

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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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(D) and Paragraph 12 of the January 24, 2018 Entry in Case No. 17-2474-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 the confidential Daymark Energy Advisors’ (“Daymark”) Audit Report of the Ohio Companies’ Rider DMR filed in this proceeding on January 14, 2022 (“Confidential Audit Report”) are protected from disclosure. The Confidential Audit Report contains confidential and proprietary business information that was provided to Daymark under R.C. § 4901.16 and the Companies’ agreement with Daymark. Accordingly, the Confidential Audit Report, as discussed more fully in the accompanying memorandum, is protected from disclosure under Ohio R.C. 149.43(A)(1)(v) because it contains trade secrets protected under R.C. 1333.61.

Dated: January 14, 2022

Respectfully submitted,

/s/ Ryan A. Doringo

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| <b>Toledo Edison Company</b>                  | ) |                                |

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**MEMORANDUM 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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The Commission should protect from public disclosure certain information designated on pages 39-48, 51-53, 57-58, 77, 79-82, and Appendices D and E of the Confidential Audit Report and grant a protective order because the designated information in the Confidential Audit Report does not constitute a “public record” within the meaning of Ohio law. Instead, the designated information is material, non-public information under Regulation FD, 17 C.F.R. 243, and includes forecasted credit metrics, forecasted earnings growth, and confidential investment data from third parties. As set forth below, the Confidential Audit Report thus contains protected trade secrets under R.C. 1333.61(D) and should not be disclosed.

**I. Ohio Protects Trade Secrets.**

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 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 forecasts and growth projections.<sup>1</sup> Thus, the Companies seek to protect from disclosure forecasted credit metrics, forecasted earnings growth, and confidential investment data from third parties that constitute proprietary, trade secret information, where, as described below, nondisclosure is not inconsistent with Title 49.

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<sup>1</sup> *See, e.g., 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).

## **II. The Information Designated In The Confidential Audit Report Warrants The Commission's Protection.**

The financial information designated on pages 39-48, 51-53, 57-58, 77, 79-82, and Appendices D and E of the Confidential Audit Report warrants protection from disclosure. *First*, these portions of the Confidential Audit Report contain trade secret information not subject to public disclosure under Ohio law. This includes forecasted credit metrics, forecasted earnings growth, and confidential investment data from third parties for the Companies and their affiliates. *See* Affidavit of Gina Caskey, attached hereto, at ¶ 4. Disclosure of this information could place FirstEnergy Corp., the Companies, and other affiliates at a severe competitive disadvantage and result in grievous economic harm. *Id.* at ¶ 8. Further, disclosure of this information would have a real impact on the financial position of the Companies and their affiliates, including affecting the price of FirstEnergy Corp.'s publicly traded stock and revealing proprietary details of the Companies' and FirstEnergy Corp.'s growth and operations strategies. *Id.* The information should likewise be protected because the Companies have not been authorized by FirstEnergy Corp., their other affiliates, or the third party credit ratings agencies to disclose the information designated in the Confidential Audit Report. *Id.* at ¶ 5.

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. This information is treated as confidential by the Companies and FirstEnergy Corp., and even the internal distribution of the information is restricted. *Id.* Members of the public would not be able to obtain and compile this confidential and proprietary business information, or to duplicate it, at the level of detail provided in the Confidential Audit Report. *Id.* at ¶ 8. In short, this information is not disclosed outside of the Companies or FirstEnergy Corp. absent agreement to protect its confidentiality, and it is not otherwise ascertainable by the public through proper means.

***Second***, 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 information redacted on pages 39-48, 51-53, 57-58, 77, 79-82, and Appendices D and E of the Confidential Audit Report is subject to this Motion. 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).

***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 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 be protected from public disclosure.

Dated: January 14, 2022

Respectfully submitted,

/s/ Ryan A. Doringo

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*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 January 14, 2022. 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 - 1525772459\_2\_No. 17-2474 - Gina Caskey Affidavit - Rider DMR Audit - Motion for Protective Order.docx**

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caskeyg@firstenergycorp.com (Principal) (Personally Known)

**E-Signature Notary: Matthew J. Albright (MJA)**

January 14, 2022 12:16:13 -8:00 [5C5B6AD446F9] [173.89.93.65]  
malbright@firstenergycorp.com  
I, Matthew J. Albright, did witness the participants named above  
electronically sign this document.



**In the Matter of the Review of the )  
Distribution Modernization Rider of ) Case No. 17-2474-EL-RDR  
Ohio Edison Company, The Cleveland )  
Electric Illuminating Company, and The )  
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growth, and confidential investment data from third parties for the Companies and their affiliates.

5. The Companies have not been authorized by FirstEnergy Corp., their other affiliates, or third party credit ratings agencies to publicly disclose the information designated in the Confidential Audit Report.
6. The information in the Confidential Audit Report 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 as proprietary, confidential business information and as a trade secret. The information in the Confidential Audit Report is not known to the public, and the Companies will only provide this information to others subject to an appropriate protective agreement.
7. Further, the information contained in the Confidential Audit Report is treated as proprietary and confidential by the Companies and their affiliates in the ordinary course of business. Within the Companies and FirstEnergy Corp., the financial information in the Confidential Audit Report is not generally accessible by 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 FirstEnergy Corp. policies prohibiting the disclosure of this type of financial information, except as otherwise authorized.
8. The information in the Confidential Audit Report also derives actual, independent value as a result of it not being generally known or readily ascertainable by those who might otherwise obtain economic value from its disclosure or use, such as



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**Case No(s). 17-2474-EL-RDR**

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