

In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37.)
)
) **Case No. 17-974-EL-UNC**
)
)
)

Pursuant to Ohio Administrative Code 4901-1-24 and Paragraph 23 of the November 4, 2020 Entry in Case No. 17-974-EL-UNC, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) move for a protective order finding that (i) the confidential Daymark Energy Advisors Corporate Separation Audit Report filed in this proceeding on September 13, 2021 (“Confidential Audit Report”) and (ii) supporting products and services tables (“Confidential Workpapers,” collectively, the “Confidential Audit Report and Workpapers”) are protected from disclosure. The Confidential Audit Report and Workpapers contain profit, revenue, and payment details derived from the Companies sales of products and services to customers. Accordingly, the Confidential Audit Report and Workpapers, as discussed more fully in the accompanying memorandum, are protected from disclosure under Ohio R.C. 149.43(A)(1)(v) because they contain trade secrets protected under R.C. 1333.61.

Dated: September 17, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

Michael R. Gladman (0059797)
Margaret M. Dengler (0097819)
Jones Day
325 John H. McConnell Blvd
Suite 600
Columbus, Ohio 43215
Tel: (614) 469-3939
Fax: (614) 461-4198
mrgladman@jonesday.com
mdengler@jonesday.com

Ryan A. Doringo (0091144)
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Tel: (216) 586-3939
Fax: (216) 579-0212
radoringo@jonesday.com

In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37.)
)
) **Case No. 17-974-EL-UNC**
)
)
)

The Commission should protect from public disclosure certain information designated on pages 9, 10, 13, 61, 63, 64, and 71 of the Confidential Audit Report and highlighted in yellow within the supporting Confidential Workpapers (and all copies, including electronic copies). The Commission should grant a protective order because the Confidential Audit Report and Workpapers are not “public records” within the meaning of Ohio law. In short, the Confidential Audit Report and Workpapers are protected trade secrets under R.C. 1333.61(D), and are excluded from the definition of a “public record” under R.C. 149.43(A)(1)(v).

R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term “public records” excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has explained that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000). Ohio law defines a trade secret as information that “(1) . . . 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) . . . the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).

Moreover, OAC 4901-1-24 allows the attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

While the Commission has often expressed its preference for open proceedings, it has long recognized its statutory duty and obligation to protect trade secrets. *See In re General Telephone Co.*, Case No. 81-383-TP-AIR, Entry (Feb. 17, 1982); *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604, ¶ 30. This Commission has carried out that obligation on numerous occasions to protect trade secrets such as sensitive cost, pricing, and forecasting information.¹ Thus the Companies seek to protect from disclosure sensitive, nonpublic profit, revenue, and payment information that constitutes proprietary, trade secret information, where, as described below, nondisclosure is not inconsistent with Title 49.

¹ *See, e.g., In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company and Related Matters for 2010*, Case No. 10-268-EL-FAC, 2014 Ohio PUC LEXIS 104 at *20-21 (May 14, 2014) (granting trade secret protection to “competitive cost and financial information” related to coal inventories and contracts); *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review*, Case No. 10-2326-GE-RDR, 2012 Ohio PUC LEXIS 89 at *2-7 (Jan. 25, 2012) (granting protection to growth projections and other forecasting information pursuant to Section 1333.61); *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, 2011 Ohio PUC LEXIS 1253 (Nov. 18, 2011) (granting trade secret protection to, among other things, the volume of customer load related to generation rates as well as other price and cost information); *Elyria Tel. Co.*, Case No. 89-965-TP-AEC, 1989 WL 1733698, at *1 (Sept. 21, 1989) (granting protective status to competitively sensitive cost information); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA, 1989 WL 1732376 at *1 (May 31, 1989) (same); *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).

II. The Information Designated In The Confidential Audit Report And Workpapers Warrant The Commission's Protection.

The financial information designated on pages 9, 10, 13, 61, 63, 64, and 71 of the Confidential Audit Report and designated information in the Confidential Workpapers warrant protection from disclosure. **First**, these portions of the Confidential Audit Report and Workpapers contain trade secret information not subject to public disclosure under Ohio law. This includes the Companies' revenue and profit figures detailing how much revenue is derived from FirstEnergy Products' ("FEP") channels, as well as the methods of payment for goods and services offered through those channels. *See* Affidavit of Richard F. Charles, attached hereto, at ¶¶ 4-5. The Companies' compile this information in conjunction with their sales of products and services to customers—a competitive service. *Id.* Thus, the Companies' revenues and profits attributable to FEP channels derive independent economic value from not being generally known. Public disclosure of the Companies' competitively sensitive revenue, profit, and payment information for their FEP channels provides an impermissible window into the Companies' internal business operations such that the Companies would be placed at a competitive disadvantage. *Id.* at ¶ 8.

The designated information is also subject to efforts to maintain its secrecy, as is evident from the Companies' treatment of this information in this proceeding. *Id.* at ¶¶ 6-7. 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 Audit Report or Confidential Workpapers. *Id.* at ¶ 8. As a result, this information has not been made public by the Companies, and no similarly situated competitor would divulge this information to others in the industry without a protective order. *Id.* at ¶ 8.

Second, the Companies seek a narrowly tailored protective order to protect the information redacted on pages 9, 10, 13, 61, 63, 64 and 71 of the Confidential Audit Report and designated

material in the Confidential Workpapers. This is a standard request for protective treatment of trade secret information that is confidential, sensitive, and proprietary, as defined in R.C. 1333.61(D), and as recognized by OAC 4901-1-24(A)(7). The Companies' request is reasonable, since multiple competitors have intervened.

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 Audit Report and Workpapers upon execution of an appropriate protective agreement. No purpose of Title 49 would be served by the public disclosure of such confidential and proprietary trade secret information.

III. Conclusion

For these reasons, the Companies request that the information designated in the Confidential Audit Report and Workpapers be protected from public disclosure.

Dated: September 17, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

Michael R. Gladman (0059797)
Margaret M. Dengler (0097819)
Jones Day
325 John H. McConnell Blvd
Suite 600
Columbus, Ohio 43215
Tel: (614) 469-3939
Fax: (614) 461-4198
mrgladman@jonesday.com
mdengler@jonesday.com

Ryan A. Doringo (0091144)
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Tel: (216) 586-3939
Fax: (216) 579-0212
radoringo@jonesday.com

On behalf of the Companies

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on September 17, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Ryan A. Doringo

Attorney for the Companies



1521236619_5_No. 17-974 - Rick Charles Affidavit - Corporate Separation Audit - Motion for Protective Order.pdf

DocVerify ID: 5D12220D-88A7-439A-87B1-97D3153667B7
 Created: September 17, 2021 11:29:09 -8:00
 Pages: 3
 Remote Notary: Yes / State: OH

This document is a DocVerify VeriVaulted protected version of the document named above. It was created by a notary or on the behalf of a notary, and it is also a DocVerify E-Sign document, which means this document was created for the purposes of Electronic Signatures and/or Electronic Notary. Tampered or altered documents can be easily verified and validated with the DocVerify veriCheck system. This remote online notarization involved the use of communication technology.

Go to www.docverify.com at any time to verify or validate the authenticity and integrity of this or any other DocVerify VeriVaulted document.

E-Signature Summary

E-Signature 1: Richard F Charles (RFC)

September 17, 2021 11:51:37 -8:00 [D72BE2933B19] [174.104.145.114]
 charlesr@firstenergycorp.com (Principal) (Personally Known)

E-Signature Notary: Jaime E. Hudson (JEH)

September 17, 2021 11:51:37 -8:00 [5F3E5C888A8A] [173.90.206.50]
 jhudson@firstenergycorp.com
 I, Jaime E. Hudson, did witness the participants named above electronically sign this document.



**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Review of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 17-974-EL-UNC
Edison Company's Compliance with R.C.)
4928.17 and Ohio Adm. Code Chapter)
4901:1-37.)**

**AFFIDAVIT OF RICHARD F. CHARLES IN SUPPORT OF
OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY'S
MOTION FOR A PROTECTIVE ORDER**

I, Richard F. Charles, being first duly sworn in accordance with the law, deposes, and states:

1. I am over 18 years of age and have personal knowledge of the matters set forth.
2. I am employed by FirstEnergy Service Company as Director, FirstEnergy Products ("FEP") Operations. In this capacity, I provide support to FirstEnergy Corp. subsidiary companies, including Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the "Companies").
3. I have reviewed and am familiar with the Corporate Separation Audit Report ("Confidential Audit Report"), including the information contained on pages 9, 10, 13, 61, 63, 64, and 71, and the supporting products and services tables ("Confidential Workpapers," collectively, the "Confidential Audit Report and Workpapers").
4. The information contained on Confidential Audit Report pages 9, 10, 13, 61, 63, 64, and 71, and certain redacted information contained in the Confidential



Workpapers, concern the revenue and profits of FirstEnergy Products (“FEP”), which supports the Companies’ sales of products and services to customers, and details revenues derived through certain FEP channels, as well as the methods of payment for those revenues. All revenue and profits figures are redacted from the public filings in these proceedings.

5. Moreover, the information in the Confidential Audit Report and Workpapers is compiled to facilitate the Companies’ offering of a competitive service. No similarly situated competitor would divulge this information to the public.
6. The information in the Confidential Audit Report and Workpapers is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The Companies have treated all of the redacted information in the Confidential Audit Report and Workpapers as proprietary, confidential business information and as a trade secret. The information in the Confidential Audit Report and Workpapers is not known to the public or those outside the Companies. The Companies will only provide this information to others under an appropriate protective agreement.
7. Further, the information contained in the Confidential Audit Report and Workpapers is treated as proprietary and confidential by the Companies and their employees in the ordinary course of business. Within the Companies, the financial information in the Confidential Audit Report and Workpapers is not generally accessible by the Companies’ employees, 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.




FURTHER AFFIANT SAYETH NAUGHT.

I, Richard F. Charles, declare under penalty of perjury that this affidavit is true and correct to the best of my knowledge, information, and belief.

Signed on 2021/09/17 11:51:37 -8:00

Subscribed, sworn, and witnessed by me this 17th day of September 2021.

1/2 mass

 **Jaime E. Hudson**
Commission # 2017-RE-665472
Electronic Notary Public
State of Ohio
My Comm Exp. Aug 12, 2022

Notary Stamp 2021/09/17 11:51:37 PST SFSE0888A0A

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/17/2021 4:16:51 PM

in

Case No(s). 17-0974-EL-UNC

Summary: Motion for Protective Order electronically filed by Ryan A. Doringo on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company