

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Political and Charitable Spending by)	
Ohio Edison Company, The Cleveland)	Case No. 20-1502-EL-UNC
Electric Illuminating Company, and the)	
Toledo Edison Company.)	
)	

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S
MOTION FOR A PROTECTIVE ORDER**

Pursuant to Ohio Administrative Code 4901-1-24(A), Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) move to protect from public disclosure certain information produced in response to the Office of the Ohio Consumers’ Counsel’s (“OCC”) discovery requests. On April 22, 2022, OCC sent notice to the Companies that it sought to disclose the entirety of two documents,¹ which contain Daymark Energy Advisor’s and Oxford Advisors LLC’s responses to the Commission’s requests for proposal in Case No. 17-2474-EL-RDR.² Both auditor responses were marked (or portions were marked) as “Confidential” by the Companies. Pursuant to the terms of OCC’s and the Companies’ Protective Agreement, upon notice of intent to disclose, the Companies have five business days to file a motion for protective order.³ In accordance with the parties’ Protective Agreement and O.A.C. 4901-1-24(A)—and to protect information that both Daymark and Oxford themselves previously designated as confidential—the Companies seek continued protective treatment over

¹ Specifically, OCC sent notice it sought to disclose Companies-0019393 (a redacted version of which was produced as OCC RPD-10-001 Attachment 7) and the redacted portions of OCC RPD-10-001 Attachment 3.

² OCC’s Notices of Disclosure are attached as Exhibit A and B.

³ The parties’ Protective Agreement is attached as Exhibit C.

pages 91-93 of Companies-0019393 (also produced as OCC RPD-10-001-Attachment 7) and
pages 37-78 of OCC RPD-10-001-Attachment 3.

Dated: April 29, 2022

Respectfully submitted,

/s/ Ryan A. Doringo

Michael R. Gladman (0059797)
Shalini B. Goyal (0096743)
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On behalf of the Companies

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Political and Charitable Spending by)	Case No. 20-1502-EL-UNC
Ohio Edison Company, The Cleveland)	
Electric Illuminating Company, and the)	
Toledo Edison Company.)	
)	

**MEMORANDUM IN SUPPORT OF OHIO EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY’S
MOTION FOR A PROTECTIVE ORDER**

On April 22, 2022, OCC sent notice of its intent to disclose two documents produced by the Companies: (1) Companies-0019393 (also produced as OCC RPD-10-001-Attachment 7), which is a Daymark Energy Advisors (“Daymark”) purchase order, dated 6/22/2021, that includes Daymark’s response to the Commission’s February 24, 2021 request for proposal in Case No. 17-2474-EL-RDR; and (2) OCC RPD-10-001-Attachment 3, which is an Oxford Advisors LLC (“Oxford”) purchase order, dated 2/2/2018, that includes Oxford’s response to the Commission’s December 13, 2017 request for proposal. Pursuant to the terms of the parties’ Protective Agreement, the Companies redacted only certain information in OCC RPD-10-001-Attachments 3 and 7.

The parties’ Protective Agreement safeguards information that is “treated by the Companies *or third parties* as commercially sensitive, personally sensitive, or proprietary.” Ex. C, ¶ 3(A) (emphasis added). The Companies understand that certain information contained in Daymark’s and Oxford’s responses—particularly, the rate structures outlined in the responses—is confidential and treated as commercially sensitive or proprietary by each respective auditor. For that reason, the Companies seek a limited protective order over the information outlined below.

The Companies do not seek protective treatment over the purchase orders themselves (nor did the Companies designate them “Confidential” in response to OCC’s Tenth Set of Discovery in this proceeding), but the Companies are not in a position to unilaterally disclose Daymark’s and Oxford’s commercially sensitive or proprietary information.

Daymark Purchase Order. In response to OCC’s Tenth Set of Discovery in this proceeding, the Companies produced a Daymark purchase order as OCC RPD-10-001-Attachment 7. The document includes a purchase order, the Commission’s Entry attaching its request for proposal, and Daymark’s response to the request for proposal. Out of the 125 pages document, the Companies designated as “Confidential” only pages 24-26 of Daymark’s response (pages 91-93 of the produced document).⁴ Specifically, these pages set forth Daymark’s rate structure, are designated by Daymark as confidential, and include the following language from Daymark: “Daymark Energy Advisors considers its billing rates and other financial information proprietary and confidential, and not for public viewing/disclosure. We ask that you treat this information as confidential and exempt from disclosure. Daymark Energy Advisors has used its best efforts to maintain the confidentiality of financial information and its disclosure could competitively harm our firm.”

Oxford Purchase Order. Similar to the Daymark purchase order, the Companies also produced an Oxford purchase order that attached Oxford’s response to the Commission’s request for proposal. It is the Companies’ understanding that Oxford’s response includes certain information Oxford may consider commercially sensitive or proprietary, including its rates. For that reason, the Companies designated as confidential only Oxford’s response (pages 37-78 of the

⁴ This document was also produced as Companies-0019393 in a separate production, which was designated “Confidential.” The Companies do not seek protective treatment over the entirety of this document—only pages 91-93, consistent with the Companies’ designation and redaction in OCC RPD-10-001-Attachment 7.

produced document) and now seek protective treatment over the information in those pages that Oxford considers commercially sensitive or proprietary.

Accordingly, pursuant to O.A.C. 4901-1-24(A) and the terms of the parties' Protective Agreement, the Companies respectfully request protective treatment over the specific information outlined above.

Dated: April 29, 2022

Respectfully submitted,

/s/ Ryan A. Doringo

Michael R. Gladman (0059797)
Shalini B. Goyal (0096743)
Margaret M. Dengler (0097819)
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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 April 29, 2022. 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

EXHIBIT A



Office of the Ohio Consumers' Counsel

April 22, 2022

VIA EMAIL

Mr. Ryan Doringo
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114

Re: FirstEnergy Utilities Consumers, PUCO Case No. 20-1502-EL-UNC

Dear Ryan:

This OCC email message is provided to notify you, under paragraph 9 of the protective agreement between OCC and the FirstEnergy Utilities, that we intend to include, utilize, refer to, or copy the following documents in the public domain:

Companies 0019393_Confidential pdf, Daymark contract documents.

The FirstEnergy Utilities have provided this document in discovery to OCC and are treating the entire document as "confidential." OCC and the FirstEnergy Utilities signed a Protective Agreement in this proceeding (and others) so that the FirstEnergy Utilities could share with OCC information and documents that the FirstEnergy Utilities deemed confidential as "Protected Materials."

Under the protective agreement, this OCC email message will result in the documents becoming unprotected (non-confidential) unless the FirstEnergy Utilities file, within the five-business-day timeline of the Protective Agreement (paragraph 9), to seek a ruling that the document is confidential.

By sending this email, OCC does not waive the right to identify additional discovery responses marked "CONFIDENTIAL" and to seek disclosure of any such documents in the public domain.

Best regards,

/s/ Maureen R. Willis

Maureen R. Willis (0020847)
Senior Counsel

EXHIBIT B



Office of the Ohio Consumers' Counsel

April 22, 2022

VIA EMAIL

Mr. Ryan Doringo
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114

Re: FirstEnergy Utilities Consumers, PUCO Case No. 20-1502-EL-UNC

Dear Ryan:

This OCC email message is provided to notify you, under paragraph 9 of the protective agreement between OCC and the FirstEnergy Utilities, that we intend to include, utilize, refer to, or copy the following documents in the public domain:

OCC RPD-10-001 Attachment 3, Oxford Advisor's response to the PUCO RFP, dated January 5, 2018.

The FirstEnergy Utilities have provided this document in discovery to OCC and are treating the entire Oxford Advisor's response as "confidential." OCC and the FirstEnergy Utilities signed Protective Agreements in this proceeding (and others) so that the FirstEnergy Utilities could share with OCC information and documents that the FirstEnergy Utilities deemed confidential as "Protected Materials."

Under the protective agreement, this OCC email message will result in the documents becoming unprotected (non-confidential) unless the FirstEnergy Utilities file, within the five-business-day timeline of the Protective Agreement (paragraph 9), to seek a ruling that the document is confidential.

By sending this email, OCC does not waive the right to identify additional discovery responses marked "CONFIDENTIAL" and to seek disclosure of any such documents in the public domain.

Best regards,

/s/ Maureen R. Willis

Maureen R. Willis (0020847)
Senior Counsel

EXHIBIT C

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Political)	
and Charitable Spending by Ohio Edison)	Case No. 20-1502-EL-UNC
Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company)	
)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("the Companies") and the Office of the Ohio Consumers' Counsel ("Receiving Party" or "OCC") (collectively, "the Parties"). This Agreement is designed to facilitate and expedite the exchange with Receiving Party of information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Companies and Receiving Party as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Companies' obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document means the above-captioned case, including any appeals, remands and other cases related thereto.

3. A. "Protected Materials" means documents, deposition testimony, or any other information designated under this Agreement as "CONFIDENTIAL" that are treated by the Companies or third parties as commercially sensitive, personally sensitive, or proprietary. "Protected Materials" include, but are not limited to, materials meeting the definition of "trade secret" under Ohio law and material nonpublic information under Regulation FD, 17 C.F.R. 243.

B. "Protected Materials" do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Companies and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

C. "Protected Materials" that are in writing shall be conspicuously marked with the appropriate designation, or counsel for the Companies may orally state on the deposition record that a response to a question posed at a deposition is considered Protected Materials.

D. "Protected Materials" include documents or information that are stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, discs, networks or tapes) ("Computerized Material"). The Companies at their discretion may produce Computerized Material in such form. To the extent that OCC reduces Computerized Material to hard copy, OCC shall conspicuously mark such hard copy as confidential.

4. Protected Materials provided in the context of this Proceeding will be provided to OCC for use by OCC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters

into the public domain. Nothing in this Agreement precludes OCC from filing Protected Materials under seal or otherwise using Protected Material in ways, such as *in camera* proceedings, that do not disclose Protected Materials.

5. As used in this Agreement, the term "Authorized Representative" includes OCC's counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by OCC and engaged in this Proceeding.

6. Access to Protected Materials is permitted to OCC's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC must treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary disclosure to any persons other than OCC's Authorized Representatives.

7. If any OCC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to another Authorized Representative of OCC and if there is no such Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed the foregoing Non-Disclosure Certificate will continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this Proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected

Materials. OCC may also disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. OCC may file Protected Materials under seal in this Proceeding whether or not OCC seeks a ruling that the Protected Materials should be in the public domain. If OCC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then OCC must first give notice (as provided in Paragraph 15) to the Companies, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Companies will have five (5) business days after service of OCC's notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Companies do not file such a motion within five (5) business days of OCC's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

10. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel, other OCC Authorized Representatives, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

11. Any portion of the Protected Materials that the administrative agency of competent

jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

12. It is expressly understood that upon a filing made in accordance with Paragraph 9 or Paragraph 13 of this Agreement, the burden will be upon the Companies to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

13. OCC will give the Companies notice (as provided in Paragraph 15) if OCC receives a public records request for Protected Materials. The Companies will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. If the Companies file such a pleading, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Companies do not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret and not subject to this Agreement. Alternatively, the Companies may provide notice to OCC that the Protected Materials may be disclosed in response to a public records request.

14. If, under Ohio's public records law, a court awards a relator or person or party attorney's fees or statutory damages or court costs in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Companies will pay such awarded fees, statutory damages, and/or court costs to the relator or person or party so that the State of Ohio, OCC and OCC's employees and officials are held harmless.

15. All notices referenced in Paragraphs 9 and 13 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via

e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. OCC may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Companies' determination regarding any material identified as confidential by the Companies and to pursue those remedies that may be available to OCC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes OCC from filing a motion to compel.

18. By entering into this Protective Agreement, the Companies do not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Companies before the administrative agency of competent jurisdiction or court of competent jurisdiction.

19. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed

as a waiver of sovereign immunity by OCC.

20. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Ohio Edison Company, The Cleveland
Electric Illuminating Company and The
Toledo Edison Company

BY:

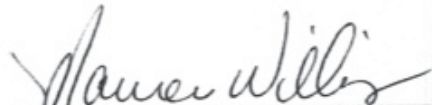
/s/ Ryan A. Doringo

Counsel

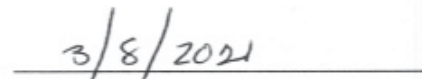
Date

The Office of the Ohio Consumers' Counsel

BY:



Counsel



Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Political and Charitable Spending by Ohio)	
Edison Company, The Cleveland Electric)	Case No. 20-1502-EL-UNC
Illuminating Company and The Toledo)	
Edison Company)	
)	

**NON-DISCLOSURE CERTIFICATE FOR
CONFIDENTIAL PROTECTED MATERIALS**

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____ 2021, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

4/29/2022 5:19:35 PM

in

Case No(s). 20-1502-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