

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland )  
Illuminating Company, and the Toledo )  
Edison Company for Authority to ) Case No. 14-1297-EL-SSO  
Provide for a Standard Service Offer )  
Pursuant to R.C. 4928.143 in the Form )  
of an Electric Security Plan. )

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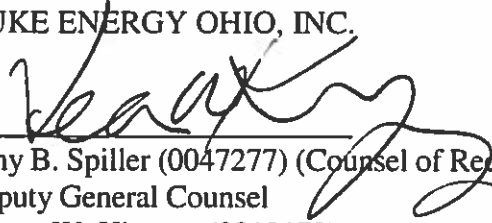
**MOTION FOR PROTECTIVE ORDER  
BY  
DUKE ENERGY OHIO, INC.**

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Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and, pursuant to O.A.C. 4901-1-24 and O.A.C. 4901-1-12, moves for a protective order with regard to the potential release of certain of the Company's confidential information. The basis for Duke Energy Ohio's motion is set forth in the attached memorandum in support, which is incorporated herein by reference.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

  
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## MEMORANDUM IN SUPPORT

This case relates to an application filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FE Utilities), seeking approval from the Public Utilities Commission of Ohio (Commission) for their next standard service offer for generation services. Duke Energy Ohio, Inc. (Duke Energy Ohio), is not a party to this proceeding.

As a part of its case in chief, the FE Utilities have offered expert testimony of Judah L. Rose, a consultant, to forecast prices. Interstate Gas Supply, Inc. (IGS), has previously subpoenaed confidential information from Duke Energy Ohio, related to prior expert testimony by Mr. Rose in a 2011 Duke Energy Ohio proceeding. After Duke Energy Ohio's motion to quash that subpoena was denied by the Commission, the Company provided the requested confidential information to IGS and to the FE Utilities.

As the hearing in the above-captioned proceedings is now underway and it appears that IGS may seek to use the confidential Duke Energy Ohio information on cross-examination, Duke Energy Ohio seeks a protective order from the Commission. In this regard, however, Duke Energy Ohio emphasizes its continuing disagreement with the Commission's granting of IGS's subpoena, on the grounds set forth in the Company's motion to quash, reply to IGS's memorandum contra the motion to quash, and application for interlocutory appeal. Furthermore, Duke Energy Ohio does not, by filing this motion for a protective order, concede any of the legal issues concerning confidentiality that are currently pending before the Commission in the Company's own electric security plan proceeding, in Case No. 14-841-EL-SSO, *et al.* Rather, the Company is simply seeking continuing protection for its confidential

information in response to the Commission's requirement that such information be released for use in the FE Utilities' above-captioned proceedings.

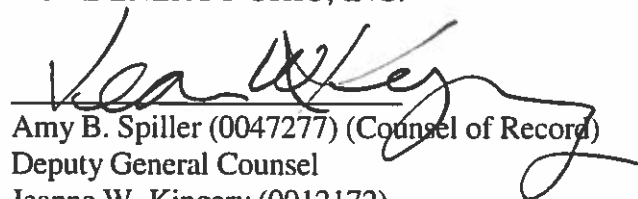
With that understanding, the Company moves that the Commission order any party herein that desires access to the Company's confidential information to execute a reasonable confidentiality agreement with the Company, based directly on the confidentiality agreement used in the Company's 2011 electric security plan proceedings, Case No. 11-3549-EL-SSO, *et al.*, as was the confidentiality agreement signed by IGS and by the FE Utilities on July 27, 2015, in the above-captioned proceeding.

For convenience purposes, an unexecuted copy of the confidentiality agreement to which the Company will agree is attached to this memorandum.

For all of the reasons discussed above, Duke Energy Ohio respectfully moves to have the Commission conclude that the attached confidentiality agreement is reasonable and, therefore, to issue a protective order, requiring the parties' execution of the attached confidentiality agreement, if such parties desire access to said confidential information.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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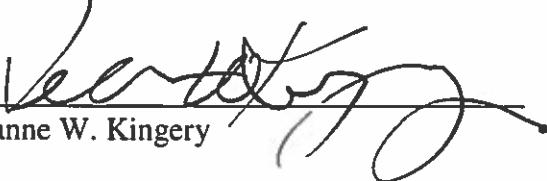
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal, or electronic mail, on this 2<sup>nd</sup> day of September, 2015, to the parties listed below.

  
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## CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT (Agreement), dated as of \_\_\_\_\_, 2015, between Duke Energy Ohio, Inc., an Ohio corporation (Duke Energy Ohio or Providing Party) with offices at 139 East Fourth Street, Cincinnati, Ohio 45201; and \_\_\_\_\_ (Receiving Party).

### WITNESSETH:

WHEREAS, the Receiving Party desires to receive Duke Energy Ohio's confidential information in Case No. 14-1297-EL-SSO (hereinafter collectively referred to as the Pending Case); and

WHEREAS, the Duke Energy Ohio and the Receiving Party (collectively, Parties) desire to ensure the confidentiality of such confidential information in connection with the Pending Case;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties hereto, intending to be legally bound, agree as follows:

### **1. CONFIDENTIAL AND PROPRIETARY NATURE OF THE CONFIDENTIAL INFORMATION**

The Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information (as defined below) and that any unauthorized disclosure or unauthorized use thereof by the Receiving Party may injure the Providing Party's business and/or the business of customer(s) of the Providing Party. The Receiving Party agrees to hold and keep the Confidential Information as provided in this Agreement and otherwise agrees to each and every restriction and obligation set forth in this Agreement.

### **2. CONFIDENTIAL INFORMATION**

As used in this Agreement, the term Confidential Information means and includes any and all information that meets both of the following requirements:

- a. The information concerning the business and affairs of the Providing Party, however documented, that has been or may hereafter be provided or shown to the Receiving Party by the Providing Party or by the directors, officers, employees, agents, consultants, advisors, or other representatives including legal counsel, accountants and financial advisors (each, a Representative) of the Providing Party (collectively, the Providing Party Representatives) or is otherwise obtained from review of Providing Party documents or property or discussions with Providing Party Representatives by the Receiving Party or its attorneys or persons involved in the Pending Case, such as experts and anticipated witnesses, (each a Receiving Party's Representative or collectively the Receiving Party's Representatives) irrespective of the form of the

communication, and also includes all notes, analyses, compilations, studies, summaries, and other material prepared by the Receiving Party or the Receiving Party's Representatives containing or based, in whole or in part, on any information included in the foregoing; and

- b. The information contains trade secrets concerning the business and affairs of the Providing Party and or its customers, plant and product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures and architectures (and related processes, formulae, composition, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information), contracts, and any other information, however documented, that is a trade secret within the meaning of applicable law.

Confidential Information shall not include any oral information exchanged between the Parties that is not promptly reduced to writing and confirmed by the applicable Parties.

Further, Confidential Information shall not include any information of the Providing Party that:

- a. was or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or the Receiving Party's Representatives;
- b. was available, or becomes available, to the Receiving Party on a non-confidential basis prior to its disclosure to the Receiving Party by the Providing Party or a Providing Party Representative, but only if (i) to the best of the Receiving Party's knowledge after due inquiry, the source of such information is not bound by a confidentiality agreement with the Providing Party or is not otherwise prohibited from transmitting such information to the Receiving Party or the Receiving Party's Representatives by a contractual, legal, fiduciary or other obligation, and (ii) the Receiving Party provides the Providing Party with prompt written notice of such prior possession; or
- c. was independently acquired or developed by the Receiving Party without violating any of its obligations under this Agreement.

### **3. RESTRICTED USE OF CONFIDENTIAL INFORMATION**

The Receiving Party agrees that (a) it will keep confidential any and all Confidential Information and, except as provided in the following paragraph or as otherwise expressly permitted by the terms of this Agreement, will neither, without the specific prior written consent of the Providing Party, disclose any Confidential Information to any person (including the fact that the Confidential Information has been

made available to the Receiving Party or that the Receiving Party has inspected any portion of the Confidential Information); and (b) it will not use any of the Confidential Information for any reason or purpose other than to perform its obligations, if any, in the Pending Case.

The Receiving Party may disclose Confidential Information to those Representatives of the Receiving Party who (i) in the judgment of the Receiving Party, require access to such material for the purpose of assisting the Receiving Party in performing work directly associated with the Pending Case and (ii) are informed by the Receiving Party of the confidential nature of the Confidential Information and the obligations of this Agreement and agree to be bound by all the provisions hereof applicable to the receipt and use of Confidential Information by the Receiving Party. The Receiving Party agrees to be fully responsible for enforcing as to the Receiving Party's Representatives the obligations of this Agreement applicable to the Receiving Party and to take such action, legal or otherwise, to the extent necessary (including all actions that the Receiving Party would take to protect its own confidential information and trade secrets) to cause its Representatives to comply with such obligations.

#### **4. DISCLOSURE REQUIRED BY LAW**

If the Receiving Party or any of the Receiving Party's Representatives is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory body to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Receiving Party or such Representative, as the case may be, will provide the Providing Party with prompt notice of such request so that it may seek an appropriate protective order or other appropriate remedy. Subject to the foregoing, the Receiving Party or such Representative may furnish that portion (and only that portion) of the Confidential Information that, in the written opinion of its counsel, reasonably acceptable to the Providing Party, the Receiving Party is legally compelled or is otherwise required to disclose. In addition, the Receiving Party or such Representative shall use reasonable efforts to obtain reliable assurances that confidential treatment will be accorded any Confidential Information so disclosed.

#### **5. RETURN OF CONFIDENTIAL INFORMATION**

If the Receiving Party determines that it does not wish to proceed with the Pending Case or upon the conclusion of the Pending Case as evident by the issuance of a final order, then the Receiving Party, upon request of the Providing Party, (a) (i) will promptly deliver to the Providing Party all documents or other materials furnished by the Providing Party or any Providing Party Representative to the Receiving Party or the Receiving Party's Representatives constituting Confidential Information, together with all copies and summaries thereof in the possession or under the control of the Receiving Party or the Receiving Party's Representatives, and (ii) will destroy materials generated by the Receiving Party or the Receiving Party's Representatives that include or refer to any part of the Confidential Information, without retaining a copy of any such material; or (b) as an alternative to the procedure described in the preceding clause (a) if the

Providing Party gives its prior written consent, the Receiving Party will promptly destroy all documents or other matters constituting Confidential Information in the possession or under the control of the Receiving Party or the Receiving Party's Representatives and shall promptly certify the same in writing to the Providing Party (including in such certification a list of the destroyed materials).

## 6. REMEDIES

The Receiving Party understands and agrees that money damages would not be a sufficient remedy for any breach of this Agreement by it or by the Receiving Party's Representatives and that the Providing Party will suffer irreparable harm because of any such breach of this Agreement. The Receiving Party further understands and agrees that the Providing Party will be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive relief as remedies for such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by the Receiving Party but shall be in addition to all other remedies available at law or equity.

## 7. MISCELLANEOUS

(a) Modification. The agreements set forth in this Agreement may be modified or waived only by a separate writing signed by the Providing Party and the Receiving Party expressly modifying or waiving such agreements.

(b) Waiver. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party; (ii) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

(c) Person. The term person means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization or other entity.

(d) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. If any of the covenants or provisions of this Agreement are determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties contemplate that the court making such

determination shall reduce such extent, duration, scope or other provision and enforce them in their reduced form for all purposes contemplated by this Agreement.

(e) Costs. The Receiving Party agrees that if it is held by any court of competent jurisdiction to be in violation, breach, or nonperformance of any of the terms of this Agreement, then it will pay all costs of such action or suit, including reasonable attorneys' fees.

(f) Assignment. Neither Party may assign any of its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(g) Governing Law. This Agreement shall be governed by the laws of the State of Ohio without regard to conflicts of laws principles thereof.

(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by an appropriate officer thereunto duly authorized, all as of the date set forth at the beginning of this Agreement.

Duke Energy Ohio, Inc.

By: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_