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10-2463-EC-CSS

To: Keturby Sheets, ESQ

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James Lynn, ESQ614-~~728~~ 728-8373 fax

From: Sherry A. Wilby

~~8~~ pages

PUCO

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- Motion to Issue Subpoenas

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**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

Sherry A. Wiley

5370 Aster Park Drive, #909

Hamilton, OH 45011

Complainant

Case No. 10-2463-EL-CSS

v.

Duke Energy Ohio, Inc.

Respondent.

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**Complainant, Sherry A. Wiley's Motion to Issue Subpoenas**

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Pursuant to Ohio Administrative Code (OAC) Section 4901-1-25, the Complainant, Sherry A. Wiley, respectfully asks the Commission to issue a subpoena to Duke Energy Corporation, Dianne B. Kuhnell, 139 East Fourth Street, P.O. Box 960, Cincinnati, Ohio 45201; and the Ohio Department of Development, HEAP, Lee Frich, Room 1, Columbus, Ohio 43215, *to both companies for their production of documents, in its entirety*; including, but not limited too; all telephone recorded calls - *with emphases on* - recorded calls with "Tony" & "Lonnie", Customer Service Representatives on October 19, 2010, *as well as all other recorded calls, memo's and notes, etc., - with emphases on* - all documentation, including, but not limited too; statements when HEAP

payment was received by Duke Energy as well as when Duke Energy applied benefit and date and information sent back to the HEAP Department confirming benefit being applied to complainant's account and all other information, *all* documentation, all recordings, all memo's, all notes; *everything* regarding Complainant. The reason in support of this Motion are set forth in the following Memorandum in Support.

### **Memorandum in Support**

Section 4901-1-25 Subpoenas and Section 4901-2 Confidential and Personal information of the Ohio Administrative Code ("OAC") states, in part, the following:

**Section 4901-1-25 Subpoenas of the Ohio Administrative Code ("OAC") in its entirety with emphases the following:**

(G) If any person fails to obey a subpoena issued by the commission, a commissioner, the legal director, the deputy legal director, or an attorney examiner, the commission may seek appropriate judicial relief against such person under section 4903.02 or 4903.04 of the Revised Code.

**Section 4901-2 Confidential and Personal information of the Ohio Administrative Code ("OAC") in its entirety:**

For the purposes of administrative rules promulgated in accordance with section 1347.15 of the Revised Code, the following definitions apply:

(A) "Access" as a noun means an instance of copying, viewing, or otherwise perceiving whereas "access" as a verb means to copy, view, or otherwise perceive.

(B) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of the agency rule addressing requirements in section 1347.15 of the Revised Code.

(C) "Computer system" means a "system," as defined by section 1347.01 of the Revised Code, that stores, maintains, or retrieves personal information using electronic data processing equipment.

(D) "Confidential personal information" (CPI) has the meaning as defined by division (A)(1) of section 1347.15 of the Revised Code and identified by rules promulgated by the agency in accordance with division (B)(3) of section 1347.15 of the Revised Code that reference the federal or state statutes or administrative rules that make personal information maintained by the agency confidential.

(E) "Employee of the state agency" means each employee of a state agency regardless of whether he/she holds an elected or appointed office or position within the state agency. "Employee of the state agency" is limited to the specific employing state agency.

(F) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.

(G) "Individual" means a natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.

(H) "Information owner" means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.

(I) "Person" means a natural person.

(J) "Personal Information" has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.

(K) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section 1347.01 of the Revised Code. "System" includes manual and computer systems.

(L) "Research" means a methodical investigation into a subject.

(M) "Routine" means commonplace, regular, habitual, or ordinary.

(N) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to employees and maintained by the agency for internal administrative and human resource purposes.

(O) "System" has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.

(P) "Upgrade" means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.

Effective: 09/18/2010

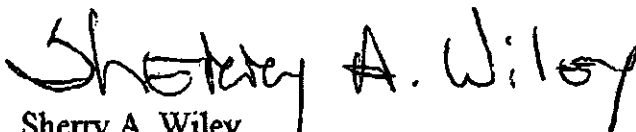
**With Emphases on Section 4901-2-01-(9) (C) (1) (b); of the Ohio Administrative Code ("OAC"):**

(b) The access is to confidential personal information about an individual, and the access occurs as a result of a request by that individual for confidential personal information about that individual.

I request this information regarding "Cindy Givens", the named individual by Respondent's Attorney, Robert A. McMahon, regarding the woman he identified as the representative from Duke Energy that attending the meeting, February 14, 2011.

This is too ensure that "Cindy Givens" was, in fact, her name and she was the person that attended the meeting and is a high ranking, Duke Energy Employee. A picture is requested for identification purposes only. The Respondent's employee is in no danger, what so ever, from the complainant. *This is to verify that Respondent and their attorney did not "make up this name" in an effort to obstruct and overt complainant's discovery process.* Thank you.

Respectively submitted,



Sherry A. Wiley  
5370 Aster Park Drive  
#909  
Hamilton, Ohio 45011

CERTIFICATION OF SERVICE

A copy of this letter will be faxed to Robert A. McMahon at 513-533-3554 today, March 19, 2011; and I will put in the U.S.P.S mail today, a copy to the PUCO. Thank you

(K)

APPENDIX

Before

The Public Utilities Commission of Ohio

SUBPOENA

TO: Duke Energy Corporation  
DIANNE B. KUHNEL  
139 EAST Fourth Street  
P.O. Box 960  
Cincinnati, OH 45201

Upon application of Shermy A. Wiley you are hereby required to  
~~appear before~~ the Public Utilities Commission of Ohio as a witness for  
~~produce documents in its entirety to~~

Duke Energy in the following proceeding:

Case No. 10-2463-EL-C51

Case Title Wrongful Disconnection and Amended  
Original Complaint Request

produce documents in its entirety to: Shermy A. Wiley  
 You are to appear at the offices of the Commission, 180 East Broad Street, Columbus, Ohio, on the 5300 Arter  
by April 9, 2011 - sealed appropriately. Park  
day of 20 at o'clock m. Drive,

You shall bring with you the following: Everything as stated in the 4909  
written accompanying motion for subpoena in its Hamilton, OH  
entirety. 45011

Dated at Columbus, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attorney Examiner

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

## APPENDIX

Before

The Public Utilities Commission of Ohio

## SUBPOENA

TO: Ohio Dept. of Development, HEAP  
Lee Feich

Room 1

Columbus, OH 43215

Upon application of Sherry A. Wiley you are hereby required to~~appear before~~ the Public Utilities Commission of Ohio as a witness for  
produce documents in its entirety toOhio Dept. of Development in the following proceeding:Case No. 10-2463-OL-C.R.Case Title Wrongful Disconnection and Amended  
Original Complaint Request.You are to produce documentation, in its entirety to: Sherry A. Wiley  
at the offices of the Commission, 180 East Broad Street, Columbus, Ohio, on the  
by April 9, 2011 - sealed appropriately. 5350 Antler Park Dr  
day of 20 at 0 clock, 00 m. 4509You shall bring with you the following: Everything as stated on Hamilton, OH 45011the written, accompanying notice for  
Subpoena in its entirety

Dated at Columbus, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attorney Examiner

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.