. The Commission should maintain under seal the confidential information contained in paragraphs 13 and 14 and in Exhibits A, B and C of Universities' complaint. Also, the Commission should serve only the public redacted version of the complaint upon FirstEnergy Solutions Corp, The Toledo Edison Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and Ohio Power Company, until notified that a confidentiality agreement has been executed.

Respectfully submitted,

MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO

A handwritten signature in black ink, appearing to read "M. Howard Petricoff" followed by a stylized flourish or initials.

M. Howard Petricoff (0008287)
Special Assistant Attorney General
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43216-1008
(614) 464-5414 Telephone
mhpetricoff@vorys.com

*Attorneys for Central Ohio Technical College,
Cleveland State University, Kent State University,
Northwest State Community College, Ohio University,
University of Akron, and University of Toledo*

LIST OF INFORMATION
FOR WHICH PROTECTION IS SOUGHT

INFORMATION

Paragraphs 13 and 14 to the complaint contain quotes from the Universities' Customer Supply Agreements with FirstEnergy Solutions Corp.

Exhibit A to the complaint is a compilation of the Universities' Customer Supply Agreements. The agreements also contain the prices for generation service and customer account numbers.

Exhibit B to the complaint is compilation of the bills containing wrongful charges. These bills contain customer account numbers, meter numbers, account identifiers, prices for generation service, usage data, and other information that is not publicly available.

Exhibit C to the complaint contains copies of two letters disputing the wrongful charges. Those letters contain customer account numbers. Also, one letter includes quotes from the Customer Supply Agreement with FirstEnergy Solutions Corp.

REASONS JUSTIFYING PROTECTION

This information is confidential. Its disclosure would give an undue advantage to competitors and put customer-specific account information into the public arena. Disclosure could put the Universities' individual electric account information at risk for theft or fraud.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 2nd day of March 2015 upon all persons/entities listed below:

Steven T. Nourse
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com

James W. Burk
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
burkj@firstenergycorp.com
cdunn@firstenergycorp.com


M. Howard Petricoff

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/2/2015 4:49:19 PM

in

Case No(s). 15-0455-EL-CSS

Summary: Motion Joint Motion for Protective Order, Joint Motion for Special Service of the Complaint, and Memorandum in Support electronically filed by M HOWARD PETRICOFF on behalf of Central Ohio Technical College and Cleveland State University and Kent State University and Northwest State Community College and Ohio University and University of Akron and University of Toledo