

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the 2020 Review of the )  
Delivery Capital Recovery Rider of Ohio )  
Edison Company, The Cleveland Electric ) Case No. 20-1629-EL-RDR  
Illuminating Company, and The Toledo )  
Edison Company )  
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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY’S  
MOTION FOR A PROTECTIVE ORDER**

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Pursuant to Ohio Administrative Code 4901-1-24 and Paragraph 10 of the November 4, 2020 Entry in Case No. 20-1629-EL-RDR, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) move for a protective order finding that portions of Blue Ridge Consulting Services, Inc.’s November 19, 2021 Investigation into Ohio Ratepayer Funding of FirstEnergy Corp.’s Renaming Cleveland Browns Stadium (the “Confidential Audit Report”) are protected from disclosure. The Confidential Audit Report contains non-public financial terms related to the Stadium Naming Rights and Sponsorship Agreement between FirstEnergy Corp. and the Cleveland Browns (the “Agreement”). As discussed more fully in the accompanying memorandum, these portions of the Confidential Audit Report are protected from disclosure under R.C. 149.43(A)(1)(v) because they contain trade secrets protected under R.C. 1333.61.

Dated: November 19, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

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Michael R. Gladman (0059797)  
Shalini B. Goyal (0096743)  
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

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**MEMORANDUM IN SUPPORT OF  
OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY’S  
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The Commission should protect from public disclosure certain information designated on pages 4 and 5 of the Confidential Audit Report and grant a protective order because the Confidential Audit Report is not a “public record” within the meaning of Ohio law. In short, the Confidential Audit Report contains protected trade secrets under R.C. 1333.61(D), which are excluded from the definition of a “public record” under R.C. 149.43(A)(1)(v).

**I. Ohio Law Protects Trade Secrets From Disclosure.**

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) . . . is 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 Examiners 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. The Commission has carried out that obligation on numerous occasions to protect trade secrets such as sensitive cost, pricing, and forecasting information which if disclosed, would provide competitors with an unfair competitive advantage.<sup>1</sup> And doing so here with respect to the financial terms contained in the Confidential Audit Report is consistent with Ohio trade secrets law. *See State ex rel. Luken v. Corp. for Findlay Mkt. of Cincinnati*, 2012-Ohio-2074, 972 N.E.2d 607, ¶ 39 (granting trade secret protection to term and rent provisions of a license agreement as “these provisions provide[] [movant] with a competitive

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<sup>1</sup> *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); *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).

advantage in negotiating with current and prospective employees, [and] thus, an economic benefit”); *Penetone Corp. v. Palchem, Inc.*, 627 F. Supp. 997, 1006-07 (N.D. Ohio 1985) (finding that “the negotiated pricing arrangements . . . rise[] to the level of trade secrets as defined by Ohio Law and are worthy of protection”). The Companies therefore seek similar treatment to protect from disclosure sensitive, nonpublic payment terms that constitute proprietary, trade secret information, where, as described below, nondisclosure is not inconsistent with Title 49.

## **II. The Information Designated In The Confidential Audit Report.**

The confidential financial terms designated on pages 4 and 5 of the Confidential Audit Report warrant protection from disclosure. Indeed, this information satisfies both prongs of Section 1333.61(D)’s trade secret standard. First, pages 4 and 5 of the Confidential Audit Report contain payment schedules detailing the amount and timing of payments due to the Browns organization to maintain FirstEnergy Corp.’s rights under the sponsorship agreement. *See* Affidavit of Douglas G. Colafella, attached hereto, at ¶¶ 4-6. These terms are critical to the contract, and their disclosure would place FirstEnergy at a competitive disadvantage. *Id.* at ¶ 7. These financial terms give insight into the negotiated value of the Agreement, and if they were to become public, it would provide competitors for the sponsorship rights with an improper window into FirstEnergy Corp.’s negotiating position. *Id.* Thus, the Agreement’s financial terms derive independent economic value from not being generally known. *Id.*

Second, the designated information is subject to efforts to maintain its secrecy, as is evident from the Companies’ treatment of this information in this proceeding. *Id.* at ¶ 8. The terms of the Agreement have not been publicly disclosed, and the public does not have access to the detailed payment schedules contained in the Confidential Audit Report. *Id.* Even internally within FirstEnergy Corp., only management and those employees with responsibility for managing the company’s sponsorship relationship with the Browns organization or for making the payments

have access to the Agreement and the level of detail displayed in the Confidential Audit Report.

*Id.* In sum, FirstEnergy Corp. has at all times safeguarded the financial terms of the Agreement.

*Id.*

Additionally, consistent with OAC 4901-1-24(D), the Companies seek a narrowly tailored protective order to “minimize the amount of information protected from public disclosure.” Only the schedules providing detail concerning the proprietary financial terms of the Agreement are subject to this Motion. This is a standard request for protective treatment of trade secret information, as defined in R.C. 1333.61(D) and as recognized by OAC 4901-1-24(A)(7).

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 intervenors may have access to the Confidential Audit Report upon execution of an appropriate protective agreement. No purpose of Title 49 would be served by the public disclosure of the confidential and proprietary financial terms of the Agreement.

### **III. Conclusion**

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

Dated: November 19, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

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Michael R. Gladman (0059797)  
Shalini B. Goyal (0096743)  
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 November 19, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

*/s/ Shalini B. Goyal*  
\_\_\_\_\_  
*Attorney for the Companies*





## FINAL - Doug Colafella Affidavit - Rider DCR - Stadium Naming Rights Expanded Audit.pdf

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### E-Signature Summary

#### E-Signature 1: Douglas G. Colafella (DGC)

November 19, 2021 11:11:23 -8:00 [551E5845A007] [174.104.219.188]  
dcolafella@firstenergycorp.com (Principal) (Personally Known)

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

November 19, 2021 11:11:23 -8:00 [E4DE79A551C2] [173.90.206.50]  
jhudson@firstenergycorp.com  
I, Jaime E. Hudson, did witness the participants named above electronically sign this document.



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**AFFIDAVIT OF DOUGLAS G. COLAFELLA IN SUPPORT OF  
OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY'S  
MOTION FOR A PROTECTIVE ORDER**

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I, Douglas G. Colafella, having been duly sworn, attest and state as follows:

1. I am over 18 years of age and have personal knowledge of the matters set forth.
2. I currently serve as Director of Communications & Branding for FirstEnergy Corp.  
  
In this capacity, I provide and oversee communications, marketing, and branding support to FirstEnergy Corp. and its subsidiaries, 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 Blue Ridge Consulting Services, Inc.'s November 19, 2021 Investigation into Ohio Ratepayer Funding of FirstEnergy Corp.'s Renaming Cleveland Browns Stadium (the "Confidential Audit Report"), including the financial terms discussed on pages 4 and 5 of the report.
4. The information contained on pages 4 and 5 of the Confidential Audit Report concerns the specific payment terms under the Stadium Naming Rights and Sponsorship Agreement between FirstEnergy Corp. and the Cleveland Browns organization (the "Agreement").



5. I am responsible for managing FirstEnergy Corp.'s ongoing obligations under the Agreement, and the company's sponsorship relationship with the Browns organization.
6. The Agreement is a key component of FirstEnergy Corp.'s overall marketing and branding efforts. And the financial terms reproduced and summarized in the Confidential Audit Report contain a level of detail that members of the public are unable to obtain.
7. As a matter of course, these terms are kept confidential. The financial terms of the Agreement are a highly sensitive and critical part of the contract, and the public disclosure of these terms would result in competitive injury to FirstEnergy Corp. Disclosure would, for instance, give insight into the negotiated value of the Agreement and could be used by other parties, armed with knowledge of FirstEnergy Corp.'s negotiating position, to leverage the financial terms of the current agreement in competition against FirstEnergy Corp. In short, the terms of the Agreement have independent economic value because they are not generally known.
8. FirstEnergy Corp. has also worked to maintain the secrecy of the terms of the Agreement. These terms have not been publicly disclosed. And in this proceeding, the Companies produced the Agreement to the auditor, as required by the Commission, on a confidential basis. Moreover, even within FirstEnergy Corp., only management and those employees with responsibility for managing FirstEnergy Corp.'s sponsorship relationship or for making the payments to the





**This foregoing document was electronically filed with the Public Utilities  
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**Case No(s). 20-1629-EL-RDR**

Summary: Motion for a Protective Order electronically filed by Mrs. Shalini B Goyal  
on behalf of The Toledo Edison Company and Ohio Edison Company and The  
Cleveland Electric Illuminating Company