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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio for Approval of a Market Rate )  
Offer to Conduct a Competitive Bidding )  
Process for Standard Service Offer Electric )  
Generation Supply, Accounting )  
Modifications, and Tariffs for Generation )  
Service. )

Case No. 10-2586-EL-SSO

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**DUKE ENERGY OHIO'S  
MOTION FOR PROTECTIVE ORDER**

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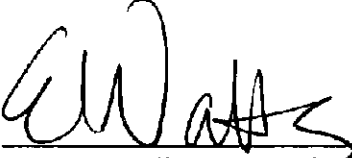
Duke Energy Ohio, Inc., (Duke Energy Ohio) hereby moves for a protective order covering the redacted information included in the briefs filed in this proceeding. The information redacted from the briefs is information that was found to be confidential by the attorney examiners at the hearing in this case and, consequently, supported a protective order covering certain exhibits and was also redacted from the hearing transcripts. Now that all briefs have been filed, Duke Energy Ohio moves for a protective order covering that same information, as it appears in briefs.

The attached Memorandum in Support fully supports the necessity for confidential treatment of the designated information.

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Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in black ink, appearing to read "E. Watts", is written over a horizontal line.

Amy B. Spiller (Counsel of Record)

Deputy General Counsel

Elizabeth H. Watts

Associate General Counsel

Rocco O. D'Ascenzo

Associate General Counsel

139 East Fourth Street

1303-Main

Cincinnati, Ohio 45202

(513) 287-4359 (telephone)

Amy.Spiller@duke-energy.com

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**MEMORANDUM IN SUPPORT OF DUKE ENERGY OHIO'S  
MOTION FOR PROTECTIVE ORDER**

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**I. INTRODUCTION**

On January 12, 2011, in the course of the hearing on this proceeding, Duke Energy Ohio moved for protective orders covering certain portions of the exhibits introduced by Industrial Energy Users-Ohio (IEU), numbered IEU Exhibits 1, 2, 3, 4, 5, 6, 8, 9, and 10, on the grounds that the information is proprietary, trade secret material, the public disclosure of which would work an unfair competitive disadvantage to Duke Energy Ohio.<sup>1</sup> Those motions were granted by the presiding attorney examiner.<sup>2</sup>

Subsequently, as the trade secret material was covered through cross-examination and redirect examination at the hearing, the resultant transcripts were similarly redacted with the approval of the attorney examiners.

The parties have now completed the briefing process. The attorney examiners recognized that briefs might need to address confidential material.<sup>3</sup> However, no specific instruction was given as to whether a formal motion would be required. Although this motion may not be necessary given the attorney examiner's statements, out of an abundance of caution, Duke Energy Ohio is filing this motion. The motion covers the confidential material, designated by redactions, in three of the briefs that have been docketed; specifically IEU's Initial Brief, filed January 27, 2011; IEU's Reply Brief, filed February 3, 2011; and Duke Energy Ohio's Reply Brief, filed February 3, 2011 (Confidential Material).

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<sup>1</sup> Tr. II at 304, 452-453.

<sup>2</sup> Tr. II at 305-306, 453.

<sup>3</sup> Tr. V at 1120-1121.

## II. ARGUMENT

The definition of trade secret contained in R.C. 1333.61(D) is as follows:

“Trade secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Duke Energy Ohio considers the Confidential Material to be proprietary, confidential, and trade secret, as that term is used in R. C. 1333.61, as discussed in the hearing in this matter.<sup>4</sup> The ruling on this issue, at the hearing, found that the material was indeed a trade secret. Both IEU and Duke Energy Ohio found it necessary to refer to this protected information in their briefs. Such references should similarly be protected here.

The Confidential Material is not known outside of Duke Energy Ohio, is not disseminated within Duke Energy Ohio except to those employees with a legitimate business need to know and act upon the information. The information contained in the Confidential Material certainly meets the definition of trade secret.

Ohio Administrative Code (O.A.C.) 4901-1-24(D) permits Duke Energy Ohio to move the Commission for the issuance of a protective order, covering information that Joint Applicants considers to be proprietary trade secret information, or otherwise confidential, such that documents including that information be filed in a redacted form and in a non-

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<sup>4</sup> Tr. II at 259-263; Tr. V at 305-306.

redacted form, to be held under seal.<sup>5</sup> The non-disclosure of the Confidential Material is not inconsistent with the purposes of Title 49 of the Revised Code, with any legitimate need by OCC for the information, or with any provision of Ohio law.

Duke Energy Ohio recognizes that parties may have a legitimate need for the information contained in the Confidential Material and has entered into Confidentiality Agreements with those parties, to the extent they have been interested in doing.

The public interest will be served by granting this motion. By protecting the confidentiality of the Confidential Material, the Commission will prevent undue harm to Duke Energy Ohio and its ratepayers, as well as ensuring a sound competitive marketplace in Ohio.

Therefore, given the highly confidential and proprietary nature of the information, Duke Energy Ohio urges the Commission to grant this motion.

### **III. CONCLUSION**

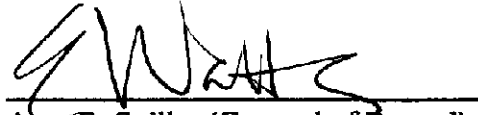
WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(D), grant its Motion for Protective Order, by making a determination that the Protected Material is confidential, proprietary and a trade secret.

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<sup>5</sup> O.A.C. 4901-1-24.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in black ink, appearing to read 'Amy B. Spiller', is written over a horizontal line.

Amy B. Spiller (Counsel of Record)

Deputy General Counsel

Elizabeth H. Watts

Associate General Counsel

Rocco O. D'Ascenzo

Associate General Counsel

139 East Fourth Street

1303-Main

Cincinnati, Ohio 45202

(513) 287-4359 (telephone)

Amy.Spiller@duke-energy.com

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Protective Order of Duke Energy Ohio has been served to the parties by regular U. S. Mail, overnight delivery, or electronic delivery this 4<sup>th</sup> day of February, 2011.



Elizabeth H. Watts

<p>John W. Bentine Mark Yurick Matthew S. White Counsel for the Kroger Company Chester, Wilcox &amp; Saxbe, LLP 65 East State Street, Suite 1000 Columbus, Ohio 43215-4213 <a href="mailto:jbentine@cwsllaw.com">jbentine@cwsllaw.com</a> <a href="mailto:myurick@cwsllaw.com">myurick@cwsllaw.com</a> <a href="mailto:mwhite@cwsllaw.com">mwhite@cwsllaw.com</a></p>	<p>David F. Boehm Michael L. Kurtz Counsel for Ohio Energy Group Boehm, Kurtz &amp; Lowry 36 East Seventh Street, Suite 1510 Cincinnati, Ohio 45202 <a href="mailto:dboehm@bklawfirm.com">dboehm@bklawfirm.com</a> <a href="mailto:mkurtz@bklawfirm.com">mkurtz@bklawfirm.com</a></p>
<p>David C. Rinebolt Counsel for Ohio Partners for Affordable Energy 231 West Lima Street Findlay, OH 45840-3033 <a href="mailto:Drinebolt@ohiopartners.org">Drinebolt@ohiopartners.org</a></p>	<p>Colleen L. Mooney Counsel for Ohio Partners for Affordable Energy 1431 Mulford Road Columbus, OH 43212-3404 <a href="mailto:Cmooney2@columbus.rr.com">Cmooney2@columbus.rr.com</a></p>
<p>Samuel C. Randazzo Joseph E. Olikier Counsel for Industrial Energy Users-Ohio McNees Wallace &amp; Nurick LLC 21 E. State Street, 17<sup>th</sup> Floor Columbus, Ohio 43215 <a href="mailto:sam@mwncmh.com">sam@mwncmh.com</a> <a href="mailto:joliker@mwncmh.com">joliker@mwncmh.com</a></p>	<p>William T. Reisinger, Counsel of Record Nolan Moser Trent A. Dougherty Ohio Environmental Council 1207 Grandview Avenue, Suite 201 Columbus, Ohio 43212-3449 <a href="mailto:will@theoec.org">will@theoec.org</a> <a href="mailto:nolan@theoec.org">nolan@theoec.org</a> <a href="mailto:trent@theoec.org">trent@theoec.org</a></p>

<p>Mark A. Hayden, Counsel of Record  FirstEnergy Service Company  76 South Main Street  Akron, Ohio 44308  <a href="mailto:haydenm@firstenergycorp.com">haydenm@firstenergycorp.com</a></p> <p>David A. Kutik, Attorney for  FirstEnergy Solutions Corp.  Jones Day  North Point  901 Lakeside Avenue  Cleveland, Ohio 44114  <a href="mailto:dakutik@jonesday.com">dakutik@jonesday.com</a></p> <p>Grant W. Garber, Attorney for  FirstEnergy Solutions Corp.  Jones Day  325 John H. McConnell Blvd., Suite 600  Columbus, Ohio 43215-2673  <a href="mailto:gwgarber@jonesday.com">gwgarber@jonesday.com</a></p>	<p>Douglas E. Hart  Attorney for The Greater Cincinnati  Health Council  441 Vine Street, Suite 4192  Cincinnati, OH 45202  <a href="mailto:dhart@douglasehart.com">dhart@douglasehart.com</a></p>
<p>M. Howard Petricoff  Stephen M. Howard  VORYS, SATER, SEYMOUR AND PEASE  LLP  52 East Gay Street  P.O. 1008  Columbus, Ohio 43216-1008  <a href="mailto:mhpetricoff@vorys.com">mhpetricoff@vorys.com</a>  <a href="mailto:smhoward@vorys.com">smhoward@vorys.com</a></p> <p>Cynthia Fonner Brady  Senior Counsel  Constellation Energy Resources, LLC  550 W. Washington St., Suite 300  Chicago, Illinois 60661  <a href="mailto:cynthia.brady@constellation.com">cynthia.brady@constellation.com</a></p> <p>Attorneys for Constellation NewEnergy, Inc.  and Constellation Energy Commodities Group,  Inc.</p>	<p>Ann M. Hotz, Counsel of Record  Kyle L. Verrett  Jody M. Kyler  Assistant Consumer Counsels  Office of the Ohio Consumers' Counsel  10 West Broad Street, Suite 1800  Columbus, Ohio 43215-3485  <a href="mailto:hotz@occ.state.oh.us">hotz@occ.state.oh.us</a>  <a href="mailto:verrett@occ.state.oh.us">verrett@occ.state.oh.us</a>  <a href="mailto:kyler@occ.state.oh.us">kyler@occ.state.oh.us</a></p>



<p>Steven Beeler  John Jones  Assistant Attorneys General  Public Utilities Commission of Ohio  180 East Broad Street  Columbus, Ohio 43215  <a href="mailto:Steven.beeler@puc.state.oh.us">Steven.beeler@puc.state.oh.us</a>  <a href="mailto:John.jones@puc.state.oh.us">John.jones@puc.state.oh.us</a></p>	<p>Michael D. Dortch  Counsel for Duke Energy Retail Sales, LLC  Kravitz, Brown &amp; Dortch, LLC  65 East State St., Suite 200  Columbus, OH 43215  <a href="mailto:mdortch@kravitzllc.com">mdortch@kravitzllc.com</a></p>
<p>Barth E. Royer  Bell &amp; Royer Co., LPA  33 South Grant Avenue  Columbus, Ohio 43215  <a href="mailto:barthroyer@aol.com">barthroyer@aol.com</a></p> <p>Gary A. Jeffries  Senior Counsel  Dominion Resources Services, Inc.  501 Martindale Street, Suite 400  Pittsburgh, PA 15212  <a href="mailto:Gary.A.Jeffries@dom.com">Gary.A.Jeffries@dom.com</a></p> <p>Attorneys for Dominion Retail, Inc.</p>	<p>Thomas J. O'Brien  Counsel for the City of Cincinnati  Bricker &amp; Eckler LLP  100 South Third Street  Columbus, Ohio 43215  <a href="mailto:tobrien@bricker.com">tobrien@bricker.com</a></p>
<p>Douglas E. Hart  Counsel for Eagle Energy, LLC  441 Vine Street, Suite 4192  Cincinnati, Ohio 45202  <a href="mailto:dhart@douglasehart.com">dhart@douglasehart.com</a></p>	