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IN THE SUPREME COURT OF OHIO

In the Matter of the Review of The Alternative)
Energy Rider Contained in The Tariffs of) Case No. 13-2026
Ohio Edison Company, The Cleveland)
Electric Illuminating Company and The) Appeal from the Public Utilities
Toledo Edison Company.) Commission of Ohio
)
) Public Utilities Commission of Ohio Case
) No. 11-5201-EL-RDR

MOTION FOR LEAVE TO FILE FOURTH MERIT BRIEF UNDER SEAL
BY
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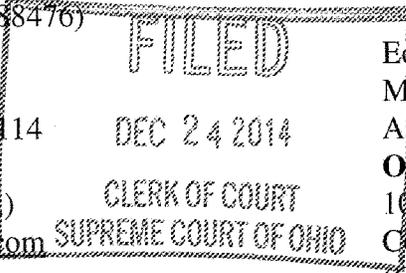
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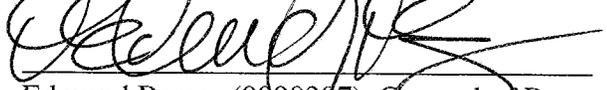
**MOTION FOR LEAVE TO FILE FOURTH MERIT BRIEF UNDER SEAL
BY
APPELLEE/CROSS-APPELLANT,
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Pursuant to Rule 3.02(B) of the Rules of the Practice of the Supreme Court of Ohio, the Office of the Ohio Consumers' Counsel ("OCC") respectfully requests this Court for leave to file certain portions of its Fourth Merit Brief under seal. OCC maintains that this information does not constitute trade secret that should be excepted from public disclosure required by law. *See* R.C. 149.43, R.C. 1333.61, R.C. 4901.12, and R.C. 4905.07. Nevertheless, this Court ruled that this information is already being maintained under seal pending a final decision by this Court on whether the PUCO properly protected the documents as trade secret. Without waiving any arguments or issues for appeal, OCC respectfully requests that this Court grant leave to file the relevant portions of its Fourth Merit Brief under seal.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE

I. INTRODUCTION AND STATEMENT OF FACTS

This is the appeal of an audit proceeding before the Public Utilities Commission of Ohio (“PUCO” or “the Commission”). The audited entities in the case below are Appellants /Cross-Appellees, Ohio Edison Company, The Cleveland Electric Illumination Company, and The Toledo Edison Company (collectively “FirstEnergy,” “FE,” or “the Utility”).

In the case below, FirstEnergy filed a number of Motions for Protective Order seeking to designate certain information and documents as protected information under R.C. 149.43 and R.C. 1333.61. The attorney examiners in the case determined that specific renewable energy bidding information – identities of those that bid renewable energy credits and the specific prices bid for those renewables – were trade secret information subject to protection. *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Pub. Util. Comm. No. 11-5201-EL-RDR, Hearing Transcript at 18 (November 20, 2012); see also, *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Pub.

Util. Comm. No. 11-5201-EL-RDR, Entry at 5-6 (February 14, 2013). Accordingly, the parties entered into a Protective Agreement to handle such protected information in accordance with the attorney examiners' ruling.

The PUCO later “affirm[ed] the rulings of the attorney examiners granting protective orders in all but one respect . . . to permit the general disclosure of FES as a successful bidder in competitive solicitations.” *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Pub. Util. Comm. No. 11-5201-EL-RDR, Opinion and Order at 11 (Aug. 7, 2013). That ruling is a portion of OCC’s cross-appeal¹ to this Court and the subject of an earlier Motion to Seal filed by FirstEnergy and a Motion for Hearing and Stay filed by OCC before this Court.² However, this Court denied FirstEnergy’s motion to seal as moot, explaining that “[t]he documents are currently being maintained under seal pursuant to Sup.R. 44(C)(1) and Sup.Ct.Prac.R. 3.02(B).” *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Entry (Sept. 3, 2014).

II. LAW AND ARGUMENT

The Supreme Court’s rules are instructive regarding the treatment of documents filed with the Court:

¹ OCC Notice of Cross-Appeal at 3-4, ¶¶ C and D (1-5).

² FirstEnergy’s Motion to Seal was filed on March 6, 2014. OCC filed a Memo opposing that Motion on March 17, 2014. OCC then filed a Motion for Hearing and Stay of the Briefing Schedule on March 21, 2014, requesting the Supreme Court’s ruling whether this information should continue to be sealed for purposes of Briefs, Appendices and Supplements before the Supreme Court. Although the Supreme Court initially stayed the briefing schedule, on September 3, 2014, the Supreme Court denied OCC’s Motion for Hearing and determined to address this matter upon briefs and oral argument.

Documents filed with the Supreme Court shall be treated as public records unless they have been sealed pursuant to a court order or are the subject of a motion to seal pending in the Supreme Court.

Sup.Ct.Prac.R. 3.02(B). The OCC realizes the difficulties presented where a case involves a dispute regarding the confidential treatment of documents before the Court (itself a public office).

But, this Court has recognized that this information will remain under seal until it “decide[s] whether the commission properly protected the documents as trade secrets after briefing and oral argument.” *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Entry (Sept. 3, 2014). Furthermore, the OCC entered into a protective agreement with FirstEnergy as part of the discovery process in order to speed up the discovery process. That agreement provides that the OCC will make filings in this case (including any appeal to the Supreme Court) under seal if OCC intends to use information over which FirstEnergy claims is confidential.

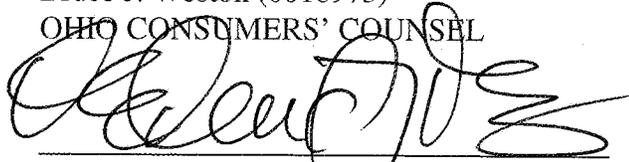
OCC’s Fourth Merit Brief contains information and excerpts from documents that are part of the sealed portion of the record. Consequently, OCC is filing this Motion for Leave, contemporaneously with the filing of its Fourth Merit Brief, requesting that such information quoted or duplicated in OCC’s Fourth Merit Brief be filed under seal pending the Supreme Court’s review of this issue. Without waiving the issues set forth in its cross-appeal, or waiving any arguments set forth in its Second and/or Fourth Merit Brief, OCC respectfully requests that this Court grant leave to file the relevant portions of its Fourth Merit Brief under seal.

III. CONCLUSION

For the foregoing reasons, and pursuant to the Court's rules of practice, the OCC requests that its Motion for Leave be granted.

Respectfully submitted,

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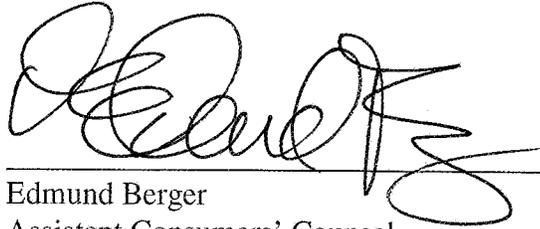
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Leave* by the Office of the Ohio Consumers' Counsel was served upon the below-listed counsel by electronic service this 24th day of December, 2014.



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