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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.

Case No. 08-935-EL-SSO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Rider FUEL and Related Accounting Authority.

Case Nos. 09-221-EL-ATA  
09-22-EL-AEM  
09-23-EL-AAM

COMMENTS OF OHIO EDISON COMPANY,  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND  
THE TOLEDO EDISON COMPANY

James W. Burk (0043808) (Counsel of Record)  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
Phone: (330) 384-5861  
Facsimile: (330) 384-3875  
E-mail: burkj@firstenergycorp.com

David A. Kutik (0006418)  
JONES DAY  
North Point, 901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212  
E-mail: dakutik@jonesday.com

ATTORNEYS FOR OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING COMPANY,  
AND THE TOLEDO EDISON COMPANY

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## **I. INTRODUCTION**

On May 17, 2011, Columbus Southern Power Company and Ohio Power Company ("AEP") filed a letter in the docket of the above-captioned cases asking the Commission to release a confidential report filed by the Commission's auction monitor, Boston Pacific Company, Inc. ("Report") addressing an SSO auction conducted by the FirstEnergy Ohio operating Companies ("Companies") on May 13, 2009. The Report was prepared by the Commission's auction monitor at the request of the Commission and was ordered to be filed and maintained under seal. On May 23, 2011, the Attorney Examiner issued an Entry requesting comments from interested parties regarding whether the Commission should release the Report ("May 2011 Entry").

As set forth below, the Report should not be released. First, AEP's request is procedurally improper. Although AEP contends that the Report should be released pursuant to the 18-month sunset provision contained in Rule 4901-1-24(F), AEP ignores that under that Rule, the 18-month provision does not apply if "otherwise ordered" by the Commission. Under the terms of Commission's Entries, the Report is to be kept confidential for an indefinite period of time. Indeed, AEP's request is, in effect, an untimely application for rehearing, and it should be rejected for that additional reason.

Further, even if the Commission considers the merits of AEP's request, it should order that Report remain confidential. The Release of the Report will violate the Commission's prior Entries regarding the proper treatment of the information contained in the Report. Further, there is no reason to revisit the rationale of those Entries. Release of the Report will jeopardize the competitiveness and integrity of future SSO auctions because it will discourage participation by bidders. Pursuant to the rules governing the SSO auction conducted on May 13, 2009 ("May 2009 Auction"), bidders were informed that sensitive information including round-by-round

price data and bidder application materials were going to be maintained as confidential for an indefinite period. And for good reason; public release of that information would hand competitors and counterparties an unfair advantage in future auctions and transactions. Release of that information now would violate the May 2009 Auction rules and upset the bidders' legitimate expectation of confidentiality, leaving them uncertain as to whether future promises of confidentiality will be honored. The result is easy to predict: less participation by bidders in future SSO auctions and higher auction clearing prices to account for the uncertainty regarding the true effect of the governing rules leading to higher prices for customers. Moreover, release of the Report is contrary to Ohio trade secret law. The Companies respectfully request that the Commission uphold its prior rulings and the May 2009 Auction rules and decline to release the Report.

## **II. BACKGROUND**

On February 19, 2009, the Companies and other parties submitted a Stipulation and Recommendation in the above-captioned cases proposing an Electric Security Plan ("ESP"). Following a hearing, the Commission issued an Opinion and Order on March 25, 2009 approving the Stipulation and Recommendation. The Stipulation and Recommendation expressly incorporated the terms and conditions of the Competitive Bidding Process ("CBP") Rules and Communication Protocols that had been proposed by the Companies in Case No. 08-936-EL-SSO. (*See* Stip., ¶ 5 ("The competitive bid process shall be conducted consistent with the [] communication protocols . . . and competitive bid process bidding rules as proposed in the MRO . . . .").) Thus, in approving the Stipulation, the Commission adopted the auction process proposed by the parties as governed by the CBP Rules and the Protocols. The Rules and Protocols provided that certain information would be kept confidential indefinitely.

On May 13, 2009, the Companies conducted an SSO auction pursuant to the terms and rules of the Commission-approved CBP for nonshopping generation service for the period June 1, 2009 through May 31, 2011. The next day, Boston Pacific filed its Report. Staff filed a motion for protective order asking the Commission to treat the Report as confidential. The Staff's motion was consistent with and required by the CBP Rules and Protocols to keep certain information confidential indefinitely. The Commission promptly issued a Finding and Order approving of the auction process and granting Staff's motion. In this Order, the Commission noted that the Report contains "sensitive information," including the names of unsuccessful bidders, price information including starting price methodologies and round-by-round price data, bidder applications and indicative pre-auction offers. *See* Finding and Order dated May 14, 2009 ("May 2009 Finding and Order"), ¶ 10. Accordingly, the Commission ordered that this information "should be deemed confidential and remain under seal." *Id.* Since that time, and consistent with the Commission's May 2009 Finding and Order, the Report has been treated as confidential and has not been publicly released.

### **III. COMMENTS**

#### **A. AEP's Request For Release Of The Report Is Procedurally Flawed.**

The Commission should deny AEP's request to release the Report because that request is procedurally flawed for two reasons. First, as the Attorney Examiner correctly observed, AEP cannot rely on Rule 4901-1-24(F) to argue that the Report should be released. *See* May 2011 Entry, ¶ 7. In its May 17 Letter, AEP argued that under that rule, confidential treatment for the Report expired on November 14, 2010. *See* May 17 Letter, p. 1. But in ordering confidential treatment of the Report, the Commission did not adopt the time limitation contained in Rule 4901-1-24(F) or otherwise limit the effect of its order. As noted, in adopting the Stipulation and

Recommendation in this case, the Commission approved the CBP Rules and Protocols proposed by the Companies in Case No. 08-936-EL-SSO.

The CBP Rules and Protocols provided detailed instructions regarding what information would be restricted from public disclosure and how long that information would be held in confidence.<sup>1</sup> For example, the CBP Rules specify that the Companies, Commission Staff and advisors to the Staff “will have undertaken to maintain the confidentiality of the list of qualified bidders.” (CBP Rules, p. 12.) Further, pursuant to those rules, “[a]ll round results are confidential.” (*Id.* at 21.)

The Protocols describe more specifically the information that is to be kept confidential. Among the stated “objectives” of the Protocols are to “ensure that any information generated by the CBP that could harm the competitive position of bidders, if released, is kept confidential” and to “ensure that information that if released could harm the competitiveness of future CBPs is kept confidential from all entities including bidders” (Protocols, p. 4.) For example, the Protocols specify that because it is “necessary to ensure that bidders do not obtain information that would provide them insights into other bidders’ bidding strategies and valuations and that may harm the competitiveness of future Solicitations,” “[t]he actual round-by-round bids for bidders would be kept confidential *for as long as the FirstEnergy Ohio Utilities are continuing to procure power through a CBP or a similar process.*” (*Id.* at 3 (emphasis added).) Specifically, round results and by-round bid information is available only to the CBP Manager and Commission personnel. (*Id.* at 14-15.) According to the Protocols, and in order “to protect information supplied by bidders on a confidential basis, encourage full disclosure, and encourage participation,” bidders’ applications are also kept confidential and are available only to the

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<sup>1</sup> Excerpts of the Rules and Protocols have been attached as Exhibit A and B, respectively.

Companies, CBP Manager and Commission Staff. (*Id.* at 3.) Similarly, only those personnel and the bidders themselves have access to the identity of qualified and registered bidders and to indicative, pre-auction bids. (*Id.* at 9-10, 17.) Notably, the CBP Rules and Protocols do not impose a time limitation on the confidentiality of any of this information. The Rules and Protocols envision that the certain information would be treated as confidential indefinitely.

The Staff's motion for a protective order relating to the Report was filed as part of these Rules and Protocols. Because the Report contained information that was designated as confidential under the CBP Rules and Protocols (and, in fact, was provided to Boston Pacific under those Rules and Protocols), the Staff was required to seek to have the Report itself treated as a confidential document. Because the Commission, through its adoption of the CBP Rules and Protocols has set forth that the treatment of the information contained in the Report is not subject to the 18-month limitation of Rule 4901-1-24(F), that rule provides no justification for the release of the Report.

Because of the Commission's adoption of the CBP Rules and Protocols, which prohibit the disclosure of information in the Report, AEP's May 17 Letter amounts to an untimely application for rehearing and should be rejected for that reason alone. To the extent AEP disagreed with this treatment of the Report, it had 30 days to apply for rehearing from either the date of the order that adopted the CBP Rules and Protocols or the date of the order granting the Staff's motion for a protective order that was filed in compliance with those Rules and Protocols. *See* R.C. 4903.10; Rule 4901-1-35. It is undisputed that AEP did not do so, and it offers no explanation for not pursuing rehearing under the applicable statute and rule. Because AEP's request for reconsideration of the Commission's May 2009 Finding and Order comes far too late—by nearly two years—it should be rejected.

**B. The Commission Should Maintain Indefinite Confidential Treatment Of The Report.**

Notwithstanding the procedural flaws in AEP's request, the Commission should continue to treat the Report as confidential and should affirm that it will not be released. As noted, the Commission has already ruled on the treatment of the Report through the adoption of the CBP Rules and Protocols. To the extent that releasing the Report would release to the public information the the CBP Rules and Protocols have designated as confidential on an indefinite basis, the release of the Report would violate the Commission's prior order.

In addition, release of the Report now is likely to jeopardize the competitiveness and integrity of future SSO auctions, both by severely discouraging bidder participation and by encouraging anti-competitive behavior. Moreover, release of the Report is contrary to Ohio trade secret law.

**1. Release of the Report will jeopardize the competitiveness and integrity of future SSO auctions.**

**(a) Release of the Report will discourage participation by bidders.**

Release of the Report will jeopardize the competitiveness and integrity of future SSO auctions by discouraging participation by bidders in future auctions. It should go without saying that customers benefit when more potential suppliers participate in a CBP and when competition is vigorous.

Bidders determine their bidding strategies and set their price points based on auction rules governing the process before, during and after the auction. In order for an auction to be successful and result in a fair, competitive price, it is essential that bidders know what the rules are and that those rules will be followed. If the rules, or their enforcement, are uncertain or unclear, bidders may be discouraged from participating in the CBP.

Release of the Report will violate bidders' well-founded expectations and thus discourage their participation in future auctions. The rules governing the May 2009 Auction were set forth in documents incorporated by reference into the Stipulation and Recommendation approved by the Commission: specifically, the CBP Rules and Protocols. As noted, the Rules and Protocols set forth how specific information would be handled, including who could have access to specific types of information.

Because release of the Report would be contrary to the CBP Rules and Protocols, such release would offend the well-founded expectations of bidders. In fact, *all* of the information described in the May 2011 Entry is required to be kept confidential by those rules. *See* May 2011 Entry, ¶ 8. Clearly, the release of the Report would violate the Rules and Protocols. As such, release of the Report would harm bidders' expectations for future auctions. Potential suppliers and participants in future CBPs could rightly believe that if the Commission here orders the release of information previously designated as confidential, the Commission would be willing in the future to similarly release other information even though that information had been designated at the time of submission as confidential. The uncertainty that potential bidders may have regarding whether the Commission would effectively keep its word about what will remain confidential leads to a predictable result: there will be less participation by bidders and higher clearing prices, meaning higher prices for customers. In order to uphold bidders' legitimate expectations, as reflected in the CBP Rules and Protocols, the Report should not be released, and information designated as confidential should remain confidential.

**(b) Release of the Report could damage the competitive positions of bidders.**

The confidential treatment of sensitive information in the Report, as established by the CBP Rules and Protocols, would harm the competitive position of bidders by disclosing



competitively valuable information about the bidders. For example, release of round-by-round bidding information would allow competing bidders and counterparties to reverse-engineer a bidder's supply curve, i.e., how much capacity the bidder is willing to supply at a given price. Thus, where Bidder A learns of Bidder B's supply curve, Bidder A in a subsequent auction may adjust its bidding strategy based on Bidder B's supply curves rather than Bidder A's own ability to supply power at the lowest possible price. Moreover, bidders whose confidential bid information has been released would be at a profound disadvantage in contracting with counterparties, who would be able to determine the bidder's "bottom line" negotiating position. In these ways, release of the Report would result in an unlevel playing field for bidders, both during the auction itself and in subsequent negotiations. For this additional reason, bidders may be less likely to participate in future auctions if the Report is released. The CBP Rules and Protocols should be upheld and the Report should be kept confidential.

**2. Release of the confidential information contained in the Report would be contrary to Ohio trade secret law.**

The Commission also should refuse to release the Report because the confidential information it contains is a protected trade secret. Under the Ohio Public Records Act, public "records" generally must be disclosed upon request. *See* R.C. 149.011. However, as the Ohio Supreme Court repeatedly has found, "trade secrets" are not subject to disclosure under the Public Records Act. *See, e.g., State ex rel. Perrea v. Cincinnati Pub. Schools* (2009), 123 Ohio St. 3d 410, 13; *State ex rel. Carr v. City of Akron* (2006), 112 Ohio St. 3d 351, 358; *see also* R.C. 149.43(A)(1)(v); R.C. 1333.61(D). Under R.C. 1333.61(D), a trade secret is "information" that both (i) "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 (ii) “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” *See Perrea* at 413.

The sensitive information contained in the Report constitute trade secrets under Ohio law. As noted above, information such as round-by-round price data and pre-auction offers reflect bidders’ unique strategies and supply curves, which are developed using substantial proprietary resources, research and market assessments. It is undisputed that these strategies and supply curves are maintained as confidential by the bidders themselves—in fact, as the CBP Rules and Protocols suggest, it is necessary for that information to be maintained as confidential in order to encourage bidders to participate in SSO auctions. Moreover, as described above, release of this confidential information will strengthen the competitive positions of competitors and counterparties to the detriment of bidders. The confidential information sought by AEP is a trade secret under Ohio law and should not be released.

#### **IV. CONCLUSION**

For the foregoing reasons, the Companies respectfully request that the Commission deny AEP’s request and hold that the Report is to remain under seal and be treated as confidential for an indefinite period of time.

DATED: June 7, 2011

Respectfully submitted,

Handwritten signature of David A. Kutik, with the words "cous by authority" written in a smaller script to the right of the signature.

James W. Burk

Counsel of Record

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, OH 44308

Phone: (330) 384-5861

Facsimile: (330) 384-3875

E-mail: burkj@firstenergycorp.com

David A. Kutik

JONES DAY

North Point, 901 Lakeside Avenue

Cleveland, Ohio 44114-1190

Telephone: (216) 586-3939

Facsimile: (216) 579-0212


E-mail: dakutik@jonesday.com

ATTORNEYS FOR OHIO EDISON  
COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY, AND THE  
TOLEDO EDISON COMPANY

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered to the following persons by

e-mail this 7th day of June, 2011:

  
An Attorney For Ohio Edison Company, The  
Cleveland Electric Illuminating Company, and  
The Toledo Edison Company

James F. Lang Laura C. McBride Trevor Alexander Calfee, Halter & Griswold LLP 1400 Key Bank Center 800 Superior Avenue Cleveland, OH 44114 jlang@calfee.com lmcbride@calfee.com talexander@calfee.com	Jeffrey L. Small Office of the Ohio Consumers' Counsel 10 West Broad Street, Suite 1800 Columbus, Ohio 43215 small@occ.state.oh.us
Samuel Randazzo Joseph E. Olier McNees Wallace & Nurick LLC Fifth Third Center 21 East State Street, 17th Floor Columbus, OH 43215 sam@mwncmh.com joliker@mwncmh.com	M. Howard Petricoff Stephen M. Howard Vorys Sater 52 East Gay Street P.O. Box 1008 Columbus, Ohio 43216 smhoward@vssp.com mhpetricoff@vssp.com
Robert J. Triozzi City of Cleveland Julianne Kurdila Cleveland City Hall 601 Lakeside Avenue, Room 106 Cleveland, Ohio 44114 rriozzi@city.cleveland.oh.us jkurdila@city.cleveland.oh.us	David C. Rinebolt Colleen L. Mooney Ohio Partners for Affordable Energy 231 West Lima Street P.O. Box 1793 Findlay, Ohio 45839 drinebolt@aol.com cmooney2@aol.com

<p>Landgon D. Bell  Barth Royer  Bell &amp; Royer  33 South Grant Avenue  Columbus, Ohio 43215  lbell@aol.com  barthroyer@aol.com</p>	<p>Cynthia Fonner Brady  Constellation Energy Group  550 W. Washington St.  Chicago, Illinois 60661  cynthia.brady@constellation.com</p>
<p>Glenn S. Krassen  Bricker &amp; Eckler  1375 East Ninth Street  Cleveland, Ohio 44114  gkrassen@bricker.com</p>	<p>David I. Fein  Vice President  Constellation Energy Group, Inc.  550 W. Washington St.  Chicago, Illinois  david.fein@constellation.com</p>
<p>Sally Bloomfield  Terrence O'Donnell  Thomas O'Brien  Matthew W. Warnock  Bricker &amp; Eckler  100 South Third Street  Columbus, Ohio 43215  sbloomfield@bricker.com  todonnell@bricker.com  tobrien@bricker.com  mwarnock@bricker.com</p>	<p>Richard L. Sites  Ohio Hospital Association  155 East Broad Street  Columbus, Ohio 43215  ricks@ohanet.org</p>
<p>Michael K. Lavanga  Garrett A. Stone  Damon E Xenopoulos  Bricker, Burchette, Ritts &amp; Stone  1025 Thomas Jefferson Street  Washington, DC 20007  mkl@bbrslaw.com  gas@bbrslaw.com  dex@bbrslaw.com</p>	<p>Lance M. Keiffer  Lucas County Courthouse  700 Adams Street  Toledo, Ohio 43604  lkeiffer@co.lucas.oh.us</p>
<p>John W. Bentine  Mark S. Yurick  Chester, Willcox &amp; Saxbe  65 East State Street  Columbus, Ohio 43215  jbentine@cwslaw.com  myurick@cwslaw.com</p>	<p>Leslie Kovacik  City of Toledo  leslie.kovacik@toledo.oh.gov</p>

Paul S. Goldberg City of Oregon pgoldberg@ci.oregon.oh.us	Sheilah M. McAdams Marsh & McAdams sheilahmca.aol.com
Paul Skaff Perrysburg, Ohio paulskaff@justice.com	Douglas Mancino McDermott Will & Emery LLP 2049 Century Park East Suite 3800 Los Angeles, CA 90067 dmancino@mwe.com
Brian Ballenger Ballenger & Moore ballengerlawbjb@sbcglobal.net	Gregory K. Lawrence McDermott Will & Emery LLP 28 State Street Boston, MA 02109 glawrence@mwe.com
James E. Moan Sylvania, Ohio jemoan@hotmail.com Thomas R. Hays Sylvania, Ohio hayslaw@buckeye-express.com	Joseph P. Meissner Matthew Vincel Legal Aid Society of Cleveland 1223 W. 6th Street Cleveland, Ohio 44113 jpmeissn@lasclv.org mvincel@lawclv.org
Steve Millard Council on Small Enterprises smillard@cose.org	Henry Eckhart 50 West Broad Street Columbus, Ohio 43215 henryeckhart@aol.com
Nolan Moser Will Reisinger Trent Dougherty Ohio Environmental Council 1207 Grandview Avenue, Suite 201 Columbus, Ohio 43215 nmoser@theoec.org will@theoec.org trent@theoec.org	Todd M. Williams P.O. Box 6885 Toledo, Ohio 43612 williams.toddm@gmail.com

Christopher L. Miller Gregory H. Dunn Schottenstein, Zox & Dunn Co. 250 West Broad Street Columbus, Ohio 43215 cmiller@szd.com gdunn@szd.com	Thomas McNamee 180 East Broad Street, 6th Floor Columbus, Ohio 42315 thomas.mcnamee@puc.state.oh.us
Theodore Robinson 2121 Murray Avenue Pittsburgh, PA 15217 robinson@citizenpower.com	Dave Stinson Bailey Cavalieri LLC 10 West Broad Street #2100 Columbus, Ohio 42315 dane.stinson@baileycavalieri.com
Sean Vollman David Munteau City of Akron vollmse@ci.akron.oh.us menteda@ci.akron.oh.us	Craig G. Goodman National Energy Marketers Assoc. cgoodman@energymarketers.com
F. Mitchell Dutton FPL Energy Power Marketing, Inc. mitch.dutton@fpl.com	Larry Gearhardt Ohio Farm Bureau Federation lgearhardt@afbf.org
Nicholas C. York Eric D. Weldele Tucker Ellis & West nicholas.york@tuckerellis.com eric.weldele@tuckerellis.com	Matthew J. Satterwhite American Electric Power 1 Riverside Plaza Columbus, Ohio 43215 mjsatterwhite@aep.com
David F. Boehm Boehm, Kurtz & Lowry 36 East Seventh Street, Suite 1510 Cincinnati, Ohio 45202 dboehm@bkllawfirm.com	

# **Exhibit A**



## **Exhibit 2**

# **RULES FOR COMPETITIVE BIDDING PROCESS**

**August 1, 2008**

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bidders. The CBP Manager will send a list of qualified bidders to other parties as necessary to oversee the proper conduct of the CBP. These other parties include representatives from the FirstEnergy Ohio Utilities, PUCO Staff, and any advisor that PUCO Staff may have retained for this purpose. These parties will have undertaken to maintain the confidentiality of the list of qualified bidders. Prospective bidders, in their Part 1 Applications, will also have undertaken to maintain the confidentiality of the list of qualified bidders.

With their Part 1 Applications, all prospective bidders will be required to pay a *Bid Participation Fee* that will contribute to covering the administration costs of the CBP. The Bid Participation Fee will be paid with each Part 1 Application, even if a supplier takes part in an abbreviated qualification process after having been previously qualified as a bidder in a given CBP. If a prospective bidder is successful in its Part 1 and Part 2 Applications, and goes on to win tranches in a Solicitation, this Bid Participation Fee will be deducted from the *Tranche Fee* that is paid by all winners. The amount of the Bid Participation Fee will be announced at the same time as the tranche targets, no later than eight (8) days prior to the Part 1 Application for the first Solicitation of the CBP. The amount of the Tranche Fee will be announced no later than three (3) days prior to the first Solicitation in the CBP.

Qualified bidders must successfully submit to a *Part 2 Application* process to bid in a Solicitation. Only qualified bidders may submit a Part 2 Application.

Part 2 Applications must be submitted no later than noon on the *Part 2 Application Date*. No later than three (3) days before the Part 2 Application Date, the CBP Manager may provide an update to the MW-measure of each tranche if available. Qualified bidders will be notified whether they succeeded in the Part 2 Application process no later than three (3) days after the Part 2 Application Date. In the Part 2 Application, each qualified bidder will make a number of certifications regarding associations, to ensure that they are bidding independently of other qualified bidders and to ensure the confidentiality of information regarding the CBP. A qualified bidder is *associated with* another qualified bidder if the two bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other. The competitiveness of each Solicitation and the ability of the CBP to deliver competitive prices may be harmed by the coordinated or collusive behavior that associations facilitate. As the CBP Manager relies on a number of factors, including the number of

### III. B. Overview of the Round Phases and Bidding Day

Bidding proceeds in rounds. Each *round* is divided into three (3) phases: a bidding phase, a calculating phase, and a reporting phase.

In the *bidding phase* of the round, bidders place their bids stating the number of tranches they want to supply for each product. To be valid, a bid must be submitted and verified by the bidder during the bidding phase, and processed. The time-stamp of a bid is the time at which the bid is processed.

In the *calculating phase* of the round, the CBP Manager tabulates the results of that round's bidding phase and calculates the prices for the next round. During this phase, bidders cannot submit bids and bidders do not yet have access to the results from that round's bidding phase.

In the *reporting phase* of the round, the CBP Manager informs the bidders of the results of that round's bidding phase. All round results are confidential. All bidders are informed of the prices for the next round's bidding phase and are provided with a range of total excess supply (i.e., excess supply for all products combined). Each bidder also privately receives the results of its own bid from that round, indicating to each bidder its obligation at this point in the bidding. A bidder receives no information regarding any other bidder's bid. A bidder with no remaining obligation loses its access to round results.

### III. C. Round 1

#### III. C. 1. Definition of a Bid and Bidding Phase

The CBP Manager informs registered bidders of the round 1 prices for each product no later than three (3) days prior to the start of bidding. These starting prices are the prices in force, or the going prices, in round 1. In general, the *going prices* in a round are the prices at which the CBP Manager solicits bids in that round.

A bidder selects how many tranches it wants to serve for each product at the round 1 prices. Specifically, for Solicitations in the 2009 CBP, a bidder will submit a *bid* that indicates:

# **Exhibit B**

## COMMUNICATION PROTOCOLS

### 2009 CBP AND BEYOND

#### I. Introduction

This document describes the information that is anticipated to be generated by the Competitive Bidding Process ("CBP") being proposed by The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Edison Company ("the FirstEnergy Ohio Utilities") to acquire SSO supply for periods beginning January 1, 2009.

Each year, the FirstEnergy Ohio Utilities will conduct a CBP. A CBP consists of one or more Solicitations. The first CBP, consisting of one Solicitation to be conducted in 2008, is referred to as the "2009 CBP" because it procures supply for periods beginning January 1, 2009. Future CBPs will consist of two Solicitations. This document describes the proposed undertakings of the CBP Manager, the FirstEnergy Ohio Utilities, the Public Utilities Commission of Ohio ("PUCO" or "Commission") Staff, the PUCO Advisor<sup>1</sup>, the PUCO, and the parties ("bidders") participating in the CBP. By "CBP Manager", we mean any member of the CBP Manager Team. By "PUCO Advisor", we mean any member of the team of PUCO advisors, should any be retained by the PUCO and the PUCO Staff. By bidders, we mean all entities that are prospective, potential, or actual bidders in one or several of the Solicitations of the CBP.

The document addresses in summary fashion the CBP, Solicitation and general bidding report information that will be kept confidential. Generally the acronym CBP is used to refer to the process of procuring SSO supply through a series of Solicitations in a twelve-month period. A Solicitation is one procurement event within the CBP. Bidding in a Solicitation will lead to the generation of round information and reports which must be given special treatment with respect to confidentiality. When the term CBP is used it encompasses all Solicitations in the CBP. When the term Solicitation is used it encompasses all activities surrounding the application, qualification, registration of bidders, bidding, as well as PUCO review and selection

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<sup>1</sup> This document makes provisions assuming that the PUCO Staff elects to utilize an Advisor.

of least cost bidders as SSO Suppliers. The CBP Rules address exactly what information is kept confidential by bidders and for what time period.

The PUCO Opinion and Order of April 6, 2005 in Case 04-1371-EL-ATA was used as a guide as to what information should be kept confidential. In that Order, the Commission stated the principle that all records of the CBP should be made public unless the material is of a nature that would reveal proprietary information of a participant or its release would be detrimental to the administration of future CBPs. To fulfill that objective, the clearing prices and the names of the winners of all Solicitations within a CBP and the product(s) each winner has won will be kept confidential until released by the PUCO. The PUCO can consider keeping all or part of this information confidential with the CBP until the last Solicitation in a given CBP has been run. This would provide protection for bidders' bargaining positions in the market when making supply arrangements. Without some protection, any counterparty could know the obligations faced by the winning supplier, hampering its negotiating position and raising prices for customers. Further, the identity of all bidders that submitted Part 1 and/or Part 2 applications in the CBP and the indicative offers would be kept confidential for at least eighteen months from the date of the close of the last Solicitation in a CBP, in order not to reveal confidential information of bidders. The PUCO may elect to keep these data confidential for a longer period, if it decides that this would benefit future CBPs. The actual round-by-round bids by bidders would be kept confidential for as long as the FirstEnergy Ohio Utilities are continuing to procure power through a CBP or a similar process. This confidentiality is necessary to ensure that bidders do not obtain information that would provide them with insights into other bidders' bidding strategies and valuations and that may harm the competitiveness of future Solicitations. The actual applications will be kept confidential to protect information supplied by bidders on a confidential basis, encourage full disclosure, and encourage participation.

These procedures are constructed on the premise that the information deemed confidential by the PUCO should be protected at all stages of the process to protect the integrity of the CBP. The CBP Rules will specifically address certain aspects of maintaining confidentiality of the information generated by the CBP by bidders as detailed in Section I.E. These protocols elaborate upon the means by which confidentiality is to be maintained by all parties through adherence to the procedures in this document. There may be information not

specifically contemplated at this time by this document that should nevertheless be maintained as confidential. Should the CBP Manager recognize that such additional information should be kept confidential, the CBP Manager will establish additional procedures in keeping with the principles provided in this document. The CBP Manager will inform all personnel from the FirstEnergy Ohio Utilities, PUCO Staff and the PUCO Advisor of the modified procedures.

## **II. Objectives**

This document and its procedures follow four main objectives:

- The first objective is to establish a fair and equitable process for all bidders by ensuring all of them have equal access to information necessary to evaluate the bidding opportunity and to prepare their bids in a timely manner.
- The second objective is to ensure that any information generated by the CBP that could harm the competitive position of bidders, if released, is kept confidential.
- The third objective is to guarantee that confidential information is only provided to those parties to whom it is deemed relevant for the conduct and management of the CBP.
- The fourth objective is to ensure that information that if released could harm the competitiveness of future CBPs is kept confidential from all entities including bidders.

These objectives will be accomplished by following two guiding principles. The first is that there shall be one communication point for bidders: all communication to prospective and actual bidders shall be through the CBP Manager. The second guiding principle is that the CBP Manager shall distribute the substance of information that goes first to one or more prospective or actual bidders to all prospective or actual bidders. These two guiding principles ensure all bidders have equal access to information. Only the CBP Manager answers inquiries from bidders and once an inquiry is answered, the information is disseminated to all bidders by or under the supervision of the CBP Manager.

The CBP Manager also ensures that information generated by the CBP that could harm the competitive position of bidders, if released, is kept confidential by those who have access to

The PUCO Advisor will not grant interviews to the press regarding the CBP except as it relates to a description of its role as Advisor to the PUCO.

**III. A. 2. List B Information**

Information available to personnel on List B is information regarding the two-part application process held for each Solicitation (if a supplier becomes a qualified bidder for a Solicitation, the supplier will be able to take part in an abbreviated qualification process for future Solicitations in the same CBP). Submitted Part 1 and 2 Applications contain confidential information that may only be discussed with personnel from List B. The Part 1 and Part 2 Applications will be received and processed by the CBP Manager. A bidder submits financial information along with its Part 1 Application. Only Processed Application Information (defined below) will be provided to FirstEnergy Ohio Utilities personnel on List B. All other information obtained from the Part 1 and Part 2 Applications will be available only to the CBP Manager, PUCO Staff and PUCO Advisor.

Confidential information available to List B personnel (subject to the exception noted below regarding FirstEnergy Ohio Utilities personnel on List B) consists of:

- List of qualified bidders
- List of registered bidders
- Completed Part 1 and Part 2 Application Forms
- Attachments to the Application Forms

The above items are available to List B personnel of the FirstEnergy Ohio Utilities except that the following information is excluded:

- Whether an applicant is part of a bidding agreement or consortium;
- Any indicative offer information specific to a particular bidder;



- Any information regarding a bidder's inability to make a certification or declaration of an association.

The three items above are not shared with personnel of the FirstEnergy Ohio Utilities even if these individuals are on List B. It is the responsibility of the CBP Manager, PUCO Staff, and the PUCO Advisor to ensure that they do not communicate this information to the FirstEnergy Ohio Utilities.

***List B Members***

Personnel from the FirstEnergy Ohio Utilities involved in conducting the creditworthiness assessment of bidders and involved in deciding whether credit instruments are acceptable to the FirstEnergy Ohio Utilities will typically be on List B. List B includes the named representatives of the FirstEnergy Ohio Utilities on an as-needed basis, the CBP Manager including its legal advisor, PUCO Staff and the PUCO Advisor. The CBP Manager is responsible for ensuring that any written material provided to the FirstEnergy Ohio Utilities personnel on List B contains only information to which this personnel has access. List B personnel will agree to abide by their confidentiality obligations by signing the confidentiality agreement attached hereto as Appendix B.

***List B Confidentiality Obligations and Communication***

List B members should keep confidential application information and can only share it with other individuals on List B. Application information of this type includes the completed Application Forms themselves, any attachments, any summaries of information contained in the applications, and any document that refers to information contained in the applications.

The CBP Manager will discuss associations and certifications with members of its team only on a need-to-know basis.

The CBP Manager is responsible for making sure that all List B personnel are advised of their obligations.

**Communication between the CBP Manager and the FirstEnergy Ohio Utilities**

or transmittal of this information will be encrypted. All hard copy records stored will be maintained in a locked and secure location.

After the last Solicitation in a given CBP, the clearing prices for Solicitations in a CBP, the names of the winners of all Solicitations within a CBP, and the quantities each winner has won will be released publicly. The confidentiality of the remainder of the List C information will continue after that time, including winning prices by bidder in each Solicitation, and the quantities won by a bidder in a given Solicitation.

**III. A. 4. List D Information**

Information available to List D is round by round bidding detail including bids by bidder, extension requests by bidder, and recess requests by bidder. It is referred to as round information. The round information associated with the CBP may only be discussed with personnel from List D.

Confidential Information available to List D is round information and consists of:

- The status or success of any particular bidder's participation in training;
- Information (such as user IDs, passwords and web site addresses) required for participation in the training or in bidding;
- Round results and bids by round, as well as any other bidding results derived therefrom;
- The status of bidding;
- The status of participation of any bidder;
- Information provided by bidders to the CBP Manager during bidding exclusive of such information available from publicly available documents.

***List D Members***

List D is comprised of the personnel who have access to the round information. List D personnel from the CBP Manager will abide by the undertaking of their confidentiality agreement, which is attached hereto as Appendix C. No round information will be discussed with individuals not on List D, and no round information will be discussed outside the CBP Manager's office. List D is comprised of:

- The CBP Manager and any legal advisor to the CBP Manager; and
- PUCO Representatives and the PUCO Advisor.

List D personnel will agree to abide by their confidentiality obligations by signing the confidentiality agreement attached hereto as Appendix C.

***List D Confidentiality Obligations and Communication***

Round information discussed in this section may only be discussed with personnel from List D in a location where reasonable measures have been taken to ensure that unauthorized personnel cannot unintentionally have access to this information. Any electronic storage or transmittal of this information will be encrypted. All hard-copy records stored will be maintained in a locked and secure location.

The confidentiality of List D information will continue after the CBP. Table 2 below summarizes the information that will be available to each party. Each party will maintain the confidentiality of List C information by releasing information available to List C personnel only to individuals on List C and/or discussing information available to List C personnel only with individuals on List C. Each party will maintain the confidentiality of List D information by releasing information available to List D personnel only to individuals on List D and/or discussing information available to List D personnel only with individuals on List D. The CBP Manager will inform all individuals on Lists C and D of the confidentiality requirements.

**CBP Manager**

### **III. B. Confidential Information for Bidders**

This section deals with the treatment of confidential information to which bidders will have access. Bidders also have obligations to keep from disclosing certain information. This section provides a list of what information and documents are considered confidential, and discusses bidders' confidentiality obligations. Bidders' obligations regarding confidentiality are set forth in their entirety in the CBP Rules. Bidders will be required to accept and acknowledge these obligations in the application process and to reaffirm these obligations prior to receiving a password and all other necessary information to submit bids. Appendix D provides an overview of bidder confidentiality obligations for reference. Appendix E provides the signature page that bidders will have to execute prior to receiving the password and all other necessary information to submit bids.

#### **III. B. 1. Confidential Information**

Information that bidders must keep confidential consists of confidential information regarding the CBP and confidential information regarding bidding strategy as set forth in the CBP Rules.

*Confidential information regarding the CBP includes the following information<sup>3</sup>:*

- the list of qualified bidders,
- the list of registered bidders,
- the initial eligibility,
- a bidder's bids,
- a bidder's indicative offer,
- if a bidder is a winner,

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<sup>3</sup> A more comprehensive definition is provided in the CBP Rules.