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 Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan	)))))))	Case No. 14-1297-EL-SSO

MOTION TO COMPEL
AND MEMORANDUM IN SUPPORT OF IGS ENERGY

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Attorneys for IGS Energy

October 23, 2014

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 Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan	)))))))	Case No. 14-1297-EL-SSO

MOTION TO COMPEL

Pursuant to Rule 4901-1-12, 4901-1-14, and 4901-1-23, Ohio Administrative Code ("OAC"), Interstate Gas Supply, Inc. ("IGS" or "IGS Energy") moves the Attorney Examiner to compel Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy" or "FE") to establish a Protective Agreement that can be used for purposes of obtaining confidential and/or competitively sensitive confidential information from FirstEnergy. The Protective Agreement proposed by FirstEnergy contains restrictions, which would, as a practical matter, limit IGS's ability to meaningfully participate in this case; thus, IGS cannot execute the proposed Protective Agreement. Specifically, FirstEnergy asserts that it will not allow IGS employees (besides counsel) to review its affiliate's, FirstEnergy Solutions ("FES"), confidential competitively sensitive information, which has been included in its application and discovery.

IGS has attempted to resolve this matter with FirstEnergy. But FirstEnergy refused to accommodate IGS's requests.[1] FirstEnergy's refusal to allow IGS's employees—including prospective internal witnesses, which have already submitted testimony in both Duke Energy Ohio's and Ohio Power Company's ESP cases—amounts to a refusal to produce confidential information to IGS. Therefore, as stated more fully in the attached memorandum in support, IGS respectfully requests that the Attorney Examiner issue an entry compelling FirstEnergy to modify its Protective Agreement such that IGS internal employees that execute a non-disclosure certificate may have access to highly confidential information for the purpose of preparing testimony in these proceedings.

Respectfully submitted,

/s/ Joseph Oliker
Joseph Oliker (0086088)
Counsel of Record
Email: joliker@igsenergy.com
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Facsimile: (614) 659-5073

Attorneys for IGS Energy

[1] Attachment 1 (containing the Affidavit of Joseph Oliker, counsel for IGS). *See also generally* Attachment 3.

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MEMORANDUM IN SUPPORT

FirstEnergy has requested Commission approval of a purchased power agreement with its affiliate, FES. Under the agreement, FirstEnergy will pay FES a cost-based rate for electricity produced by the Sammis, David Besse, Clifty Creek, and Kyger Creek generating stations. FirstEnergy will resell the power it purchases from its affiliate into the PJM Interconnection, LLC ("PJM") wholesale energy and capacity markets. If the market-based revenues exceed the cost-base revenue requirement FirstEnergy pays to its affiliate, FirstEnergy will provide a non-bypassable credit to its distribution customers through the Retail Rate Stability Rider ("Rider RRS"). But, if the market-based revenues are less than the cost-based revenue requirement, FirstEnergy will collect a non-bypassable charge from its distribution customers.

Among other things, FirstEnergy claims that its proposed affiliate purchased power contract is a "good deal" for its distribution customers. Its claim is based largely on purported competitively sensitive confidential information provided by its affiliate,

FES.[2] FirstEnergy, however, has structured its Protective Agreement to allow only "Fully Authorized Representatives" to access competitively sensitive information. A copy of FirstEnergy's proposed Protective Agreement is attached.[3] Only IGS's counsel qualifies as a "Fully Authorized Representative" under the proposed Protective Agreement; thus, other internal employees of IGS capable of testifying in these proceedings fail to qualify. [4]

IGS requested that a limited amount of its employees (subject to execution of a non-disclosure certificate) have access to this information in order to prepare expert testimony. FE's counsel, however, apparently in the capacity of dually representing FES, asserted that it will not make its affiliate's information available, stating "[w]e are not willing to agree to your proposal that would allow individuals who are involved in businesses competitive with FirstEnergy Solutions (specifically, either competitive retail electric suppliers or participants in competitive wholesale electric procurements) to see FES' competitive data."[5]

FirstEnergy's counsel further stated that IGS's ability to participate in this case is not inhibited because IGS may obtain an outside expert, stating "[w]e do not believe that our proposal inhibits IGS' ability to prepare for and participate in this case. You, as counsel, and any outside expert not involved in CRES or competitive wholesale

[2] It should be noted that the information filed in FirstEnergy's Application and discovery responses is labeled as confidential, only because FirstEnergy has made the determination to label it as such. There has been no legal showing that this information is actually confidential.

[3] Attachment 2. The attached agreement does not address another minor issue that FirstEnergy and IGS have mutually resolved in a separate document.

[4] Attachment 2 at 3.

[5] Attachment 3 at 1, 3 (containing e-mail correspondence between IGS's counsel and FirstEnergy's counsel).

procurements would be able to see all of the information that may be produced and introduced."[6]

Initially, FirstEnergy's proposal will limit IGS's ability to participate in these proceedings. While FirstEnergy claims that IGS is free to hire an outside expert, FirstEnergy's proposal would cause IGS to duplicate its efforts regarding similar proposals. IGS's employees have already submitted expert testimony regarding the anticompetitive purchased power proposals requested by both Duke Energy Ohio and Ohio Power Company. IGS witness Hamilton reviewed and challenged Duke's competitively sensitive projections of the costs and benefits associated with Duke's purchased power proposal. Yet, FirstEnergy's proposed Protective Agreement would prevent him from submitting testimony challenging FirstEnergy's alleged "benefits" of the RRS.

Moreover, FirstEnergy's proposal would require IGS to bear substantial cost to retain an outside expert when IGS already has a qualified internal expert that has testified in similar Commission proceedings. Further, unlike FirstEnergy, IGS cannot recover its expert witness costs from distribution ratepayers. Thus, FirstEnergy makes this request although, over the course of these proceedings, FirstEnergy will spend several million dollars of its distribution customers' money on legal expenses from two different law firms and its own outside expert witnesses largely to insulate its affiliate's generating assets from the risk of the competitive market.

It is unclear under what basis FirstEnergy believes that it may utilize distribution ratepayer dollars to protect the confidential information of its affiliate. FES has not intervened in these proceedings and FES has not asserted that the information in

[6] Attachment 3 at 1.

question is confidential. If FES believes that it has an interest in protecting its information, it should intervene in this case and assert its interest—rather than allowing its regulated electric distribution utility to commit resources on its behalf.

Moreover, FirstEnergy has not demonstrated why the confidential information should not be disclosed to IGS's internal expert witnesses. If FES is concerned about what parties may have access its confidential information, it should not conspire with its regulated affiliate—potentially in violation of Ohio's corporate separation statutes—to ask all FirstEnergy distribution customers to pay a cost based rate of return on FES generation. IGS would not request access to FES's confidential information, nor would IGS have a right to access FES's confidential information but for FES's decision to ask for a power purchase agreement funded by all FirstEnergy customers, including IGS customers.

Further, allowing FirstEnergy to prevent IGS's internal expert witnesses from viewing information FirstEnergy deems as "competitively sensitive" would drive up the cost of litigation. Effectively, FirstEnergy could label any information "confidential" regardless of whether that information is actually confidential. The only recourse IGS would have then is to file a costly motion to compel to dispute whether FirstEnergy has rightfully labeled information as confidential.

Finally, FirstEnergy has not demonstrated that there is a risk of IGS employees misappropriating FES's confidential information. IGS does not own large-scale generating assets. Thus, competitively sensitive information regarding FES's generating assets is of no value to IGS outside of these proceedings. Further, FES has openly declared that it is leaving the retail business, except for small exceptions that are

not truly retail-related.[7] Moreover, outside of these proceedings, IGS places little value on any purported competitively sensitive information in FirstEnergy's possession. Said information is being offered for the self-serving purpose of convincing the Commission that FirstEnergy's proposal is a "good deal" for customers.

Ultimately, IGS's reliance on produced competitively sensitive information for business purposes would still violate the Protective Agreement and subject IGS to potential lawsuit. Thus there is no legitimate rationale to prohibit IGS's internal witnesses from reviewing such information—particularly since it is FES that is asking Ohio distribution customers to pay for a cost based rate of return on its generating assets.

Therefore, for the reasons stated herein, IGS respectfully requests that the Attorney Examiner grant this motion to compel FirstEnergy to modify its proposed Protective Agreement to include IGS employees that may potentially serve as a witness in these proceedings in the definition of "Fully Authorized Representative."

Respectfully submitted,

/s/ Joseph Oliker
Joseph Oliker (0086088)

[7] According to FirstEnergy's Securities and Exchange Commission 2014 10-Q at 63-64 (Aug. 5, 2014), "*the Competitive Energy Services segment has eliminated future selling efforts in certain sales channels, such as mass market, medium commercial-industrial and select large commercial-industrial*, to focus on a selective mix of retail sales channels, wholesale sales that hedge generation more effectively, and maintain a small open position to take advantage of market upside opportunities resulting from volatility as was experienced . . . . Going forward, the Competitive Energy Services segment expects to target a sales portfolio of approximately 10 to 15 million MWHs in Governmental Aggregation sales, 0 to 10 million MWHs of POLR sales, 0 to 20 million MWHs in large commercial and industrial sales, 10 to 20 million in block wholesale sales and 10 to 20 million of spot wholesale sales. Support for current customers in the channels to be exited will remain through their respective contract terms." *See also Dominant Retail Supplier Drops Customers to POLR, Exiting Mass Market, Mid-Merit Retail Sales*, EnergyChoice Matters (available at http://www.energychoicematters.com/stories/20140806a.html).

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Facsimile: (614) 659-5073

Attorneys for IGS Energy

CERTIFICATE OF SERVICE

I certify that this Motion to Compel and Memorandum in Support of IGS Energy was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 23rd day of October, 2014. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company, Association Of Independent Colleges and Universities of Ohio, Buckeye Association of School Administrators, Buckeye Wind LLC, Citizens Coalition, City Of Akron, City Of Cleveland, Constellation NewEnergy Inc., Council Of Smaller Enterprises, Direct Energy Services LLC, Duke Energy Ohio Inc., Dynegy Inc., Energy Professionals of Ohio, EnerNOC Inc., Environmental Law & Policy Center, Exelon Generation Company, LLC, Hardin Wind LLC, IBEW Local 245, IGS Energy, Industrial Energy Users Of Ohio, Kroger Co., Mid-Atlantic Renewable Energy Coalition, Monitoring Analytics LLC, MSC, Nextera Energy Resources, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, Nucor Steel Marion, Inc., Ohio Advanced Energy Economy, Ohio Association Of School Business, Ohio Consumers Counsel, Ohio Energy Group, Inc., Ohio Environmental Counsel, Ohio Hospital Association, Ohio Manufacturers' Association, Ohio Power Company, Ohio Partners For Affordable Energy, Ohio School Boards Association, Ohio Schools Council, PJM Power Providers Group, Power4Schools, Retail Energy Supply Association, Sierra Club, The Cleveland Municipal School District, The Electric Power Supply Association, Wal-Mart Stores East, LP, and Sam's East, Inc.

/s/ Joseph Oliker
Joseph Oliker

AFFIDAVIT OF JOSEPH OLIKER

State of Ohio : S.S.

County of Franklin :

I, Joseph Oliker, counsel for Interstate Gas Supply, Inc. ("IGS" or "IGS Energy") in the above-caption proceedings, being first duly sworn, depose and say:

1. On behalf of IGS, I requested that Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company ("FirstEnergy") produce confidential documents pursuant to a Protective Agreement.

2. FirstEnergy proposed that IGS execute a Protective Agreement that prohibits IGS employees, other than counsel, from viewing highly confidential/competitively sensitive information.

3. On October 9, 2014, I notified FirstEnergy's counsel that FirstEnergy's proposed Protective Agreement would prevent IGS's employees from testifying in this proceeding regarding critical issues and therefore FirstEnergy's proposed Protective Agreement was not acceptable.

4. On October 9, 2014, FirstEnergy indicated that it would not disclose confidential information to "competitors" but that it would consider any proposed modifications to the Protective Agreement.

5. On October 13, 2014, IGS proposed a modification to the definition of Fully Authorized Representative in the proposed agreement, which would allow IGS employees involved in the preparation of testimony to access highly confidential/competitively sensitive information. IGS indicated that it would file a motion to compel adoption of a modified Protective Agreement if FirstEnergy refused to agree to IGS's proposed modification.

6. On October 16, 2014, FirstEnergy indicated that it would not accept IGS's proposed modification.

7. Considering FirstEnergy's response, I believe that FirstEnergy does not intend to enter into a reasonable Protective Agreement with IGS or to transmit confidential discovery responses to IGS without an order from the Public Utilities Commission of Ohio compelling FirstEnergy to modify its Protective Agreement.

Joseph Oliker

Sworn before me and subscribed in my presence this 21st day of October, 2014

NOTARIAL SEAL STATE OF OHIO

Helen A. Sweeney
Notary Public, State of Ohio
My Commission Expires 09-26-2015

Notary Public
State of Ohio

BEFORE
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PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("the Companies") and IGS Energy ("Receiving Party") (collectively, "the Parties"). This Agreement is designed to facilitate and expedite the exchange with Receiving Party of information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Companies and Receiving Party as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Companies' obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document means the above-captioned case(s), including any appeals, remands and other cases related thereto.

3.A. "Protected Materials" means documents and information designated under this Agreement as "CONFIDENTIAL" that customarily are treated by the Companies or third parties as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject the Companies or third parties to risk of competitive disadvantage or other business injury, and may include materials meeting the definition of "trade secret" under Ohio law.

B. "Protected Materials" also includes documents and information designated under this Agreement as "COMPETITIVELY SENSITIVE CONFIDENTIAL" that contain highly proprietary or competitively-sensitive information, that, if disclosed to suppliers, competitors or customers, may damage the producing party's competitive position or the competitive position of the third party which created the documents or information. COMPETITIVELY SENSITIVE CONFIDENTIAL DOCUMENTS can include documents or information prepared by the Companies or provided to the Companies by a third-party pursuant to a nondisclosure agreement.

C. "Protected Materials" do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Companies and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

D. "Protected Materials" that are in writing shall be conspicuously marked with the appropriate designation, or counsel for the Companies may orally state on the deposition record that a response to a question posed at a deposition is considered Protected Materials.

E. "Protected Materials" includes documents or information that are stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, discs, networks or tapes) ("Computerized Material"). The Companies at their discretion may produce Computerized Material in such form. To the extent that Receiving Party reduces Computerized Material to hard copy, Receiving Party shall conspicuously mark such hard copy as confidential.

4. "Fully Authorized Representative" must execute a Non-Disclosure Certificate in the form of Exhibit B (applicable to COMPETITIVELY SENSITIVE CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Receiving Party's outside legal counsel and in-house legal counsel who are actively engaged in the conduct of this Proceeding;

B. Paralegals and other employees who are associated for purposes of this case with the attorneys described in Paragraph 4(A); and

C. An outside expert or employee of an outside expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding and who is not involved in (or providing advice regarding) decision-making by or on behalf of any entity concerning any aspect of competitive retail electric service or of competitive wholesale electric procurements.

5. "Limited Authorized Representative" must execute the Non-Disclosure Certificate in the form of Exhibit A (applicable to CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Legal counsel who have made an appearance in this proceeding or are actively engaged in this Proceeding for Receiving Party;

B. Paralegals and other employees who are associated for purposes of this case with an attorney described in Paragraph 5(A);

C. An employee of Receiving Party who is involved in the Proceedings on behalf of Receiving Party;

D. An expert or employee of an expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding.

6. Copies of all executed Non-Disclosure Certificates signed by Fully Authorized Representatives and Limited Authorized Representatives in this proceeding shall be provided to counsel for the Companies as soon as possible after the Certificates are executed.

7. Access to Protected Materials designated as "CONFIDENTIAL" is permitted to Fully Authorized Representatives and Limited Authorized Representatives who have executed the appropriate Non-Disclosure Certificate. Notwithstanding other provisions of this Agreement to the contrary, Protected Materials designated as "COMPETITIVELY SENSITIVE CONFIDENTIAL" or with words of similar import will be **strictly** limited to Fully Authorized Representatives. Counsel for Receiving Party will ensure that individuals who are not Fully Authorized Representatives are not permitted to access COMPETITIVELY SENSITIVE CONFIDENTIAL materials. Receiving Party, its Counsel, Fully Authorized Representatives and Limited Authorized Representatives must treat all Protected Materials (no matter how designated), copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary,

inadvertent, or accidental disclosure to any persons other than Receiving Party's counsel and those persons authorized to have access to the Protected Materials as set forth in this Agreement.

8. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Companies and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain. Nothing in this Agreement precludes Receiving Party from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

9. If any Receiving Party counsel, Fully Authorized Representative or Limited Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to a counsel of Receiving Party who is a Fully Authorized Representative, and if there is no such counsel of Receiving Party who is a Fully Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed either form of the foregoing Non-Disclosure Certificates will continue to be bound by the provisions of this Agreement even if no longer so engaged.

10. Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives are prohibited from disclosing Protected Materials to another party or that party's authorized representatives, provided however, (i) Receiving Party's counsel may disclose Protected Materials to employees or persons working for or representing the Public

Utilities Commission of Ohio in connection with this Proceeding, (ii) for Protected Materials identified as CONFIDENTIAL, Receiving Party's counsel may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials and has signed a Non-Disclosure Certificate applicable to materials designated as CONFIDENTIAL, and (iii) for Protected Materials identified as COMPETITIVELY SENSITIVE CONFIDENTIAL, Receiving Party's counsel may disclose such materials to another party's counsel as long as Receiving Party's Counsel has executed the **appropriate** Non-Disclosure Certificate and the Receiving Party's counsel (a) represents a party that has signed a protective agreement with the Companies and (b) has signed a Non-Disclosure Certificate applicable to materials designated as COMPETITIVELY SENSITIVE CONFIDENTIAL. Protected Materials, designated as "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL" and provided to Receiving Party by another party or its counsel shall be treated by Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives as being provided by the Companies and all terms of this Protective Agreement shall apply to the treatment of such materials.

11. Receiving Party may file Protected Materials under seal in this Proceeding whether or not Receiving Party seeks a ruling that the Protected Materials should be in the public domain. If Receiving Party desires to include, utilize, refer to, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then Receiving Party must first give notice (as provided in Paragraph 15) to the Companies, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Companies will have five (5) business days after service of Receiving

Party's notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Companies do not file such a motion within five (5) business days of Receiving Party's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

12. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel who are either a signatory to this Agreement or who have executed a Non-Disclosure Certification prior to any access, any other person who would otherwise be permitted to have access to the Protected Materials under the terms of Paragraph 7, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

13. Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

14. It is expressly understood that upon a filing made in accordance with Paragraph 11 of this Agreement, the burden will be upon the Companies to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

15. All notices referenced in Paragraph 11 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once Receiving Party has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and Receiving Party determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, Receiving Party must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. Receiving Party may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, Receiving Party does not waive any right that it may have to dispute the Companies' determination regarding any material identified as confidential by the Companies and to pursue those remedies that may be available to Receiving Party before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes Receiving Party from filing a motion to compel.

18. By entering into this Protective Agreement, the Companies do not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Companies before the administrative agency of competent jurisdiction or court of competent jurisdiction.

19. Inadvertent production of any document or information during discovery without a designation of "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL" will not be deemed to waive the Companies' claim to its confidential nature or estop the Companies from designating the document or information at a later date. Disclosure of the document or information by Receiving Party prior to such later designation shall not be deemed a violation of this Agreement and Receiving Party bears no responsibility or liability for any such disclosure. Receiving Party does not waive its right to challenge the Companies' delayed claim or designation of the inadvertent production of any document or information as "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL."

20. This Protective Agreement shall become effective upon the date first above written, and shall remain in effect until terminated in writing by either party or three (3) years from the date first set forth above, whichever occurs earlier. Notwithstanding any such termination, the rights and obligations with respect to the disclosure of Protected Materials as defined hereinabove shall survive the termination of this Protective Agreement for a period of three (3) years following the later of the Commission's final Order or Entry on Rehearing in this proceeding.

21. To the extent of any conflicts between this Agreement and any previously signed confidentiality or nondisclosure agreement related to the disclosure of information associated with the Companies' fourth electric security plan, this Agreement prevails.

22. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties.

23. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company	IGS Energy
BY:	BY:
_____	_____
Counsel	Counsel
_____	_____
Date	Date

Exhibit A

BEFORE
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NON-DISCLOSURE CERTIFICATE FOR
CONFIDENTIAL PROTECTED MATERIALS

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____ 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____
Address: _____
Telephone: _____

Date: _____

Exhibit B

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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NON-DISCLOSURE CERTIFICATE FOR
COMPETITIVELY SENSITIVE CONFIDENTIAL PROTECTED MATERIALS

I certify my understanding that access to COMPETITIVELY SENSITIVE CONFIDENTIAL Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____ 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____
Address: _____
Telephone: _____

Date: _____

Joe Oliker

From: Martin T Harvey <mtharvey@JonesDay.com>
Sent: Thursday, October 16, 2014 5:06 PM
To: Joe Oliker
Cc: David A. Kutik
Subject: Fw: Case No. 14-1297-EL-SSO: IGS Energy Protective Agreement
Attachments: CLI_202263909_1_14-1297-- Protective Agreement Redline for IGS.DOCX

Joe --

We have reviewed your draft. We are willing to accept the intent of your changes to paragraph 10 to allow individuals who are Fully Authorized Representatives of one party to share Competitively Sensitive Confidential information with Fully Authorized Representatives of another party . We are similarly willing to allow Limited Authorized Representatives of one party to share Confidential information with Limited Authorized Representatives of another party. We believe that the language that we have proposed in the attached draft accomplishes this objective. It largely tracks your proposal but keeps some language that you deleted.

We are not willing to agree to your proposal that would allow individuals who are involved in businesses competitive with FirstEnergy Solutions (specifically, either competitive retail electric suppliers or participants in competitive wholesale electric procurements) to see FES' competitive data. We know of no case in which the Commission has found that it is appropriate for such disclosures to take place. As we have advised you, we believe that the Commission regularly recognizes and protects competitively valuable information. We do not believe that our proposal inhibits IGS' ability to prepare for and participate in this case. You, as counsel, and any outside expert not involved in CRES or competitive wholesale procurements would be able to see all of the information that may be produced and introduced.

Thank you,

Martin Harvey
Jones Day
Phone: (216) 586-7026
Email: mtharvey@jonesday.com

From : Joe Oliker <joliker@igsenergy.com>
To : Martin T Harvey <mtharvey@JonesDay.com>
Cc : "David A. Kutik" <dakutik@JonesDay.com>, "burkj@firstenergycorp.com" <burkj@firstenergycorp.com>, "Matt S. White" <mswhite@igsenergy.com>
Sent on : 10/13 04:45:24 PM EDT
Subject : RE: Case No. 14-1297-EL-SSO: IGS Energy Protective Agreement

Marty,

On October 9, 2014, IGS indicated that it has concerns with FirstEnergy's proposed confidentiality agreement and requested that FirstEnergy modify the agreement to allow an internal employee to qualify as a Fully Authorized Representative. We have not heard a response from FirstEnergy.

In addition, the proposed agreement is overly restrictive inasmuch as it prohibits non-counsel from discussing confidential information with another party that has executed a confidentiality agreement. There is no legitimate reason to so limit conversations between parties. The purpose of a confidentiality agreement is to prevent disclosure of information—not to restrict discussions between appropriately authorized parties. As a practical matter, the proposed provision would cause problems in the context of settlement discussions, depositions, and any hearings in this case.

The attached document contains proposed modifications to the confidentiality agreement. Additionally, IGS would agree to execute a confidentiality agreement similar to the agreement authorized by the Commission in Case 14-841-EL-SSO, et al., on August 27, 2014.

Please let us know if you will consent to these modifications by Thursday, October 16, 2014 at 5:00 p.m. or we will file a motion to compel adoption of a confidentiality agreement consistent with the modifications discussed above.

We hope that we can resolve this matter without Commission involvement.

Joseph Oliker

Regulatory Counsel

Direct (614) 659 5069

Mobile (518) 225 9114

Email joliker@igsenergy.com

IGS Energy **::** 6100 Emerald Parkway **::** Dublin, OH 43016

www.IGSenergy.com

From: Joe Oliker
Sent: Thursday, October 09, 2014 1:02 PM
To: 'Martin T Harvey'
Cc: David A. Kutik
Subject: RE: Case No. 14-1297-EL-SSO: IGS Energy Protective Agreement

Marty,

The main issue is the classification of Fully Authorized Representative vs. Limited Authorized Representative. To the extent that you are willing to modify the definition of Fully Authorized Representative to include IGS employees that may be presented as a witness or that are involved in litigating the proceeding, we could agree to those terms. We have no problem with executing NDA certificates for all individuals and also agreeing to not use competitively sensitive information for competitive purposes. Of course, as you probably know, IGS does not own power plants, so the risk of this competitive information being misappropriated is not on par with other participants in the proceeding.

Regarding the Duke case, IGS employees have access to competitively sensitive information. And an IGS employee submitted testimony under seal based upon Duke's competitively sensitive information.

Please advise whether FirstEnergy is willing to agree to this proposed modification. We appreciate you working with us to resolve this issue.

From: Martin T Harvey [mailto:mtharvey@JonesDay.com]
Sent: Thursday, October 09, 2014 12:46 PM
To: Joe Oliker
Cc: David A. Kutik
Subject: RE: Case No. 14-1297-EL-SSO: IGS Energy Protective Agreement

Joe,

We believe that the notion that protective agreements should keep confidential competitively valuable information confidential and away from competitors has been upheld by the Commission repeatedly, including in the Duke case. If there are particular problems that you have with our proposed agreement, we are willing to

review any modifications that you may have and react to those as appropriate. I have attached a Word version of the Protective Agreement that I sent you on August 28, 2014 which you can use for a redline.

Thanks,

Marty

Martin Harvey
Jones Day
Phone: (216) 586-7026
Email: mtharvey@jonesday.com

From: Joe Oliker <joliker@igsenergy.com>

To: Martin T Harvey <mtharvey@JonesDay.com>,

Cc: "David A. Kutik" <dakutik@JonesDay.com>

Date: 10/09/2014 09:18 AM

Subject: RE: Case No. 14-1297-EL-SSO: IGS Energy Protective Agreement

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Marty,

I have a concern about the proposed confidentiality agreement. From a high level, the proposed agreement appears to limit disclosure of competitively sensitive information to outside legal experts (and excludes IGS employees besides legal counsel/paralegals). This is overly restrictive and not acceptable as it would effectively preclude IGS employees from testifying to several matters that will likely be at issue in this proceeding.

As you probably know, the Commission recently struck several provisions from the confidentiality agreement that Duke Energy Ohio proposed in its electric security plan. The Commission approved an agreement in that proceeding that does not contain the limitation proposed by FirstEnergy.

Please advise whether you will modify the agreement to remove this limitation. I hope that we can resolve this issue without involving the Commission.

Joseph Oliker
Regulatory Counsel

Direct (614) 659 5069
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From: Martin T Harvey [mailto:mtharvey@JonesDay.com]
Sent: Thursday, August 28, 2014 9:00 AM
To: Joe Oliker
Cc: David A. Kutik
Subject: Case No. 14-1297-EL-SSO: IGS Energy Protective Agreement

Joe,

On behalf of Jim Burk, attached please a draft protective agreement for your review. If this agreement is acceptable, please sign it and return it to me. Please note that, as with past agreements, others working on this case on behalf of IGS Energy will have to sign the applicable certifications and return those to me as well. Please call me at the number below with any questions.

Thank you,

Marty

Martin Harvey
Jones Day
Phone: (216) 586-7026
Email: mtharvey@jonesday.com

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[attachment "CLI_2244265_1_14-1297 IGS Protective Agreement.docx" deleted by Martin T Harvey/JonesDay]

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Summary: Motion to Compel and Memorandum in Support electronically filed by Mr. Joseph E. Oliker on behalf of IGS Energy