

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Demand	)	
Side Management and Energy Efficiency	)	
Riders of Ohio Edison Company, The	)	Case No. 20-1673-EL-RDR
Cleveland Electric Illuminating Company, and	)	
The Toledo Edison Company	)	

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**MOTION FOR PROTECTIVE ORDER**

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Pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-24(D), Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) respectfully move for a protective order regarding confidential information contained in Exhibit A (Pages 1 & 2 of 4) and Exhibit B (Pages 1 & 2 of 4), in the Demand Side Management and Energy Efficiency Rider (“Rider DSE”) workpapers supporting the Report in Support of Staff’s 2021 Rider DSE Annual Review, which is being contemporaneously filed in the above captioned matter. As described in the attached Memorandum in Support of this Motion, Exhibit A (Pages 1 & 2 of 4) and Exhibit B (Pages 1 & 2 of 4), contain, or would otherwise reveal, highly confidential customer usage information that warrants protection. Accordingly, the Companies request that certain information that has been redacted from Exhibit A (Pages 1 & 2 of 4) and Exhibit B (Pages 1 & 2 of 4), be protected from public disclosure.

Respectfully submitted,

/s/Christine E. Watchorn  
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	)	

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**MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

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The Companies seek to protect certain customer energy usage and curtailable load information contained in Exhibit A (Pages 1 & 2 of 4) and Exhibit B (Pages 1 & 2 of 4), in the Demand Side Management and Energy Efficiency Rider (“Rider DSE”) workpapers supporting the Report in Support of Staff’s 2021 Rider DSE Annual Review, which is being contemporaneously filed. Exhibit A (Pages 1 & 2 of 4) and Exhibit B (Pages 1 & 2 of 4), generally contain aggregated or anonymized information for Economic Load Response Program (“Rider ELR”) participants by rate schedule, including inputs used to derive the realized curtailable load and to calculate economic load response credits. However, for one of the Companies’ rate schedules, there is only one Rider ELR participant, and as such, the Companies cannot provide anonymized or aggregated information. Further, the Companies have redacted additional customers’ information in other rate schedules to prevent interpolation of the affected customer’s data. Redacting this information protects the energy usage and curtailable load information of the affected customer, which the Companies understand to be confidential and proprietary. The information is, therefore, appropriate for protective treatment pursuant to Ohio law.

Ohio Adm. Code 4901-1-24(D) states:

Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including

where the information is deemed by the commission, the legal director, the deputy legal director, or the attorney examiner 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.

Ohio law defines a “trade secret” as:

[I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any 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.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>1</sup>

Ohio law grants special protection to such trade secrets, including statutory causes of action for an injunction precluding the misappropriation of trade secrets.<sup>2</sup> The Commission has recognized the statutory obligation to protect trade secrets.<sup>3</sup> Indeed, the Commission’s rules provide that it may issue any order “necessary to protect a party or person,” including that a “trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.”<sup>4</sup>

Customer usage information is subject to this statutory obligation. For example, in *In the Matter of the Application of Ohio Power Company to Adjust its Economic Development Rider Rate*, Case No. 16-1684-EL-RDR, AEP Ohio filed a motion for protective treatment of customer-specific load information of Eramet Marietta, Inc., Globe Metallurgical, Inc. and TimkenSteel Company (the “Customers”) contained in certain schedules within AEP Ohio’s application to adjust its Economic Development Rider rate.<sup>5</sup> The Customers filed motions for protective treatment as well, arguing the application included certain

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<sup>1</sup> R.C. 1333.61(D).

<sup>2</sup> See R.C. 1333.62.

<sup>3</sup> See *Gen. Tel. Co.*, Case No. 81-383-TP-AIR, Entry (Feb. 17, 1982) (recognizing necessity of protecting trade secrets); 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).

<sup>4</sup> Ohio Adm.Code 4901-1-24(A)(7).

<sup>5</sup> *In re Ohio Power Co.*, Case No. 16-1684-EL-RDR, Finding and Order (Sept. 22, 2016) ¶ 9.

“customer-specific information related to electric usage and pricing that is confidential, sensitive, and proprietary trade secret information.”<sup>6</sup> The motions set forth that, if the customer-specific usage information was released to the public, “it would compromise their business position and ability to compete by disclosing actual customer usage and pricing terms that are not generally known or readily ascertainable by their competitors.”<sup>7</sup> The Commission agreed, and granted the motions for protective treatment based on those same grounds.<sup>8</sup>

The customer data at issue here includes customer energy usage and curtailable load information associated with one of the Rider ELR program participants, as well as information pertaining to other customers that, if made public, would allow the interpolation of the affected customer’s information. If this customer-specific information is released to the public, it is the Companies’ understanding that this could compromise the affected customer’s business positions and ability to compete by disclosing information about its operations and cost of production that is not generally known or readily ascertainable by its competitors. As in *In re Ohio Power Co.*, the redacted data is customer-specific information, or could reveal customer-specific information, related to electric usage that is confidential, sensitive, and proprietary trade secret information, therefore warranting protection.

The Commission has previously granted similar motions to protect confidential customer information.<sup>9</sup> Further, the affected customer’s redacted information at issue is confidential and subject to efforts that are reasonable under the circumstances to maintain its secrecy. The information that is redacted in the public versions of these workpapers will be available for review by the Commission and the Commission’s Staff, pursuant to Ohio Adm. Code 4901-1-24(D)(2), which requires that unredacted copies of the confidential information be filed under seal along with the motion for protection of the information.

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<sup>6</sup> *Id.* at ¶ 11.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at ¶ 13.

<sup>9</sup> See, e.g., *In the Matter of the Petition of Harry W. Schmidt and numerous Other subscribers of the New London Exchange of GTE North Incorporated*, Case No. 98-1481-TP-PEX, Supplemental Opinion and Order, (Dec. 21, 1999), \*7; *In the Matter of the Application of Major Energy Services, LLC for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 15-1405-GA-CRS, Entry, (Dec. 20, 2021), \*3.

Accordingly, the Companies respectfully request that the redacted customer energy usage and curtailable load information in the filed workpapers supporting their respective tariffs be kept confidential.

Respectfully submitted,

/s/ Christine E. Watchorn

Christine E. Watchorn (0075919)

Counsel of Record

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### Affidavit McMillen.docx

DocVerify ID: F17E2A5B-A036-4E24-AD01-8D475D6172DE  
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### E-Signature Summary

**E-Signature 1: Brandon McMillen (BSM)**

September 07, 2022 12:16:41 -8:00 [85C99E1A893A] [74.141.99.49]  
bmcmillen@firstenergycorp.com (Principal) (Personally Known)

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

September 07, 2022 12:16:41 -8:00 [0E05CEC0D3A1] [76.34.169.133]  
malbright@firstenergycorp.com  
I, Matthew J. Albright, did witness the participants named above electronically sign this document.



**AFFIDAVIT OF BRANDON MCMILLEN**

I, Brandon McMillen, being first duly cautioned and sworn, swear as follows:

1. I am employed by FirstEnergy Service Company as an Analyst V, Rates & Regulatory Affairs—Ohio. I have been employed by FirstEnergy Service Company since July 2012. My responsibilities include serving as the analyst responsible for preparing various riders, including the Demand Side Management and Energy Efficiency Rider (“Rider DSE”). I have personal knowledge of the matters set forth herein based upon my review of documents and records kept in the course of regularly conducted business activity.

2. I submit this affidavit in support of the Companies’ Motion for Protective Order and believe the facts contained in this affidavit and in the Motion for Protective Order to be true.

3. I have reviewed the unredacted versions of Exhibit A (Pages 1 & 2 of 4) and Exhibit B (Pages 1 & 2 of 4), workpapers supporting the Report in Support of Staff’s 2021 Rider DSE Annual Review. I understand that the unaggregated and non-anonymized customer-specific energy usage and curtailable load information is confidential and subject to trade secret protections. The Companies have redacted this information for one affected customer and have redacted additional customers’ information to prevent interpolation of the affected customer’s data.

4. Specifically, I believe that publishing the customer-specific usage information could compromise the affected customer’s business position and ability to compete by disclosing information about its operations and cost of production that is not generally known or readily ascertainable by its competitors.

*[Signatures on following page.]*

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FURTHER AFFIANT SAYETH NAUGHT.

*Brandon McMillen*  
Signed on 2022/09/07 12:16:41 -8:00

Brandon McMillen

Sworn to and subscribed in my presence this 7th day of September 2022.

*M Albright*  
Signed on 2022/09/07 12:16:41 -8:00

NOTARY PUBLIC



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**CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 7<sup>th</sup> day of September 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties:

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Christine E. Watchorn (0075919)

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**Case No(s). 20-1673-EL-RDR**

Summary: Motion for Protective Order electronically filed by Ms. Jill R. Olbrysh  
Sustar on behalf of Ohio Edison Company and The Cleveland Electric Illuminating  
Company and The Toledo Edison Company