

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of Duke)	
Energy Ohio, Inc. for Authority to)	Case No. 14-841-EL-SSO
Establish a Standard Service Offer)	
Pursuant to R.C. 4928.143, in the Form of)	
an Electric Security Plan, Accounting)	
Modifications, and Tariffs for Generation)	
Service.)	

In the Matter of Application of Duke)	
Energy Ohio, Inc. for Authority to)	Case No. 14-842-EL-ATA
Amend its Certified Supplier Tariff,)	
P.U.C.O. No. 20.)	

**MOTION TO COMPEL RESPONSES TO DISCOVERY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In this case Duke Energy Ohio Company (“Duke or “Utility”) is seeking to charge customers for electric service it will provide under an electric security plan (“ESP”) for the time period of 2015 through 2018. As the statutory representative of Ohio’s residential utility consumers, the Office of the Ohio Consumers’ Counsel (“OCC”) seeks to discover side agreements that may exist between Duke’s affiliates and third parties -- information which by law, (R.C. 4928.145), Duke must make available.

Consistent with that law, OCC moves¹ the Public Utilities Commission of Ohio (“PUCO”), the legal director, the deputy legal director, or an attorney examiner for an order compelling Duke to respond to OCC Interrogatories INT-007, 008, and 009, as

¹ See Ohio Adm. Code 4901-1-12 and 4901-1-23.

well as requests for production of documents RPD-007, 008, and 009. These discovery requests are attached as OCC Attachment 1.

Duke objected to providing information on side deals between its affiliates and third parties based on a litany of baseless objections. These objections include that such information is not Duke's possession.

But the law dictates discovery of side deals between, inter alia, Duke's affiliates and third parties. Under R.C. 4928.145, Duke is required to disclose the information requested by OCC. The law does not preclude discovery of side agreements between a utility's affiliates and third parties if the utility does not retain a copy of such side agreements. Moreover, as a general matter, under Ohio Adm. Code 4901-1-19, a utility must furnish information that is "known or readily available" to it. Duke's blanket assertion that the requested information is not in its possession is unavailing.

OCC files this Motion to Compel, with the reasons supporting this motion set forth in the attached Memorandum in Support. OCC requests that the PUCO require Duke to respond to its discovery requests in an expedited manner that will allow OCC to use the discovery at the upcoming evidentiary hearing.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Ohio Adm. Code 4901-1-23(C) details the technical requirements for a Motion to Compel, all of which are met in this OCC pleading. Those requirements include the filing of an affidavit explaining how the party seeking to compel discovery has exhausted all other reasonable means of resolving the differences with the party from whom the discovery is sought.

The OCC has detailed in the attached affidavit,² the efforts which it undertook to resolve differences between it and the Utility, consistent with Rule 4901-1-23(C)(3). At this point it is clear that OCC and Duke are not able to reach a resolution. Duke is steadfast in its belief that it does not have to respond to the discovery requests because it allegedly does not have access to or possession of any such documents. But, as explained

² OCC Exhibit 1.

below, Duke must respond as a matter of law to the OCC discovery. Duke's claim that it does not possess the information does not relieve the Utility of its obligation under R.C. 4928.145 to make such information available to parties who request it.

For the reasons explained more fully below, the PUCO should grant OCC's Motion to Compel and order Duke to provide responses to the discovery on an expedited basis so that it can be used at the upcoming evidentiary hearing.

II. SCOPE OF PARTIES' RIGHT TO DISCOVERY

R.C. 4903.082 states that "[a]ll parties and intervenors shall be granted ample rights of discovery." Therefore the OCC, a party in this proceeding,³ is entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the PUCO to ensure that parties are allowed "full and reasonable discovery" under its rules. Under the PUCO's rules, "discovery may begin immediately after a proceeding is commenced."⁴

The PUCO has adopted rules that specifically define the scope of discovery. Ohio Adm. Code 4901-1-16(B) provides:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

The PUCO's rule is similar to Ohio Civ. R. 26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad

³ See Ohio Adm. Code 4901-1-16(H). OCC filed a Motion to intervene on February 3, 2014, which was granted by Attorney Examiner's Entry dated August 5, 2014.

⁴ Ohio Adm. Code 4901-1-17 (A). Accord Ohio Civ. R.33 (A) (interrogatories may be served by any party without leave on the plaintiff "after commencement of the action.").

discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.⁵

This scope of discovery is applicable to written interrogatories. Written interrogatories may elicit facts, data, or other information *known or readily available* to the party upon whom the discovery is served, under Ohio Adm. Code 4901-1-19. Each interrogatory must be answered “separately and fully, in writing and under oath, unless objected to, in which case the reasons for the objection shall be stated in lieu of an answer. The answer shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them.”

OCC’s right to discovery is assured by law, rule and Supreme Court precedent.⁶ OCC is entitled to timely and complete responses to its discovery inquiries. OCC seeks responses to its discovery requests and is unable to obtain the responses without the PUCO compelling Duke to respond.

III. ARGUMENT

A. OCC’s Motion To Compel Should Be Granted, And The PUCO Should Require Duke To Answer OCC’s Discovery Requests.

1. Duke’s objection that the information sought is not in Duke’s possession or custody, must fail because R.C. 4928.145 requires the information to be made available to requesting parties.

For the interrogatories in question (OCC Interrogatory INT-007, 008, and 009), Duke claims that the information sought is not within its possession, custody, or control.

⁵ *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O’Neill* (1996), 75 Ohio St. 3d 1479.

⁶ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213.

(Attachment 2) Thus, Duke argues that it cannot be provided. However, the law supersedes this argument.

The law, R.C. 4928.145, requires “the utility to make available to the requesting party every contract or agreement that is between the utility *or any of its affiliates****.” (Emphasis added). There is no exemption for affiliate information that may not be in the possession, custody or control of the electric distribution utility. R.C. 4928.145 -- a law -trumps any objection or administrative rule that might preclude disclosure.⁷

And, even assuming arguendo, that the law does not control (which it does), Duke’s objections must fail. Duke ignores the standard that the Ohio Administrative Code has established to guide the discovery process. Ohio Adm. Code 4901-1-19(B) indicates that, “interrogatories may elicit facts, data, or other information *known or readily available* to the party upon whom the interrogatories are served.”⁸ Duke has not claimed that the information requested by OCC is not known or that it is not readily available to it.

2. OCC’s interrogatories do not exceed the scope of 4928.145 as Duke alleges, but rather fall squarely within the scope of the statute.

Duke objects that OCC’s interrogatories are beyond the scope of R.C. 4928.145 and are therefore “harassment.” These are frivolous objections that should be overruled. The General Assembly has explicitly stated that parties involved in electric security plan proceedings are entitled to the information that OCC requested in the discovery subject to this motion to compel.

⁷ *State v. Brown*, 38 Ohio St.3d 305, 307, 528 N.E.2d 523 (1998).

⁸ Ohio Adm. Code 4901-1-19(B) (emphasis added).

The statute specifically states that during an ESP proceeding, following the submission of an appropriate discovery request the electric distribution company shall:

...make available to the requesting party every contract or agreement that is between the utility *or any of its affiliates* and a party to the proceeding, consumer, electric services company, or political subdivision... that is relevant to the proceeding...⁹

Each of OCC's interrogatories addressed one of the categories listed by the statute: agreements between Duke's affiliates and parties to the proceeding (OCC INT-007), agreements between Duke's affiliates and electric service companies (OCC INT-008), and agreements between Duke's affiliates and political subdivisions (OCC INT-009).

The General Assembly recognized the importance of disclosing side deals that may exist in the context of an ESP proceeding. Under the law, R.C. 4928.145, Duke "shall make available" the side agreements between Duke "or any of its affiliates." Thus, OCC's request is, as a matter of law, relevant and reasonably calculated to lead to the discovery of admissible evidence.

And if R.C. 4928.145 itself was not the final arbiter of what is discoverable (which it is), the discoverability of the information is otherwise confirmed by virtue of other provisions of the Revised Code. The interrogatories (and the corresponding requests to produce) are focused on information that is needed in order to evaluate whether the ESP should be accepted or modified. Specifically, in order to receive approval for an ESP, Duke must demonstrate that the ESP is more favorable than an MRO in the aggregate.¹⁰ That statutory analysis must include the ESP's "pricing and all

⁹ R.C. 4928.145. (Emphasis added).

¹⁰ R.C. 4928.143(C).

other terms and conditions....”¹¹ Side agreements between Duke’s affiliates pertaining to the “provision, sale, and/or purchase of electric services and charges”¹² constitute “all other terms and conditions” of the ESP. They must therefore, be included in the statutory test required under R.C. 4928.143(C). This statute also confirms the relevance of side agreements and the absolute need to discover such side agreements in order to properly conduct the statutory MRO v. ESP test.

Although Duke claims that OCC’s interrogatories exceed the scope of the statute, it has not explained its theory. Without anything more than a bald assertion, Duke’s objections to discovery on these grounds should be overruled.

3. OCC’ Motion to Compel should be granted because Duke has failed to establish that responding to OCC’s discovery is unduly burdensome.

Duke’s objection that OCC’s discovery requests are unduly burdensome should be overruled. This is because Duke has failed to explain how responding to these discovery requests would be unduly burdensome. Federal case law¹³ has held that, when a party objects to an interrogatory based on the request being oppressive or unduly burdensome, that party must specifically show how each interrogatory is overly broad, burdensome, or oppressive, despite the broad and liberal construction afforded discovery

¹¹ R.C. 4928.143 (C).

¹² R.C. 4928.145.

¹³ Although federal case law is not binding upon the PUCO with regard to interpreting the Ohio Civil Rules of Practice (upon which the PUCO discovery rules are based), it is instructive where, as here, Ohio’s rule is similar to the federal rules. Ohio Admin. Code 4901-1-24 allows a protective order to limit discovery to protect against “undue burden and expense.” C.R. 26(c) similarly allows a protective order to limit discovery to protect against “undue burden and expense.” Cf. *In the Matter of the Investigation into Perry Nuclear Power Station*, Case No. 85-521-EL-COI, Entry at 14-15 (Mar. 17, 1987), where the PUCO opined that a motion for protective order on discovery must be “specific and detailed as to the reasons why providing the responses to matters...will be unduly burdensome.”

rules.¹⁴ In objecting, the party must submit affidavits or offer evidence revealing the nature of the burden.¹⁵ General objections without specific support may result in waiver of the objection.¹⁶

Here, Duke has merely alleged that responding to OCC's discovery requests is unduly burdensome. All Duke has offered is conclusory statements devoid of factual support (*i.e.*, information like the number of hours, the cost, or the volume of information that would be required to comply with the discovery). Such unsubstantiated assertions fail to specifically demonstrate how the interrogatories are unduly burdensome. The burden falls upon the party resisting discovery to clarify and explain its objections and to provide support,¹⁷ and Duke has failed to do so. Ample rights of discovery are afforded parties in PUCO proceedings, by law,¹⁸ by rule¹⁹ and by precedent.²⁰ Duke's objection should be overruled. OCC's Motion to Compel should be granted.

4. Duke's objections to OCC's discovery requests based on the alleged proprietary nature of information should be overruled. Duke failed to bear its burden of showing that OCC's requests seek to elicit information that involves proprietary information.

Duke objects to OCC's interrogatories because the requests contain "business proprietary, trade secret, and/or confidential information."²¹ But again, Duke has not identified any specific information which it claims is proprietary. Nor has Duke identified

¹⁴ *Trabon Engineering Corp. v. Eaton Manufacturing Co.*, 37 F.R.D. 51, 54 (N.D. Ohio 1964).

¹⁵ *Roesberg v. Johns-Manville*, 85 F.R.D. 292, 297 (D.Pa 1980).

¹⁶ *Id.*, citing *In re Folding Carton Anti-Trust Litigation*, 83 F.R.D. 251, 264 (N.D. Ill. 1978).

¹⁷ *Gulf Oil Corp. v. Schlesinger*, 465 F.Supp. 913, 916-917 (E.D.Pa. 1979).

¹⁸ R.C. 4903.082.

¹⁹ Ohio Adm. Code 4901 -1-16 (scope of discovery is wide -- reasonably calculated to lead to the discovery of admissible evidence).

²⁰ See, e.g., *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 320.

²¹ Duke Response to OCC Interrogatory Nos. INT- 007, 008, and 009.

any reason why such information could not be provided to OCC under the terms of the OCC/Duke executed protective agreement.

As the PUCO is well aware, use of protective agreements is common practice where the utility claims some information (that another party seeks in discovery) is proprietary. A protective agreement enables the party seeking discovery to obtain the discovery, but under terms that protect it from being publicly divulged (subject to the terms of the agreement) to the detriment of the utility.

Moreover, Duke's blanket claim that information is proprietary, without identifying which information responsive to the discovery requests is proprietary or why, is inappropriate. Accordingly, OCC's Motion to Compel should be granted.

B. OCC Undertook Reasonable Efforts To Resolve The Discovery Dispute

As noted in the attached affidavit, counsel for OCC contacted counsel for Duke on two separate occasions to discuss the OCC discovery. In those discussions OCC pointed out the similarities between the Interrogatories (and corresponding Requests to Produce) that Duke responded to (OCC Interrogatory INT-005 and 006), and those that are subject of this Motion to Compel. Duke responded that there was confusion over the wording of the interrogatories and thus, did not respond. Duke's alleged confusion is not a reason to deny a party discovery of information that is required to be disclosed by law. Moreover, Duke's confusion should have dissipated after several discussions OCC conducted with Duke's counsel.

Duke's response does not address its responsibility to respond to discovery regarding any agreements between any of the Utility's affiliates and third parties. But Duke cannot escape the law. The PUCO should grant OCC's Motion to Compel.

Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Compel was served via electronic transmission upon the parties this 16th day of October, 2014.

/s/ Joseph P. Serio
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In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	Case No. 14-841-EL-SSO
Standard Service Offer Pursuant to)	
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Certified Supplier Tariff, P.U.C.O.)	
No. 20.)	

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON DUKE-ENERGY OHIO,**

**FIRST SET
(DATED JUNE 6, 2014)**

The Office of the Ohio Consumers' Counsel in the above-captioned proceedings before the Public Utilities Commission of Ohio submits the following Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from the Duke-Energy Ohio ("Duke") within 10 days, and no later than any shorter period required by the Public Utilities Commission of Ohio or its authorized representative. An electronic response should be provided to the extent possible to the Office of the Ohio Consumers' Counsel at the following addresses:

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Additionally, Duke must follow the instructions provided herein in responding to the inquiries. Definitions are provided that are used in the Office of the Ohio Consumers’ Counsel’s discovery.

DEFINITIONS

As used herein the following definitions apply:

1. “Document” or “Documentation” when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers,

agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately

identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. “Communication” shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The “substance” of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. “You,” and “Your,” or “Yourself” refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.

8. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. “Identify,” or “the identity of,” or “identified” means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;
 - E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.

- F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
11. The term "e.g." connotes illustration by example, not limitation.
12. "OCC" means the Office of the Ohio Consumers' Counsel.
13. "ESP" means electric security plan as found under R.C. 4928.143(B) that was filed in this Proceeding.
14. "Duke" or "Company" means Duke Energy Ohio.
15. "Proceeding" means the following PUCO case(s):
16. "Application" includes all information (including all revisions, additions, modifications, amendments or updates) filed by the Company in the above-captioned cases on May 29, 2014.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files; and
 - D. such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2000 through and including the date of your response.
9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

INTERROGATORIES¹

* In accordance with Ohio Adm. Code 4901-1-16(D)(5), OCC is specifically requesting that all responses be supplemented with subsequently acquired information at the time such information is available.

INT-1. Identify the person(s) who prepared or assisted in the preparation of responses to these discovery requests, indicating, for each person, the discovery request to which he or she assisted in responding.

RESPONSE:

INT-2. Identify all experts retained or employed by the Utility that assisted in the preparation of the Application and/or testimony supporting the Application.

RESPONSE:

INT-3. Identify each person whom the Utility may call as a witness at a hearing in this proceeding and identify the following:

- a. The substance of each opinion on which the witness may testify;
- b. All the facts which provide the basis for each opinion on which the witness may testify;
- c. The witness's background (including education and employment history) and qualifications;

¹ In accordance with Ohio Adm. Code 4901-1-16(D)(5) the OCC is specifically requesting that all responses be supplemented with subsequently acquired information at the time such information is available.

- d. Each document supplied to, reviewed by, relied on, or prepared by the witness in connection with his or her testimony;

All other proceedings (identified by case-caption, agency or court, case name, and case number) in which the witness has testified on the same or a similar topic or in any proceeding involving a public utility, in the past ten years; and,

- e. The name and title of all persons who assisted in the preparation of testimony and identify each person's contribution?

RESPONSE:

INT-4. Pursuant to R.C. 4928.145, identify each contract and/or agreement between Duke and a party to this Proceeding, including members of groups that are parties to this Proceeding, related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

- INT-5. Pursuant to R.C. 4928.145, identify each contract and/or agreement between Duke and an electric services company, related to:
- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
 - b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

- INT-6. Pursuant to R.C. 4928.145, identify each contract and/or agreement between Duke and a political subdivision, related to:
- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
 - b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

- INT-7. Pursuant to R.C. 4928.145, identify each contract and/or agreement between any affiliate of Duke and a party to this Proceeding, including members of groups that are parties to this Proceeding (i.e. identify each contract and agreement), related to:
- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
 - b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

- INT-8. Pursuant to R.C. 4928.145, identify each contract and/or agreement between any affiliate of Duke and an electric services company, related to:
- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
 - b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

- INT-9. Pursuant to R.C. 4928.145, identify each contract and/or agreement between any affiliate of Duke and a political subdivision, related to:
- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
 - b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

* In accordance with Ohio Adm. Code 4901-1-16(D)(5) the OCC is specifically requesting that all responses be supplemented with subsequently acquired information at the time such information is available.

- RPD-1. Please provide a copy of all formal and informal requests (e.g. interrogatories, data requests) made by the Commission, the PUCO Staff and the PUCO's Attorneys General in this Proceeding to the Company, and the responses to those requests provided by the Company.
- RPD-2. Please provide a copy of all documents and workpapers provided to the Commission, the PUCO Staff, and/or the PUCO's Attorneys General in connection with this Proceeding.
- RPD-3. Please provide a copy of all discovery requests received by the Company from other parties in this Proceeding, and the Company's responses to those requests.
- RPD-4. Pursuant to R.C. 4928.145, please provide copies of each contract and/or agreement as identified in the response to OCC Interrogatory No. 4, between Duke and a party to this Proceeding, including members of groups that are parties to this Proceeding (i.e. identify each contract and agreement), related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

RPD-5. Pursuant to R.C. 4928.145, please provide copies of each contract and/or agreement, as identified in the response to OCC Interrogatory No. 5, between Duke and an electric services company, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

RPD-6. Pursuant to R.C. 4928.145, please provide copies of each contract and/or agreement, as identified in the response to OCC Interrogatory No. 6, between Duke and a political subdivision, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation,

distribution and transmission services) for any period during or
after the proposed ESP period; and

- b. this Proceeding (e.g. support of the electric utility's positions
and/or Application).

RPD-7. Pursuant to R.C. 4928.145, please provide copies of each contract and/or
agreement, as identified in the response to OCC Interrogatory No. 7,
between any affiliate of Duke and a party to this Proceeding, including
members of groups that are parties to this Proceeding, related to:

- a. the provision, sale and/or purchase of electric services and charges
for those electric services (including, but not limited to generation,
distribution and transmission services) for any period during or
after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions
and/or Application).

RPD-8. Pursuant to R.C. 4928.145, please provide copies of each contract and/or
agreement, as identified in the response to OCC Interrogatory No. 8,
between any affiliate of Duke and an electric services company, related to:

- a. the provision, sale and/or purchase of electric services and charges
for those electric services (including, but not limited to generation,
distribution and transmission services) for any period during or
after the proposed ESP period; and

- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

RPD-9. Pursuant to R.C. 4928.145, Please provide copies of each contract and/or agreement, as identified in the response to OCC Interrogatory No. 9, between any affiliate of Duke and a political subdivision, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

RPD-10. Please provide all analyses, studies and reports (including workpapers, data, documentation and other information relied upon to conduct the analyses, studies and reports) that support the Application that have not been filed with the PUCO.

RPD-11. Please provide a copy of all Communications (e.g., email, memos) between the Company and the Commission, the PUCO Staff, and/or the PUCO's Attorneys General related to this proceeding.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Office of the Ohio Consumers' Counsel's Interrogatories and Requests for Production of Documents, First Set, has been served upon the below-stated counsel, electronically, this 6th day of June, 2014.

/s/ Maureen R. Grady
Maureen R. Grady
Assistant Consumers' Counsel

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	
Standard Service Offer Pursuant to Section)	
4928.143, Revised Code, in the Form of)	Case No. 14-841-EL-SSO
an Electric Security Plan, Accounting)	
Modifications and Tariffs for Generation)	
Service.)	

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its)	Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)	

**DUKE ENERGY OHIO'S RESPONSES TO THE
FIRST SET OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS FROM
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL TO
DUKE ENERGY OHIO, INC.**

Dated: June 16, 2014

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby submits its responses and objections to the Second Set of Discovery Interrogatories and Request for Production of Documents (Discovery Request) submitted by The Office of the Ohio Consumers' Counsel (OCC) to Duke Energy Ohio in the above-captioned case.

Duke Energy Ohio's responses are being provided subject to, and without waiver of, the general objections stated below and the specific objections posed in response to each Discovery Request. The general objections are hereby incorporated by reference into the individual response made to each Discovery Request. Duke Energy Ohio's responses to these Discovery Requests are submitted without prejudice to, and without waiving, any general objections not expressly set forth herein. The provision of any response shall not waive Duke Energy Ohio's objections.

Duke Energy Ohio expressly reserves the right to supplement these responses, as required under Ohio law and Public Utilities Commission of Ohio (Commission) rule. The Company further expressly reserves the right to object, on appropriate grounds, to the use of any or all of its responses for purposes of discovery or as evidence in the hearing of the captioned matter. Duke Energy Ohio hereby fully preserves all of its objections to the Discovery Requests or the use of its responses for any purpose.

Duke Energy Ohio's responses to the Discovery Requests shall not be construed as a waiver of the attorney-client privilege, trial preparation and/or work product doctrine, or any other applicable privilege or doctrine. Duke Energy Ohio reserves the right to seek protective treatment in respect of discovery, as permitted under the Ohio Rules of Civil Procedure and Commission Rules.

GENERAL OBJECTIONS

1. Duke Energy Ohio objects to any Discovery Request as improper, overbroad, and unduly burdensome to the extent it purports to impose upon the Company any obligations broader than those set forth the Commission's rules or as otherwise allowed by law.
2. Duke Energy Ohio objects to these Discovery Requests and to OCC's Definitions and Instructions as improper, overbroad, and unduly burdensome to the extent that they seek or purport to require the disclosure of information protected by the attorney-client privilege, trial preparation and/or work product doctrine, or any other applicable privilege or doctrine. Duke Energy Ohio's responses as may hereinafter be given shall not include any information protected by such privileges or doctrines, and any inadvertent disclosure of such information shall not be deemed as a waiver of any such privilege or doctrine.
3. Duke Energy Ohio objects to these Discovery Requests and to the OCC's Definitions and Instructions to the extent they improperly seek or purport to require Duke Energy Ohio to provide documents and information not in the possession, custody, or control of Duke Energy Ohio.
4. The objections and responses contained herein and produced in response hereto are not intended to, nor shall they, be construed as waiving Duke Energy Ohio's right to object to these Discovery Requests or the information provided in response thereto for any purpose, including but not limited to discovery, motion practice, and hearing.
5. Duke Energy Ohio objects to these Discovery Requests to the extent they improperly seek or purport to require the production of documents or information that is not relevant to the subject matter of the captioned proceeding and/or not reasonably calculated to lead to the discovery of admissible evidence.

6. Duke Energy Ohio objects to these Discovery Requests and the OCC's Definitions and Instructions to the extent they improperly seek or purport to require production of documents in a form other than how the documents are maintained by the Company in the ordinary course of business.
7. Duke Energy Ohio objects to these Discovery Requests to the extent they seek documents or information that is publicly available to, and thus equally accessible by, OCC.
8. Duke Energy Ohio objects to those Discovery Requests that seek "all" or "any" document, to the extent that such requests are overly broad, unduly burdensome, expose the Company to undue expense, and are designed to elicit information that is irrelevant or not likely to lead to the discovery of admissible evidence.
9. Duke Energy Ohio objects to those Discovery Requests that fail to include reasonable time parameters pursuant to which they are to be answered, on the basis that said requests are overly broad, unduly burdensome, expose the Company to undue expense, and are designed to elicit information that is irrelevant or not likely to lead to the discovery of admissible evidence.
10. Duke Energy Ohio objects to these Discovery Requests to the extent they are vague, ambiguous, lacking in definition, include terminology that is subject to differing interpretations, and otherwise force the Company to engage in speculation and guesswork as to their intended meaning.
11. Duke Energy Ohio objects to these Discovery Requests and to OCC's Definitions and Instructions to the extent they improperly seek or purport to require the production of information relating to entities not subject to the jurisdiction of the Commission.

12. The objections and responses contained herein are not intended to be, nor should they be construed as, a waiver of Duke Energy Ohio's right to object to other discovery involving or relating to the subject matter of these requests and responses.

**OCC's FIRST SET OF DISCOVERY REQUESTS TO
DUKE ENERGY OHIO, INC.
Docket Nos. 14-841-EL-SSO and 14-842-EL-ATA**

INTERROGATORY NO. 1: Identify the person(s) who prepared or assisted in the preparation of responses to these discovery requests, indicating, for each person, the discovery request to which he or she assisted in responding.

Response: See response provided contemporaneously herewith.

INTERROGATORY NO. 2: Identify all experts retained or employed by the Utility that assisted in the preparation of the Application and/or testimony supporting the Application.

Response: See response provided contemporaneously herewith.

INTERROGATORY NO. 3: Identify each person whom the Utility may call as a witness at a hearing in this proceeding and identify the following:

- (a) The substance of each opinion on which the witness may testify;
- (b) All the facts which provide the basis for each opinion on which the witness may testify;
- (c) The witness's background (including education and employment history) and qualifications;

(d) Each document supplied to, reviewed by, relied on, or prepared by the witness in connection with his or her testimony;

All other proceedings (identified by case-caption, agency or court, case name, and case number) in which the witness has testified on the same or a similar topic or in any proceeding involving a public utility, in the past ten years; and,

(e) The name and title of all persons who assisted in the preparation of testimony and identify each person's contribution?

Response: See response provided contemporaneously herewith.

INTERROGATORY NO. 4: Pursuant to R.C. 4928.145, identify each contract and/or agreement between Duke and a party to this Proceeding, including members of groups that are parties to this Proceeding, related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

INTERROGATORY NO. 5: Pursuant to R.C. 4928.145, identify each contract and/or agreement between Duke and an electric services company, related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

INTERROGATORY NO. 6: Pursuant to R.C. 4928.145, identify each contract and/or agreement between Duke and a political subdivision, related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

INTERROGATORY NO. 7: Pursuant to R.C. 4928.145, identify each contract and/or agreement between any affiliate of Duke and a party to this Proceeding, including

members of groups that are parties to this Proceeding (i.e. identify each contract and agreement), related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

INTERROGATORY NO. 8: Pursuant to R.C. 4928.145, identify each contract and/or agreement between any affiliate of Duke and an electric services company, related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

INTERROGATORY NO. 8: Pursuant to R.C. 4928.145, identify each contract and/or agreement between any affiliate of Duke and a political subdivision, related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION OF DOCUMENT NO. 1: Please provide a copy of all formal and informal requests (e.g. interrogatories, data requests) made by the Commission, the PUCO Staff and the PUCO's Attorneys General in this Proceeding to the Company, and the responses to those requests provided by the Company.

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 2: Please provide a copy of all documents and workpapers provided to the Commission, the PUCO Staff, and/or the PUCO's Attorneys General in connection with this Proceeding.

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 3: Please provide a copy of all discovery requests received by the Company from other parties in this Proceeding, and the Company's responses to those requests.

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 4: Pursuant to R.C. 4928.145, please provide copies of each contract and/or agreement as identified in the response to OCC Interrogatory No. 4, between Duke and a party to this

Proceeding, including members of groups that are parties to this Proceeding (i.e. identify each contract and agreement), related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 5:. Pursuant to R.C. 4928.145, please provide copies of each contract and/or agreement, as identified in the response to OCC Interrogatory No. 5, between Duke and an electric services company, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 6:.. Pursuant to R.C. 4928.145,
please provide copies of each contract and/or agreement, as identified in the
response to OCC Interrogatory No. 6, between Duke and a political subdivision,
related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 7: Pursuant to R.C. 4928.145,
please provide copies of each contract and/or agreement, as identified in the
response to OCC Interrogatory No. 7, between any affiliate of Duke and a party
to this Proceeding, including members of groups that are parties to this
Proceeding, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and

- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 8: Pursuant to R.C. 4928.145,

please provide copies of each contract and/or agreement, as identified in the response to OCC Interrogatory No. 8, between any affiliate of Duke and an electric services company, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 9: Pursuant to R.C. 4928.145,

Please provide copies of each contract and/or agreement, as identified in the response to OCC Interrogatory No. 9, between any affiliate of Duke and a political subdivision, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation,

distribution and transmission services) for any period during or after the proposed ESP period; and

- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 10:. Please provide all analyses, studies and reports (including workpapers, data, documentation and other information relied upon to conduct the analyses, studies and reports) that support the Application that have not been filed with the PUCO.

Response: See response provided contemporaneously herewith.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 11:. Please provide a copy of all Communications (e.g., email, memos) between the Company and the Commission, the PUCO Staff, and/or the PUCO's Attorneys General related to this proceeding.

Response: See response provided contemporaneously herewith.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Responses to OCC's Second Set of Interrogatories and Request for Production of Documents was served on the following parties this 16th day of June, 2014 by regular U. S. Mail, overnight delivery or electronic delivery.


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**Counsel for Ohio Partners for Affordable
Energy**

**Duke Energy Ohio
Case No. 14-841-EL-SSO
OCC First Set Interrogatories
Date Received: June 6, 2014**

OCC-INT-01-007

REQUEST:

Pursuant to R.C. 4928.145, identify each contract and/or agreement between any affiliate of Duke and a party to this Proceeding, including members of groups that are parties to this Proceeding (i.e. identify each contract and agreement), related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome. Furthermore, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. This Interrogatory also exceeds the permissible scope of R.C. 4928.145 and thus must be viewed as harassing in nature. This Interrogatory also seeks to elicit information in the possession of the Office of the Ohio Consumers' Counsel or that otherwise contains business proprietary, trade secret, and/or confidential information. This Interrogatory also seeks to elicit information that is not within the possession, custody, or control of Duke Energy Ohio.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 14-841-EL-SSO
OCC First Set Interrogatories
Date Received: June 6, 2014**

OCC-INT-01-008

REQUEST:

Pursuant to R.C. 4928.145, identify each contract and/or agreement between any affiliate of Duke and an electric services company, related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome. Furthermore, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. This Interrogatory also exceeds the permissible scope of R.C. 4928.145 and thus must be viewed as harassing in nature. This Interrogatory also seeks to elicit information in the possession of the Office of the Ohio Consumers' Counsel or that otherwise contains business proprietary, trade secret, and/or confidential information. This Interrogatory also seeks to elicit information that is not within the possession, custody, or control of Duke Energy Ohio.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 14-841-EL-SSO
OCC First Set Interrogatories
Date Received: June 6, 2014**

OCC-INT-01-009

REQUEST:

Pursuant to R.C. 4928.145, identify each contract and/or agreement between any affiliate of Duke and a political subdivision, related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. This Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome. Furthermore, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. This Interrogatory also exceeds the permissible scope of R.C. 4928.145 and thus must be viewed as harassing in nature. This Interrogatory also seeks to elicit information in the possession of the Office of the Ohio Consumers' Counsel or that otherwise contains business proprietary, trade secret, and/or confidential information. This Interrogatory also seeks to elicit information that is not within the possession, custody, or control of Duke Energy Ohio.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 14-841-EL-SSO
OCC First Set Production of Documents
Date Received: June 6, 2014

OCC-POD-01-007

REQUEST:

Pursuant to R.C. 4928.145, please provide copies of each contract and/or agreement, as identified in the response to OCC Interrogatory No. 7, between any affiliate of Duke and a party to this Proceeding, including members of groups that are parties to this Proceeding, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

Objection. This Request for Production of Documents is overly broad and unduly burdensome. Furthermore, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. This Interrogatory also exceeds the permissible scope of R.C. 4928.145 and thus must be viewed as harassing in nature. This Request for Production of Documents also seeks to elicit information in the possession of the Office of the Ohio Consumers' Counsel or that otherwise contains business proprietary, trade secret, and/or confidential information. This Request for Production of Documents also seeks to elicit information that is not within the possession, custody, or control of Duke Energy Ohio.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 14-841-EL-SSO
OCC First Set Production of Documents
Date Received: June 6, 2014**

OCC-POD-01-008

REQUEST:

Pursuant to R.C. 4928.145, please provide copies of each contract and/or agreement, as identified in the response to OCC Interrogatory No. 8, between any affiliate of Duke and an electric services company, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

Objection. This Request for Production of Documents is overly broad and unduly burdensome. Furthermore, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. This Request for Production of Documents also exceeds the permissible scope of R.C. 4928.145 and thus must be viewed as harassing in nature. This Request for Production of Documents also seeks to elicit information in the possession of the Office of the Ohio Consumers' Counsel or that otherwise contains business proprietary, trade secret, and/or confidential information. Objecting further, Duke Energy Ohio objects to these this Request for Production of Documents to the extent it improperly seeks to require Duke Energy Ohio to provide documents and information outside the possession, custody, or control of Duke Energy Ohio.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 14-841-EL-SSO
OCC First Set Production of Documents
Date Received: June 6, 2014**

OCC-POD-01-009

REQUEST:

Pursuant to R.C. 4928.145, Please provide copies of each contract and/or agreement, as identified in the response to OCC Interrogatory No. 9, between any affiliate of Duke and a political subdivision, related to:

- a. the provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed ESP period; and
- b. this Proceeding (e.g. support of the electric utility's positions and/or Application).

RESPONSE:

Objection. This Request for Production of Documents is overly broad and unduly burdensome. Furthermore, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. This Request for Production of Documents also exceeds the permissible scope of R.C. 4928.145 and thus must be viewed as harassing in nature. This Request for Production of Documents also seeks to elicit information in the possession of the Office of the Ohio Consumers' Counsel or that otherwise contains business proprietary, trade secret, and/or confidential information. This Request for Production of Documents also seeks to elicit information that is not within the possession, custody, or control of Duke Energy Ohio.

PERSON RESPONSIBLE: Legal

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	Case No. 14-841-EL-SSO
Standard Service Offer Pursuant to)	
Section 4928.143, Revised Code, in the)	
Form of an Electric Security Plan,)	
Accounting Modifications and Tariffs for)	
Generation Service.)	

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its)	Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O.)	
No. 20.)	

AFFIDAVIT OF JOSEPH P. SERIO

I, Joseph P. Serio, attorney for the Office of the Ohio Consumers' Counsel ("OCC") in the above captioned cases, being first duly sworn, depose and state that the following efforts have been made to resolve the differences with Duke Energy Ohio ("Duke" or "Utility") in regard to Duke's provision of discovery responses (that Duke alleges is not within its possession, custody or control).

1. On June 6, 2015, OCC submitted discovery to Duke, including OCC Interrogatory Nos. INT-005, 006, 007, 008 and 009 (and corresponding Requests to produce). (Attachment 1).

2. On June 27, 2014, Duke responded to the OCC discovery. As part of those responses, Duke specifically provided a response to OCC Interrogatory Nos. INT-005 and 006. However, Duke did not respond to similar questions in OCC Interrogatory Nos. INT-007, 008 and 009. (Attachment 2).

3. On September 5, 2014 I spoke with counsel for Duke, Elizabeth Watts to discuss the matter.

4. On September 10, 2014, I spoke with counsel at the close of the Local Public Hearing held at the City Council Chambers in Middletown, Ohio. At this meeting I presented counsel with a copy of the responses to OCC Interrogatory Nos. INT-005 and 006 and pointed out the similarities in the questions that were answered and those that were not.

5. On September 11, I received an e-mail for Duke's counsel explaining that Duke did not have any of the documents mentioned in its possession. (Exhibit 1A).

6. On October 16, 2014, I had a final conversation with counsel indicating that a failure to resolve the matter would result in a Motion to Compel being filed with the PUCO. As a result of that conversation, the parties were not able to resolve the dispute.

7. Thus, it is clear that efforts to resolve the dispute over the discovery failed, necessitating this Motion to Compel.

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

The undersigned, being of lawful age and duly sworn on oath, hereby certifies,
deposes and state the following:

I have caused to be prepared the attached written affidavit for OCC in the above
referenced cases. This affidavit is true and correct to the best of my knowledge,
information and belief.

Further affiant sayeth naught.



Joseph P. Serio, Affiant

Subscribed and sworn to before me this 16th day of October, 2014.



Notary Public



Debra Jo Bingham, Notary Public
Union County, State of Ohio
My Commission Expires June 13, 2015

Serio, Joseph

From: Watts, Elizabeth H <Elizabeth.Watts@duke-energy.com>
Sent: Thursday, September 11, 2014 9:50 AM
To: Serio, Joseph
Cc: Spiller, Amy B; Kingery, Jeanne W
Subject: DISCOVERY QUESTION

Joe:

You had asked me to review our discovery responses to OCC's First Set of Interrogatories, OCC-01-006, OCC-01-007 and OCC-01-008. You indicated in conversation that you believed that 006, 007 and 008 were similar to Interrogatories OCC-01-004 and OCC-01-005.

I reviewed all of these responses. I note that interrogatories 004,005 and 006 request agreements between Duke and other entities. Interrogatories 007 and 008 request agreements between "any affiliate of Duke" and other entities. Duke Energy Ohio does not have access to, or possession of any agreements between its affiliates and other parties. As we discussed, there may be some confusion with respect to the wording of the interrogatories. Duke Energy Ohio has responded in good faith given the existing language. Perhaps you may wish to restate the interrogatories and resubmit?

Elizabeth

Elizabeth H. Watts

Associate General Counsel | [Duke Energy Business Services](#)
155 East Broad Street, Columbus, Ohio 43215
614-222-1331 Direct - 614-202-2509 Cell

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in

Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA

Summary: Motion Motion to Compel Responses to Discovery by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Serio, Joseph P. Mr.