

reference. Unredacted copies of the confidential information, which is the subject of this Motion, were filed under seal.

Respectfully Submitted,

/s/ James F. Lang

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ATTORNEYS FOR OHIO EDISON
COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE
TOLEDO EDISON COMPANY

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)
Distribution and Modernization Rider of)
Ohio Edison Company, The Cleveland) Case No. 17-2474-EL-RDR
Electric Illuminating Company, and The)
Toledo Edison Company)

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 19-361-EL-RDR
Edison Company for an Extension of)
Their Distribution Modernization Rider)

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the “Companies”) request that the Commission protect from public disclosure certain information designated on Attachment A hereto (along with any and all copies, including electronic copies). The designated information is contained in the Mid-Term Report of Oxford Advisors filed under seal on June 14, 2019 (“Mid-Term Report”). The designated information constitutes material nonpublic information under Regulation FD, 17 C.F.R. 243, and includes forecasted credit metrics, forecasted earnings growth and confidential third-party investment data. As set forth herein, Ohio law and the Commission’s rules provide for the protection of such confidential and proprietary information.

I. Ohio Law Protects Trade Secrets.

Ohio law defines a “trade secret” as:

[A]ny 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. [And]

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R. C. § 1333.61(D).¹ The law further prohibits the release of information meeting the definition of a trade secret. *See* 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. 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 (Sept. 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA, Finding and

¹ Ohio courts have also identified factors to be considered in recognizing a trade secret: (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. *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga App. 1983) citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kans. 1980); *State ex rel. Perrea v. Cincinnati Pub. Sch.*, 123 Ohio St.3d 410, 414, 2009-Ohio-4762 (adopting these factors as appropriate).

Order, (May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR, Entry (Aug. 17, 1990).

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 the Companies seek 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.

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

The Companies have treated all of the information that is the subject of this Motion as proprietary, confidential business information and as trade secrets. This information was provided to Oxford Advisors with an expectation of confidentiality under R.C. § 4901.16 and the Companies' agreement with Oxford Advisors solely for purpose of facilitating Oxford Advisors' compliance review of the Distribution Modernization Rider ("Rider DMR"). The Companies and their affiliates consider and have treated the information as a trade secret. Further, in the ordinary course of business of the Companies, this information is treated as proprietary and confidential by the Companies and their employees. It is not disclosed to anyone without proper safeguards.

Specifically, the information redacted from the Mid-Term Report includes material nonpublic information under Regulation FD, 17 C.F.R. 243, and includes forecasted credit metrics, forecasted earnings growth² and confidential third-party investment data from the Companies' regulated affiliates. This information derives actual, independent economic value as a result of it not being generally known or readily ascertainable by other persons who might otherwise obtain economic value from its disclosure or use.³ In short, the public disclosure of this information would have a real effect on the financial position of the Companies and/or its regulated affiliates, including affecting the price of publicly traded stock and revealing proprietary details of the Companies' growth and operations strategies.⁴ Further, the information should be protected from public disclosure because the Companies have not been authorized by their regulated affiliates to disclose their confidential and proprietary information included in the Mid-Term Report.⁵

Finally, 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. The protection of trade secret information as requested herein will not impair the Commission's regulatory responsibilities. Moreover, the Companies were careful to request only those redactions from the publicly-filed version of the Mid-Term Report that are essential to prevent disclosure of confidential and proprietary information. In sum, no purpose of Title 49 would be served by the public disclosure of such classified and proprietary trade secret information.

² The Commission has previously held that prospective earnings per share information constitutes a trade secret warranting confidential protection by the Commission. *See In the Matter of the Application of The Toledo Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service, et al.*, Case No. 95-299-EL-AIR, *et al.*, 1996 Ohio PUC LEXIS 36, Entry (Jan. 4, 1996), *8.

³ *See* Affidavit in Support to be filed separately.

⁴ *Id.*

⁵ *Id.*

III. Conclusion

For the foregoing reasons, the Companies request that the information identified on Attachment A and designated in the Mid-Term Report of Oxford Advisors be protected from public disclosure.

Respectfully Submitted,

/s/ James F. Lang

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 14th day of June, 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record.

/s/ Mark T. Keaney _____
One of the Attorneys for Ohio Edison Company,
The Cleveland Electric Illuminating Company, and
The Toledo Edison Company

Attachment A

Oxford Advisors Mid-Term Report

<i>Page(s)</i>	<i>Description</i>
18	Investments of the Companies and affiliates
22	Forecasted credit metrics
25, 36	Forecasted earnings growth

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Summary: Motion for Protective Order electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company