

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

I. Schumann & Company, LLC)	
)	
Complainant,)	Case No. 17-0473-EL-CSS
)	
v.)	
)	
The Cleveland Electric Illuminating Company,)	
)	
Respondent.)	

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code (“O.A.C.”), I. Schumann & Company, LLC (“I. Schumann”) moves for a protective order to keep the confidential, proprietary and trade secret information contained in I. Schumann’s Post-Hearing Reply Brief (“Schumann Post-Hearing Reply”) filed today in the instant proceeding by I. Schumann 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 Schumann Post-Hearing Reply have been submitted under seal with confidential information highlighted on pages stamped “Confidential.”

Therefore, I. Schumann respectfully requests that this motion be granted and that the unredacted versions of the Schumann Post-Hearing Reply remain under seal.

Respectfully requested,

/s/ Michael J. Settineri

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

The Public Utilities Commission of Ohio ("Commission") should protect I. Schumann's confidential information in this case.

I. Introduction and Background

On February 15, 2017, I. Schumann commenced this case by filing a complaint against The Cleveland Electric Illuminating Company ("CEI") alleging that CEI's refusal to allow I. Schumann to change its electrical service from 13.2 kV distribution service under Rate GS to 36 kV subtransmission service under Rate GSU was unlawful, unreasonable and unduly discriminatory. An evidentiary hearing in the case was held on August 16 and 17, 2017. The evidentiary record includes both a confidential transcript of certain witness testimony taken on August 16, 2017 ("Confidential Transcript") and confidential exhibits admitted in evidence on both days of the hearing ("Confidential Exhibits"). The Confidential Transcript and Confidential Exhibits contain confidential, sensitive, and proprietary operational and financial data, business forecasts, electric demand and use and pricing information, and employment figures. This information has been filed under seal and is being maintained accordingly.

The Schumann Post-Hearing Reply includes citation to and discussion of certain evidence in the Confidential Transcript and Confidential Exhibits. This information constitutes trade secret information for which I. Schumann is seeking a protective order.¹

¹ Information for which confidential treatment is sought is redacted in the public version of the application but is highlighted in yellow and, when possible, bracketed in the confidential version submitted under seal.

At its plant in Oakwood Village, Ohio, I. Schumann manufactures a wide range of brass and bronze alloys in both pellet and ingot form for customers in Ohio, around the country and around the world. The confidential information contained in the Schumann Post-Hearing Reply, if released to the public, would harm I. Schumann by providing its domestic and international competitors with proprietary information concerning its operations, forecasts, finances, and electric use and pricing information.

II. Argument

Rule 4901-1-24(D) of the Ohio Administrative Code 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. State law recognizes the need to protect the types of information that are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49 because the Commission and its Staff have full access to the information in order to fulfill its 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:

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). The Ohio Supreme Court has affirmed the Commission’s protection of trade secret information. *See also Ohio Consumers’ Counsel v. Pub. Util. Comm’n of Ohio*, 121 Ohio St.3d 362, 370, 2009-Ohio-604 ¶ 31 (affirming Commission order designating and redacting certain protected trade secret information). The Commission has facilitated the protection of trade secrets in its rules. 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.*, 80 Ohio St.3d 513 (1997), 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 I. Schumann seeks to protect, it is clear that a protective order should be granted. The information redacted from the Schumann Post-Hearing Reply includes operational and financial data, business forecasts, electric demand and use and pricing information. Such sensitive information is generally not disclosed and I. Schumann takes steps to prevent the disclosure of this information. Its disclosure could give competitors an advantage that would hinder I. Schumann's ability to compete worldwide, especially given the current competitive product market.

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, 220 (1982) (holding the commission "had an affirmative responsibility to make provision" to protect trade secrets). The Commission has previously protected

information of the type and kind that I. Schumann is asking to have protected here. *See In re Application Seeking Approval of Ohio Power Company's Proposal*, Case No. 14-1693-EL-RDR, 2016 Ohio PUC LEXIS 269 *16-21, Opinion and Order at 8-9 (Mar. 31, 2016) (granting protective orders for financial and other information of multiple parties). *See also* O.A.C. 4901:1-37-04(D)(1) (providing protection for "any proprietary customer information (e.g., individual customer load profiles or billing histories)"). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses.

III. Conclusion

For the above reasons, I. Schumann requests that the Commission grant this motion for protective order and maintain the confidential information in the Schumann Post-Hearing Reply under seal.

Respectfully requested,

/s/ Michael J. Settineri

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the persons below via electronic mail this 10th day of October 2017. Copies of this document were also served via electronic mail on the below listed counsel.

/s/ Michael J. Settineri

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Summary: Motion For Protective Order electronically filed by Mr. Michael J. Settineri on behalf of I. Schumann & Company, LLC