

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of the)
Existence of Significantly Excessive Earnings for) Case No. 18-857-EL-UNC
2017 Under the Electric Security Plans of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo Edison)
Company.)

In the Matter of the Determination of the)
Existence of Significantly Excessive Earnings for) Case No. 19-1338-EL-UNC
2018 Under the Electric Security Plan of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo Edison)
Company.)

In the Matter of the Determination of the)
Existence of Significantly Excessive Earnings for) Case No. 20-1034-EL-UNC
2019 Under the Electric Security Plan of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo Edison)
Company.)

In the Matter of the Quadrennial Review)
Required by R.C. 4928.143(E) for the Electric)
Security Plan of Ohio Edison Company, The) Case No. 20-1476-EL-UNC
Cleveland Electric Illuminating Company, and)
The Toledo Edison Company)

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

Pursuant to O.A.C. 4901-1-24(D), Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) move
for a protective order to guard the confidentiality of proprietary financial projections contained in
Schedules JMS-1-Supplemental and JMS-2-Supplemental to the Supplemental Testimony of

Joseph M. Storsin, Jr. and Schedules TMA-1-Supplemental, TMA-2-Supplemental, and TMA-3-Supplemental to the Second Supplemental Testimony of Tracy M. Ashton. These schedules contain projected net income and balance sheet information for the Companies, as well as the Companies' total projected earnings and common equity for calendar years 2021 – 2024 that are trade secrets under R.C. 1333.61(D). Accordingly, the Companies request that the Commission grant this Motion and protect from disclosure the confidential and proprietary business information in the referenced schedules.

A Memorandum in Support of this Motion is attached hereto and incorporated herein by reference. In accordance with the Commission's April 8, 2020 and September 9, 2020 Entries in Case No. 20-591-AU-UNC, the Companies have filed unredacted copies of these confidential schedules under seal in Case No. 20-2000-XX-XXXX.

Respectfully submitted,

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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 Schedules JMS-1-Supplemental and JMS-2-Supplemental to the Supplemental Testimony of Joseph M. Storsin, Jr. and Schedules TMA-1-Supplemental, TMA-2-Supplemental, and TMA-3-Supplemental to

the Second Supplemental Testimony of Tracy M. Ashton (the “Confidential Schedules”). The designated information constitutes material nonpublic information under Regulation FD, 17 C.F.R. 243 and includes projected net income, balance sheet information, earnings, and common equity for calendar years 2021 – 2024 that are trade secrets under R.C. 1333.61(D). 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) (emphasis added).¹ As expressly stated in the definition, various types of financial information qualify as trade secrets. *See, e.g., Boehm v. Black Diamond Casino Events, LLC*, 2018-Ohio-2379, 116 N.E.3d 704, ¶ 7 (1st Dist.) (trade secrets include tax returns and profit-and-loss statements). 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

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. *See State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399-400, 732 N.E.2d 373 (2000).

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 Order, (May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR, Entry (Aug. 17, 1990); *In the Matter of the Joint Application of Sprint Nextel Corporation and LTD Holding Company for Consent and Approval of a Transfer of Control*, Case No. 05-1040-TP-ACO, Entry (April 27, 2007) (granting extension of protective order for detailed financial projections that included net income and projected capital expenditures); *In the Matter of the Application of Midwest Utility Consultants, Inc. for Certification as a Competitive Retail Natural Gas Aggregator/Broker*, Case No. 09-893-GA-AGG, Entry (Jan. 30, 2012) (granting protective order for forecasted financial statements); *In the Matter of the Application of Harrison Pipeline Company, LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 18-116-PL-ACE, Finding and Order (Oct. 7, 2020) (granting protective order for projected financial statements). The Commission has previously held that prospective earnings per share

information constitutes a trade secret warranting confidential protection. *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 WL 34606324 at *3 Entry (Jan. 4, 1996).

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. The information in the Confidential Schedules is not known to the public or those outside the Companies. The Companies have treated the information in the Confidential Schedules as a trade secret and will only provide it to others under an appropriate protective agreement. Further, in the ordinary course of business of the Companies, this information is treated as proprietary and confidential by the Companies and their employees. Within the Companies, the financial information in the Confidential Schedules

is not generally accessible by employees of the Companies, except for those employees who helped create it or need to rely on it to carry out their responsibilities. All employees are subject to nondisclosure agreements prohibiting the disclosure of this type of financial information, except as otherwise authorized. While the Companies' parent company discloses specific financial information in its public reporting on a consolidated basis, the information in the Confidential Schedules is not disclosed to anyone without proper safeguards.² Specifically, the information redacted from the Confidential Schedules includes material nonpublic information under Regulation FD, 17 C.F.R. 243, and includes forecasted net income, balance sheet information, earnings and common equity for calendar years 2021 – 2024. This information derives actual, independent economic value as a result of it not being generally known or readily ascertainable by other persons – competitors, suppliers or investors – who might otherwise obtain economic value from its disclosure or use. In short, the public disclosure of this information would have a real effect on the financial position of the Companies, including potentially affecting the price of publicly traded stock and revealing proprietary details of the Companies' growth and operations strategies. Members of the public would not be able to obtain and compile this financial information, or to duplicate it, at the level of detail provided in the Confidential Schedules.³ 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, and any intervenors may have access to the Confidential Schedules upon execution of an appropriate protective agreement. No purpose of Title 49 would be served by the public disclosure of such classified and proprietary trade secret information.

² Affidavit of Joseph M. Storsin, Jr., attached hereto, ¶¶ 5-6.

³ *Id.* at ¶¶ 7-8.

III. Conclusion

For the foregoing reasons, the Companies request that the information identified on Attachment A and designated in the Confidential Schedules be protected from public disclosure.

Respectfully submitted,

/s/ N. Trevor Alexander

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Attachment A

Confidential Schedules

<i>Schedules</i>	<i>Description</i>
JMS-1-Supplemental	Actual and Projected Income Statements
JMS-2-Supplemental	Actual and Projected Balance Sheets
TMA-1-Supplemental	Prospective SEET Return on Equity Calculation (the annual ROEs are not redacted)
TMA-2-Supplemental	Prospective SEET Net Income Calculation
TMA-3-Supplemental	Prospective SEET Common Equity Calculation

CERTIFICATE OF SERVICE

I hereby certify that Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company filed the foregoing document electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 20th day of April 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney
*Attorney for Ohio Edison Company, The
Cleveland Electric Illuminating Company, and
The Toledo Edison Company*

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 18-0857-EL-UNC, 19-1338-EL-UNC, 20-1034-EL-UNC, 20-1476-EL-UNC

Summary: Motion Motion for Protective Order and Memorandum in Support electronically filed by Mark T Keaney on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company