

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland)	
Electric Illuminating Company, and)	Case No. 08-935-EL-SSO
The Toledo Edison Company For)	
Authority to Establish a Standard)	
Service Offer Pursuant to R.C. §)	
4928.143 in the Form of an Electric)	
Security Plan)	
)	
)	
In the Matter of the Application of Ohio)	Case Nos. 09-21-EL-ATA
Edison Company, The Cleveland)	09-22-EL-AEM
Electric Illuminating Company and The)	09-23-EL-AAM
Toledo Edison Company for Approval)	
of Rider FUEL and Related Accounting)	
Authority)	

**FIRSTENERGY SOLUTIONS CORP.'S COMMENTS REGARDING THE
DISCLOSURE OF THE REPORT OF THE COMMISSION'S CONSULTANT**

INTRODUCTION

FirstEnergy Solutions Corp. ("FES") hereby submits its comments regarding the disclosure of the standard service offer ("SSO") auction report (the "Report") prepared at the request and direction of the Commission by its consultant, Boston Pacific Company, Inc. ("Boston Pacific"). The Report contains highly confidential and competitively sensitive information regarding the May 13-14, 2009 SSO auction conducted by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies"). As a participant and winning bidder in the auction, FES has a real and substantial interest in maintaining the confidentiality of the Report. Disclosure of the Report, and the information therein, would have a drastic, negative effect on the developing competitive electric generation market in Ohio and would jeopardize bidder participation in future auctions.

As discussed and demonstrated below, the Commission's May 14, 2009 Finding and Order required that the Report be maintained under seal indefinitely. The Commission's order is consistent with, and mandated by, the Competitive Bidding Process ("CBP") rules, and no valid reason exists today to alter that mandate. Indeed, the Report is not the type of discoverable, party-generated information that the Commission requires a motion for protective order to protect. Rather, the Report contains information prepared *at the request of the Commission* and *solely for the use of the Commission*, and the Commission is obligated to maintain it under seal. The information in the Report must be maintained under seal because it constitutes trade secrets under Ohio law. Indeed, the CBP Rules prohibit disclosure of the entire Report and all of its contents in order to ensure that the Commission receives a full accounting of the auction from its independent advisor. Therefore, the Commission should continue to maintain the Report under seal indefinitely.

BACKGROUND

Boston Pacific created the Report at the request of the Commission to aid it in evaluating the Companies' May 13-14, 2009 SSO auction. In a February 19, 2009 entry ("February 19, 2009 Entry"), the Commission required the Companies to provide funding for a consultant to "assess and report to the Commission regarding any SSO proposed by [the Companies]." February 19 2009 Entry, ¶ 4. The consultant was tasked with "assisting the Commission in its evaluation of any forthcoming SSO proposal and monitoring any proposed competitive bid procurement process." *Id.* The Commission retained Boston Pacific as its consultant to monitor the auction. Boston Pacific monitored the Companies' SSO auction and generated the Report, which contained highly-confidential, competitively-sensitive information regarding the CBP and each of the bidders.

The ESP Stipulation approved by the Commission in this docket provided that the CBP “shall be conducted consistent with the (i) communication protocols, (ii) SSO Supply Agreement, and (iii) competitive bid process bidding rules proposed in the MRO as modified to accord with this Stipulation and as more fully outlined in Attachment A.”¹ The CBP Communication Protocols governing the conduct of the SSO auction (the “CBP Rules”), a copy of which is attached hereto as Exhibit A, addressed the information that would be generated by the CBP and imposed confidentiality obligations on all bidders, the CBP manager, the FirstEnergy Ohio utilities, the Commission, Commission Staff, and Boston Pacific. *See* CBP Rules at p. 2. With regard to the data at issue here, although the CBP Rules established a minimum 18-month non-disclosure period for bidder names, the Commission could extend this period indefinitely in order to benefit future CBPs. *Id.* at p. 3. Moreover, the CBP Rules specifically mandated a more extended period for bidding information:

The actual round-by-round bids by bidders would be kept confidential for as long as the FirstEnergy Ohio Utilities are continuing to procure power through a CBP or a similar process. This confidentiality is necessary to ensure that bidders do not obtain information that would provide them with insights into other bidders’ bidding strategies and valuations and that may harm the competitiveness of future Solicitations. The actual applications will be kept confidential to protect information supplied by bidders on a confidential basis, encourage full disclosure, and encourage participation.

Id. Thus, the CBP Rules obligated all entities involved in the CBP, including the Commission, to maintain the confidentiality of the information in the Report regarding bidders and bidding

¹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, PUCO Case No. 08-935-EL-SSO, Stipulation and Recommendation at p. 9 (Feb. 19, 2009).

strategies. As explained in the CBP Rules, “[k]eeping such information confidential is one of the most important policies employed to maximize participation in the CBP.” *Id.* at p. 5.

The Report was provided only to the Commission and Commission Staff, which moved on May 14, 2009, for a protective order to keep the Report confidential as mandated by the CBP Rules. Staff’s motion described the information in the Report as “highly competitively sensitive” and noted that disclosure of the information “would be highly prejudicial to the bidding parties and to the viability of any future Auction in Ohio.” Motion, p. 2. That same day, the Commission approved the CBP results. The Commission ordered that winning bid information be released to the public after twenty-one days as authorized by the CBP Rules. May 14, 2009 Finding and Order, ¶ 9; CBP Rules at pp. 3, 13, 21-22. The Commission also found that the Report contained confidential information and, as required by the CBP Rules, ordered that it “remain under seal.” May 14, 2009 Finding and Order, ¶ 10. According to the Commission, the Report contains the following information that should be protected from disclosure: “the names of unsuccessful bidders; price information, including starting price methodologies and round prices/quantities for individual bidders; all information contained in Part I and Part II bidder applications; and indicative pre-auction offers.” *Id.* at ¶ 10.

Columbus Southern Power Company and Ohio Power Company (collectively, “AEP Ohio”) submitted a public records request to the Commission on May 17, 2011, seeking disclosure of the Report. AEP Ohio argued that the Commission’s protective order expired on November 14, 2009, pursuant to O.A.C. 4901-1-24(F), which provides that protective orders issued pursuant to division (D) of that rule expire after eighteen months unless otherwise indicated. AEP Ohio’s request does not mention the CBP Rules.

On May 23, 2011, the Attorney Examiner issued an entry (“May 23, 2011 Entry”) finding that AEP Ohio had “misconstrued” the Commission’s May 14, 2009 Finding and Order protecting the information in the Report. The Attorney Examiner found that the Commission intended the Report to remain under seal *indefinitely*. May 23, 2011 Entry, ¶ 7. However, due to AEP Ohio’s request, the Attorney Examiner also found it appropriate to review whether the Report should remain confidential. *Id.* at ¶ 8. Accordingly, interested persons were given fifteen days to file comments on whether the Report should remain confidential.

LAW AND ARGUMENT

I. The Commission Did Not Intend That The Report Be Disclosed Publicly.

FES agrees with the Attorney Examiner that the Commission did not intend the provisions of O.A.C. 4901-1-24(F) to apply to the Report. The Commission’s intent – indeed, its mandate as expressed in the May 14, 2009 Finding and Order – was that the information remain under seal *indefinitely*. The circumstances surrounding the Report make it clear that it was never intended to be released to the public. It is a document prepared for the Commission, at the Commission’s request, by the Commission’s independent advisor. It is not the type of discoverable information that a protective order issued pursuant to O.A.C. 4901-1-24(F) protects for only eighteen months. The circumstances surrounding the Report indicate that it should remain under seal indefinitely.

First, in the Commission’s Entry directing the Companies to hire Boston Pacific, the Commission demonstrated its intent that the Report remain confidential. In that Entry, the Commission stated that the consultant chosen by Staff shall be subject to the Commission’s statutory duty under R.C. § 4901.16, which states in relevant part:

Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or

agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent.

February 19 Entry, ¶ 4. This explicit direction by the Commission indicates its intent that the information contained in the Report never be disclosed. Likely recognizing the effect that disclosure of the Report would have on the competitive market and future bidder participation, the Commission directed Boston Pacific not to divulge any such information.

Next, the language of the May 14, 2009 Entry further demonstrates the Commission's intent that the Report remain under seal indefinitely. In granting Staff's motion for a protective order, the Commission stated that the Report contained sensitive information that "should be deemed confidential and remain under seal." May 14 2009 Entry, ¶ 10. The Commission did not specify a time period regarding the Report's confidentiality. Typically, when the Commission or an attorney examiner grants a motion for a protective order, the Commission or attorney examiner clearly states the period of time that the information will be protected. *See, e.g., In the Matter of the Application of FirstEnergy Solutions Corp. for Approval of its Alternative Energy Annual Status Report and for an Amendment of its 2009 Solar Energy Resources Benchmark pursuant to Section 4928.64(C)(4)(a), Revised Code*, Case No. 10-467-EL-EEC (Entry, January 5, 2011) ("The attorney examiner, therefore, finds that there is good cause to grant FirstEnergy Solutions' motion for a protective order. The unredacted report should receive protected status for an 18-month period and should remain under seal in the Docketing Division for that time period."); *see also In the Matter of the Amendment of the Minimum Telephone Service Standards as set forth in Chapter 4901:1-15 of the Ohio Administrative Code*, Case No. 00-1265-TP-ORD (Entry, March 7, 2007) ("Under the circumstances presented, we find it appropriate to grant AT&T's motion for protective order and,

thereby, to extend protective status to the information covered by that motion for a limited period of 18 months.”).

These examples demonstrate that when the Commission intends for confidential information to remain under seal for a specific period of time under Rule 4901-1-24(D), it clearly states so. Here, the Commission clearly states that the Report should “be deemed confidential and remain under seal.” May 14 Entry, ¶ 10. The Commission’s failure to specify a time period here indicates its intent, as the Attorney Examiner found, that the Report should remain confidential indefinitely. As described above, the Commission was bound by the CBP Rules to afford confidential treatment to this data. The provisions of Rule 4901-1-24 did not and do not apply.

Moreover, the CBP Rules extend special treatment to the Report itself by providing that the Report in its entirety not be disclosed to the public. *See* CBP Rules at p. 21. Maintaining the confidentiality of the Report (and all future auction reports) is essential in order for the Commission to obtain the independent consultant’s unblemished opinions regarding the conduct of the auction. Maintaining the confidentiality of these reports is essential to ensuring that SSO customers receive the benefits of fair and efficient energy markets. Thus, the CBP Rules prohibit release of the Report to the public.

Finally, not only would releasing the Report violate the CBP Rules, but it would conflict with the Commission’s duty to promote and encourage Ohio’s competitive electric services market. Such a release would have a drastic effect on the competitive auction process. As the Ohio Supreme Court explained in a case involving Duke Energy Ohio, Inc.’s standard service offer:

Exposing a competitor’s business strategies and pricing points would likely have a negative impact on that provider’s viability.

Absent any showing of harm from the commission's order, and recognizing the volatility and competitiveness of the electric industry, we conclude that the order to redact information is not unreasonable.

Ohio Consumers' Counsel v. Public Utilities Commission of Ohio, 121 Ohio St.3d 362, 370 (2009). The Commission has made a similar determination concerning the information in the Report, noting that the "reports [] contain sensitive information which should be deemed confidential and remain under seal." May 14 Entry, ¶ 10. By incorporating the CBP Rules into the ESP Stipulation, all stipulating parties agreed that the development of fair and efficient markets requires non-disclosure of CBP bidding data. Disclosing the Report would have a drastic effect on the development of the competitive electric generation market and conflict with the Commission's duty to encourage that market. If bidders are not assured that their competitively sensitive information will be protected, they will be less likely to participate in the standard service offers of public utilities. Protection of the type of information contained in the Report is vital to the success of the competitive market in Ohio. Accordingly, the Report should not be disclosed.

II. The Report Contains Trade Secrets That Are Protected From Disclosure Under Ohio Law.

Even absent the express non-disclosure language in the CBP Rules, the Report should be kept confidential because it contains trade secrets under Ohio law. Reports in the Commission's possession are not public records to the extent provided in Ohio's Public Records Act, R.C. § 149.43. *See* R.C. § 4905.07. The Public Records Act excepts from the definition of "public record" any record the release of which is prohibited by state or federal law. R.C. § 149.43(A)(1). In turn, state law prohibits the release of information meeting the definition of a trade secret. R.C. §§ 1333.61(D) and 1333.62. The bidding data in the Report are trade secrets

under Ohio law, and no purpose of Title 49 would be served by the public disclosure of the information.²

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“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.

R.C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of competitively-sensitive information such as the information in the Report.

In *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga App. 1983), the court of appeals, citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980), delineated factors to be considered in recognizing a trade secret: (1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information. The Ohio Supreme Court has adopted these

² Notably, AEP Ohio cannot rely upon the 18-month period in Rule 4901-1-24 to obtain disclosure of trade secrets that are prohibited by Ohio law from being disclosed. The Commission’s rule cannot be used to circumvent a statutory mandate.

factors as appropriate. *State ex rel. Perrea v. Cincinnati Pub. Schools*, 123 Ohio St.3d 410, 414, 2009-Ohio-4762 (2009).

The Commission's description of the Report indicates that it contains proprietary, confidential business information. The Commission clearly considers and has treated the information as a trade secret. The stipulating parties in this docket and all parties involved in the CBP intended that this information be protected as a trade secret. The information in the Report provides specific information concerning the Companies' CBP. It contains information detailing, among other things, the prices submitted by the bidders and the quantity of electricity each bidder sought. Such information would allow competitors to learn the bidders' pricing strategy. Indeed, disclosure could cause otherwise interested bidders to avoid the SSO process altogether, including all future CBPs conducted by the FirstEnergy utilities and other Ohio EDUs, instead of risking disclosure of their business strategies.

For these reasons, FES contends that the information contained in the Report constitutes trade secrets under Ohio law and should remain under seal indefinitely.

CONCLUSION

The facts and circumstances concerning the Report indicate that the Commission intended the highly sensitive information therein to be maintained under seal for an indefinite period of time. The Report contains information that is a trade secret under Ohio law. Accordingly, FES requests that the Report be maintained under seal indefinitely.

Respectfully submitted,

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EXHIBIT A

CPB Communication Protocols

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COMMUNICATION PROTOCOLS

2009 CBP AND BEYOND

I. Introduction

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

Each year, the FirstEnergy Ohio Utilities will conduct a CBP. A CBP consists of one or more Solicitations. The first CBP, consisting of one Solicitation to be conducted in 2008, is referred to as the "2009 CBP" because it procures supply for periods beginning January 1, 2009. Future CBPs will consist of two Solicitations. This document describes the proposed undertakings of the CBP Manager, the FirstEnergy Ohio Utilities, the Public Utilities Commission of Ohio ("PUCO" or "Commission") Staff, the PUCO Advisor¹, the PUCO, and the parties ("bidders") participating in the CBP. By "CBP Manager", we mean any member of the CBP Manager Team. By "PUCO Advisor", we mean any member of the team of PUCO advisors, should any be retained by the PUCO and the PUCO Staff. By bidders, we mean all entities that are prospective, potential, or actual bidders in one or several of the Solicitations of the CBP.

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

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

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

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

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

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

II. Objectives

This document and its procedures follow four main objectives:

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

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

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

such information. This type of information is described in more detail in Sections III and IV. Keeping such information confidential is one of the most important policies employed to maximize participation in the CBP. To maintain this level of confidentiality, this document lays out in detail the procedures by which such information will not be accidentally released. This includes clearly identifying information that should be kept confidential, identifying the obligations of parties having access to this information, and the practical procedures that all parties involved in the process should follow. Also, the last part of this document contains five appendices: Appendix A provides a summary of obligations, discretion and procedures for lists A, B, C and D personnel. Appendix B presents the signature pages that all parties on those lists will sign. Appendix C presents the confidentiality agreement the CBP Manager Team will sign while bidding is on-going. Appendix D provides an overview of bidder non-disclosure obligations. Appendix E presents the signature page that bidders will be required to execute regarding treatment of confidential information.

III. Treatment of Confidential Information

The CBP generates both public and confidential information. All CBP information, including confidential information, is available to the CBP Manager, and it is the CBP Manager who is responsible for distributing this information to the relevant parties. Public information is any information to which all parties (i.e., bidders, the FirstEnergy Ohio Utilities, PUCO Staff, PUCO Advisor, the public and the media) can have access. As discussed in Section V of the CBP Rules, confidential information includes any information that would reveal proprietary information of a participant and any material which upon its release would be detrimental to the administration of future CBPs. Public information is posted to the CBP web site and is made available to everyone, while confidential information is only available to certain personnel of the different parties involved in the CBP – those on lists A, B, C, or D. Part A of this Section III deals with confidential information that will be made available to the FirstEnergy Ohio Utilities, the PUCO and its Advisor, and the CBP Manager. Part B of this Section III deals with confidential information to which bidders, either registered or qualified, will have access.

III. A. Treatment of Confidential Information Concerning the CBP Available to the CBP Manager, the FirstEnergy Ohio Utilities and the PUCO

The present section discusses treatment of confidential information, written or oral, that will be generated during the CBP and that may be made available to the FirstEnergy Ohio Utilities, the PUCO Staff and PUCO Advisor, and the CBP Manager. This section outlines the procedures by which this information is to be communicated between the different parties involved in the CBP, namely the CBP Manager, the FirstEnergy Ohio Utilities, PUCO Staff and the PUCO Advisor. It also outlines who is responsible for administering and releasing different types of information and to whom. For this purpose, all personnel involved in the CBP are classified into different lists (i.e., Lists A, B, C or D) depending on the type of confidential information to which they need access to perform their function in the CBP. The members of different lists will also adhere to certain undertakings regarding the confidential information to which they have access. The section is split into the different lists of personnel outlining the different types of CBP information that will be disseminated and also establishes how this information is to be communicated and disseminated among the personnel that belong to the different lists. It is understood that once information is released by the PUCO, this information is no longer confidential and any undertakings described herein no longer apply.

For purposes of information dissemination related to the CBP there are four lists: List A, List B, List C, and List D. List A recipients are those that may receive information regarding the identity of bidders and the questions that they may ask. List B recipients are those that may receive information contained in the Application Forms of bidders for each Solicitation. List C recipients are those that will receive general bidding information and results. List D recipients are those that will receive information regarding bids by individual bidders.

III. A. 1. List A Information

Information available to individuals on List A is information about bidders resulting from inquiries regarding the CBP. All inquiries from prospective bidders and other interested parties, even if the question concerns public information, must be referred to and answered by the CBP Manager. Direct questions from parties who are interested in the process but not directly participating in it, such as the general public and customers, will also be answered by the CBP

Manager. The FirstEnergy Ohio Utilities are free to provide their customers, security analysts and utilities or regulators from outside Ohio with public information and with their view of the CBP.

Confidential information that may be available to List A personnel consists of:

- The identity of a party asking a question to the CBP Manager;
- The identity of prospective bidders directing inquiries to the PUCO Staff or PUCO Advisor or the FirstEnergy Ohio Utilities;
- Inferences that can be made from a question asked by a bidder; and
- Data that may be requested by bidders and that the FirstEnergy Ohio Utilities believe must be provided on a confidential basis.

List A Members

Confidential information related to inquiries from bidders is only provided to List A members. List A includes all resource persons upon which the CBP Manager may rely to answer questions from bidders. List A is comprised of all the personnel of the CBP Manager Team, designated PUCO Staff, designated personnel from the PUCO Advisor, and designated representatives from the FirstEnergy Ohio Utilities. For the FirstEnergy Ohio Utilities, List A includes credit, data, regulatory, rate design, MISO, and contract experts.

All individuals from List A may share the information that reveals the identity of a bidder only with other individuals on List A. This procedure protects bidders who have an expectation that their identity will not be made public or revealed to other bidders when they submit a question or a comment to the CBP Manager. Additionally, any information available to these parties that is not posted on the web site can be shared only with other parties on List A. List A personnel will agree to abide by their confidentiality obligations by the signing the confidentiality agreement attached hereto as Appendix B.

List A Confidentiality Obligations and Communication

All personnel from and representing the FirstEnergy Ohio Utilities refer all questions, inquiries, comments and requests regarding the CBP that come from a bidder to the CBP Manager. The CBP Manager is under an obligation to remind all parties that the information is to be held confidential in accordance with the procedure outlined above. The general intent of this procedure is to ensure that all bidders are provided with the same information regarding the CBP and to prevent a bidder from being inadvertently favored.

Any information communicated to the CBP Manager as a result of contact with a bidder can be shared with personnel from the FirstEnergy Ohio Utilities on List A. The explicit identity of bidders will be routinely redacted from the information that the CBP Manager communicates to the List A personnel from the FirstEnergy Ohio Utilities. Discussion that involves some but not all bidders and any FirstEnergy Ohio Utilities personnel should also involve the CBP Manager.² It is the CBP Manager's responsibility to ensure that any information given to one or more bidders during such discussions is provided promptly to all bidders. The CBP Manager has the ability to disseminate this information through the FAQ section of the web site or through an announcement sent to the bidder list.

All personnel from PUCO Staff and the PUCO Advisor will also refer all questions, inquiries, comments and requests regarding the CBP that come from a bidder to the CBP Manager. PUCO Staff and the PUCO Advisor (if any) will be asked by the CBP Manager to help answer questions that may require the expertise and procedural knowledge of PUCO Staff. The PUCO Advisor and PUCO Staff may only discuss information that reveals the identity of bidders and share this information with the CBP Manager and with other persons on List A. The CBP Manager will obtain answers to questions directed to the PUCO or PUCO Staff from the PUCO Staff and make sure that these questions and answers are posted as FAQs on the CBP web site. The general intent of this procedure is to ensure that all bidders are provided with the same information and that no bidder is accidentally favored.

² Such discussions are not expected in the normal course of the CBP and as noted above FirstEnergy Ohio Utilities personnel will refer all requests for information by potential bidders to the CBP Manager. However, it is possible that there may be information exchanged in discussions between the FirstEnergy Ohio Utilities and potential bidders, for example, to receive bidder comments on credit or contract issues, and this procedure is in place to ensure that any information exchanged will be made available to all potential bidders.

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

III. A. 2. List B Information

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

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

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

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

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

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

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

List B Members

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

List B Confidentiality Obligations and Communication

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

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

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

Communication between the CBP Manager and the FirstEnergy Ohio Utilities

The CBP Manager will only provide to the FirstEnergy Ohio Utilities (throughout this section, "the FirstEnergy Ohio Utilities" will mean List B personnel from the FirstEnergy Ohio Utilities) the information to which they have access as described above.

The general information regarding the applications, such as the number of applicants and the general level of creditworthiness must be kept confidential. The FirstEnergy Ohio Utilities personnel responsible for assessing the creditworthiness of Part 1 applicants will communicate the results of their assessment only to other List B personnel. The CBP Manager will put this assessment together with other qualification criteria to decide whether to qualify applicants. The FirstEnergy Ohio Utilities personnel responsible for assessing whether credit instruments in the Part 2 Application are acceptable to the FirstEnergy Ohio Utilities will communicate any concerns only to the CBP Manager. The CBP Manager will write a letter to the bidder outlining the FirstEnergy Ohio Utilities' concerns and the FirstEnergy Ohio Utilities will evaluate any resubmitted credit instruments.

Communication between the CBP Manager and the PUCO Staff and Advisor

The CBP Manager can provide the PUCO Staff and the PUCO Advisor with all application information. PUCO Staff and the PUCO Advisor will appropriately secure any information they receive.

The PUCO Staff and PUCO Advisor may find it necessary to brief the PUCO on information obtained through the Application process. Such briefings will be conducted confidentially. These briefings may provide the PUCO with preliminary indications of interest, and/or the number of bidders qualified or registered. Such briefings will be conducted confidentially. After the last Solicitation in a CBP, along with the clearing prices, the names of the winners within a CBP, and the quantities each winner has won, the PUCO Staff may release some List B information as directed by the PUCO, such as the number of bidders in each Solicitation or in the entire CBP.

III. A. 3. List C Information

Confidential information available to List C is information regarding bidding that will be generally available through reports of the CBP Manager to all bidders. This information is referred to as general report information. This information is confidential and generally consists of the bidding schedule, the range of excess supply in each round, and the prices in each round. The general report information may only be discussed with personnel from List C. Aside from knowing that bidding has begun, the public and media have no access to information regarding the progress of the bidding from the time that the bidding starts until the PUCO announces that the bidding is over and it is considering the results, at which point the public and media know that the bidding is over. Once the CBP is complete, the public and media will know whether the results of the Solicitation become the standard service offer of the FirstEnergy Ohio Utilities no later than the third calendar day after the solicitation concludes. The public and media will learn the names of the winning bidders and the final prices after the last Solicitation in a given CBP.

Confidential Information available to List C consists of:

- List of Qualified and Registered Bidders;
- Total initial eligibility for a Solicitation;
- Going prices in any round;
- Range of excess supply in any round;
- The fact that the bidding has ended;
- Extraordinary events;
- The status or success of bidder training;
- Information (such as web site addresses, IDs and passwords) necessary to view general report information;
- The round in progress at any point in time;

- The final prices for any product prior to release by the PUCO; and
- The names of the winning bidders and the quantity of each product won by each bidder.

The PUCO Staff, the CBP Manager, and the PUCO Advisor may hold a conference call if decisions need to be taken regarding an extraordinary event. The CBP Manager alone may initiate communication with the FirstEnergy Ohio Utilities during bidding to inform them of extraordinary events.

List C Members

List C includes the CBP Manager Team, the PUCO and PUCO Advisor, and the List C personnel of the FirstEnergy Ohio Utilities. The FirstEnergy Ohio Utilities will select personnel that will be on List C. For the remainder of this section, the FirstEnergy Ohio Utilities personnel can be understood to mean the List C personnel of the FirstEnergy Ohio Utilities. List C personnel will agree to abide by their confidentiality obligations by the signing the confidentiality agreement attached hereto as Appendix B.

List C Confidentiality Obligations and Communication

List C information discussed in this section may only be discussed with personnel from List C in a location where reasonable measures have been taken to ensure that unauthorized personnel cannot unintentionally have access to this information.

The FirstEnergy Ohio Utilities, the CBP Manager, PUCO Staff, and the PUCO Advisor will keep in mind that the information is only to be discussed with individuals on List C and that this information may not be discussed or referred to in a public place. List C personnel will abide by the undertaking of their confidentiality agreement. The FirstEnergy Ohio Utilities and PUCO Staff will view the general report information in a way that ensures that personnel from the FirstEnergy Ohio Utilities or PUCO Staff who should not have access to this information cannot accidentally view the information. For example, the FirstEnergy Ohio Utilities and PUCO Staff may choose to view the information from a remote location. Any electronic storage

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

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

III. A. 4. List D Information

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

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

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

List D Members

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

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

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

List D Confidentiality Obligations and Communication

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

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

CBP Manager

The CBP Manager has access to all CBP information. The CBP Manager is mindful of the sensitivity of confidential information and will impress upon all staff that it is crucial for no information to leave or be discussed outside the CBP Manager's Office. Each day of bidding, all members of the CBP Manager Team will execute a Confidentiality Agreement certifying that CBP Manager personnel will not discuss, disclose or reveal any round information to anyone outside the CBP Manager Office. The Confidentiality Agreement that CBP Manager personnel will sign is attached hereto as Appendix C.

FirstEnergy Ohio Utilities

The CBP Manager will prepare a final report for the PUCO at the end of each Solicitation. The report will also be provided in draft form to the FirstEnergy Ohio Utilities personnel on List C, but with all appropriate information redacted. That is, the FirstEnergy Ohio Utilities will not learn new information regarding bids from the report. Table 1 and Table 2 detail what information will be available to the FirstEnergy Ohio Utilities during the various phases of the CBP.

PUCO Staff and the PUCO may receive from their Advisor a post-solicitation assessment in addition to the CBP Manager's final report. The FirstEnergy Ohio Utilities receive a redacted version of the Advisor's assessment and may provide comments to ensure accuracy.

PUCO Staff and PUCO Advisor

Representatives from the PUCO Staff and PUCO Advisor may be present at the CBP Manager's Office during the bidding. These individuals will be on List D and have access to the round information, as well as bid results in a format agreed to by the CBP Manager, PUCO Staff Representatives and the PUCO Advisor before bidding begins. All CBP Manager Team personnel and representatives from the PUCO Staff and PUCO Advisor that will have access to the CBP Manager's Office will also be on List D. All paper copies of the bidding results will remain in the CBP Manager Office. The PUCO Advisor and the PUCO Staff Representatives on List D will brief the PUCO as appropriate during bidding or after bidding has been completed.

III. B. Confidential Information for Bidders

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

III. B. 1. Confidential Information

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

Confidential information regarding the CBP includes the following information³:

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

³ A more comprehensive definition is provided in the CBP Rules.

- the status of a bidder's participation,
- the status of bidding,
- any information made available to bidders during bidding,
- all reports of results and announcements made by the CBP Manager to any one bidder, and
- the clearing price for any product prior to release by the PUCO.

For each and all Solicitations with the CBP. *Confidential information regarding the CBP* also includes all information necessary to submit bids (e.g., passwords) and any communications from the CBP Manager, such as memoranda, emails, manuals, letters or faxes containing confidential information related to the CBP.

Confidential information regarding bidding strategy includes the following information applicable to any Solicitation within the CBP:

- quantities a bidder wishes to serve,
- a bidder's estimation of the value of a tranche,
- a bidder's estimation of the risks associated with serving SSO Load, and
- a bidder's contractual arrangement for power with a party to serve SSO Load were the bidder to be a winner.

III. B. 2. Confidentiality Obligations for Bidders

A bidder will be required in its Part 1 Application to certify that if it becomes a qualified bidder, it will not disclose confidential information regarding the CBP including the list of qualified bidders, the number of qualified bidders, the identity of any or all qualified bidders, or the fact that an entity has not been qualified for further participation in the Solicitation. Each bidder must also certify that it will destroy any document distributed by the CBP Manager that

lists the qualified bidders within five (5) days of the Commission selecting least cost bidders as SSO Suppliers.

A qualified bidder will be required in its Part 2 Application to certify that it does not have any knowledge of Confidential Information relative to the bidding strategy of any other qualified bidder, that it will not disclose Confidential Information relative to its own bidding strategy, and that it will not, at any time, disclose Confidential Information regarding the CBP, including the total initial eligibility, the list of registered bidders, and the fact that an entity has not been registered for further participation.

Following a successful Part 2 Application, the registered bidder will be required to certify that it will continue to abide by its prior commitment to maintain the confidentiality of information regarding the CBP. The registered bidder will be required to do so before obtaining essential information for bidding.

The least cost bidders as SSO Suppliers, the results of a Solicitation, the clearing prices and the names of the winners may not be released until after the last Solicitation in a given CBP. After the PUCO selects least cost bidders as SSO Suppliers for a given Solicitation, a winner may itself release information regarding the number of tranches it has won and the products that the winner will be serving, and a losing bidder may itself release information only regarding the fact that it participated in the Solicitation. Prices may not be released at this time. The winners and losing bidders otherwise continue to be bound by their certifications as described previously. All bidders must destroy all documents containing confidential information obtained in a given Solicitation within 5 days of the conclusion of that Solicitation.

Sanctions can be imposed on a qualified bidder for releasing Confidential Information or disclosing information during the CBP. Such sanctions can include, but are not limited to, any one or more of the following: the loss of all rights to provide tranches won in the CBP by such bidder; the forfeiture of letters of credit and other fees posted or paid; liquidated damages of \$100,000; action (including prosecution) under applicable state and/or federal laws; payment of attorneys' fees and court costs incurred in any litigation that arises out of the bidder's improper disclosure; debarment from participation in future Solicitations in the CBP and/or future CBPs; and/or other sanctions that the PUCO may consider appropriate.

Should such an event occur, the CBP Manager will make a recommendation regarding a sanction. The PUCO will be the final arbiter of any sanction.

III. C. Summary of Information Dissemination During the CBP

Summary tables of which parties have access to which information at various times during the CBP are provided below.

Table 1. Who Knows What During Bidding

	List C	List D	Bidders
Going prices	X	X	X
Names of bidders with bids in a round		X	(1)
# of tranches by bidder		X	(1)
Round information other than common information		X	(1)

(1) A bidder knows its own bids during bidding, but not the bids of other bidders.

Table 2. Who Knows What After Bidding Closes

	List C	List D	Bidders	Public
Clearing Prices	X	X	(A)	
Winning Bidders for each product*		X	(1)	
# of tranches by winning bidder for each product*		X	(2)	
Bid data submitted during bidding		X	(3)	
CBP Manager Final report (and PUCO Advisor post-solicitation assessment if applicable)	(4)	(4)		

	List C	List D	Bidders	Public
If Solicitation Results become SSO pricing				
Clearing Prices	X ⁴	X	X	(5)
Winning bidders for each product	X	X	(2)	(5)
# of tranches by winning bidder for each product	X	X	(2)	
Bid data submitted during solicitation		X	(3)	
CBP Manager Final report (and PUCO Advisor post-solicitation assessment if applicable)	X	X		
If PUCO Determines any of three delineated criteria from R.C. 4928.142(C) not met				
Clearing Prices	X	X	X	(5)
Winning bidders for each product*		X	(1)	
# of tranches by winning bidder for each product*		X	(2)	
Bid data submitted during solicitation		X	(3)	
CBP Manager Final report (and PUCO Advisor post-solicitation assessment if applicable) redacted	(4)	(4)		

Note: After the last Solicitation in the CBP the PUCO will publicly release the number of tranches that each winning bidder will serve.

* "Winning bidder" means "tentative winning bidder" prior to PUCO selecting least cost bidders as SSO Suppliers (such selection may not occur).

(A) Only winning bidders know the final clearing prices for each product. Losing bidders do not have access to round results or prices beginning in the first round in which they cannot win any tranches of any product.

(1) A bidder knows whether it is a (tentative) winning bidder. A bidder does not know the names of any other (tentative) winning bidders until after the last Solicitation in a CBP.

(2) A bidder knows how many tranches of each product, if any, it has sold to the FirstEnergy Ohio Utilities. A bidder does not know the names of any other (tentative) winning bidders until after the last Solicitation in a CBP.

(3) A bidder knows its bids during bidding, but not other bidders' bids.

⁴ List C will also include individuals that must execute the contract with winning bidders and communicate with winning bidders to help effect supply obligations.

(4) PUCO Staff and the PUCO may receive from their Advisor a post-solicitation assessment. The FirstEnergy Ohio Utilities receive a redacted version of the CBP Manager Final Report.

(5) This information may become public no earlier than after the last Solicitation in a CBP has ended. The PUCO would release clearing prices for each Solicitation.

Appendix A: Summary of Obligations, Discretion and Procedures for List A, B, C and D Personnel Involved in the CBP

The present section summarizes the obligations that all personnel involved in the CBP will respect regarding the treatment of confidential information. Confidential information can only be released to and discussed with personnel on Lists A, B, C and D as provided in these communication protocols.

List A: Summary of Obligations, Discretion and Procedures

1. The FirstEnergy Ohio Utilities, the PUCO Advisor and PUCO Staff refer all inquiries and questions from bidders to the CBP Manager;
2. The FirstEnergy Ohio Utilities, the CBP Manager, the PUCO Staff, and the PUCO Advisor must select the personnel that will be included on List A;
3. Personnel representing the FirstEnergy Ohio Utilities who are on List A, and who may also be performing services for FirstEnergy Solutions, will be identified to PUCO Staff and to the PUCO Advisor. Such personnel will recognize explicitly their obligations not to communicate any information about the CBP to FirstEnergy Solutions;
4. All List A personnel must receive List A and a statement of their obligations including a duty to not disclose any non-public information to those not on List A. All List A personnel must acknowledge receipt of these materials to the CBP Manager (the list of personnel and the statement of obligations) by returning the executed signature page of Appendix B;
5. Any update to List A will be immediately communicated to the CBP Manager who will email the update to all the parties on List A;
6. Any information provided to any bidder(s) is provided to all bidders without discrimination by the CBP Manager;
7. The CBP Manager can communicate information received from bidders in the form of a question or a comment only to individuals on List A. The CBP Manager

communicates questions for the purposes of eliciting the expertise of FirstEnergy Ohio Utilities personnel or PUCO Staff. The CBP Manager does not necessarily redact all information that could imply the identity of the bidder;

8. Whenever the CBP Manager communicates information regarding bidders to an individual on List A, the CBP Manager has the obligation to remind personnel to keep information received concerning bidders confidential;

9. In any interaction between bidders and the FirstEnergy Ohio Utilities, the CBP Manager is present and the CBP Manager disseminates any information that has come to light during this interaction to all bidders;

10. The CBP Manager may contact bidders directly in order to seek information about the CBP. The CBP Manager has the discretion to approach new parties to solicit their interest in the CBP.

List B: Summary of Obligations, Discretion and Procedures

1. The FirstEnergy Ohio Utilities, the CBP Manager, the PUCO Staff, and the PUCO Advisor must select the personnel that will be on List B;

2. All List B personnel must receive List B and a statement of their obligations (see Appendix B). All List B personnel must acknowledge receipt of these materials to the CBP Manager (the list of personnel and the statement of obligations) by returning the executed signature page of Appendix B. PUCO Staff, the PUCO Advisor, and the CBP Manager must keep in mind that List B personnel from the FirstEnergy Ohio Utilities do not have access to all List B information;

3. Any update to List B will be immediately communicated to the CBP Manager, who will email the update to all parties on List B;

4. FirstEnergy Ohio Utilities personnel on List B who may also be performing services for FirstEnergy Solutions will be identified to PUCO Staff and to the PUCO Advisor.

Such personnel will recognize explicitly their obligations not to communicate any information about the CBP to FirstEnergy Solutions;

5. The CBP Manager provides List B information to the List B personnel. All summaries and documents produced by the CBP Manager are marked "Confidential: CBP Application Information". The CBP Manager provides additional information from the Application Forms to PUCO Staff and the PUCO Advisor as deemed appropriate;

6. Qualified Bidders and Registered Bidders will have certified that they will not disclose the list of Qualified Bidders, the list of Registered Bidders, and the initial eligibility;

The CBP Manager will ensure that information regarding bidding agreements, bidding consortia, and associations are disclosed only on a need-to-know basis to members of its own team. The CBP Manager will ensure that the PUCO Advisor consults any relevant document from the Applications on the premises of the CBP Manager Office.

Lists C and D: Summary of Obligations, Discretion and Procedures

1. The FirstEnergy Ohio Utilities, the CBP Manager, the PUCO Staff, and the PUCO Advisor must select the personnel that will be on List C. The CBP Manager, PUCO Advisor, and PUCO Staff must designate List D individuals;

2. FirstEnergy Ohio Utilities personnel on List C who may also be performing services for FirstEnergy Solutions will be identified to PUCO Staff and to the PUCO Advisor. Such personnel will recognize explicitly their obligations not to communicate any information about the CBP to FirstEnergy Solutions;

3. All List C personnel must receive List C and a statement of their obligations and must acknowledge their obligations by returning the executed signature page of Appendix B. List C may not be modified after the registration of the bidders except under extraordinary circumstances. List C should include all personnel who will be required to execute the contracts with winning bidders and communicate with bidders regarding credit and other supply responsibility information;

4. Representatives from PUCO Staff, representatives from the PUCO Advisor and the CBP Manager are on List D. List D personnel will be mindful that List C personnel have access only to general report information;

5. All List D personnel must receive List D and a statement of their obligations. List D personnel from the CBP Manager Team will sign a Confidentiality Agreement and return the signature page to the CBP Manager each day of the Solicitation. Other List D personnel acknowledge their obligations by returning the executed signature page of Appendix B;

6. The List C personnel must view the general report information in a way that minimizes the possibility of accidental disclosure. List C personnel can discuss general report information only with other List C personnel. List C personnel must not discuss this information in a public setting;

7. There is no communication with the media or the public while bidding is in progress or while the PUCO is evaluating the results except for the CBP Manager stating when the bidding has started;

8. List C and D personnel will not release or discuss, except with other List C and D personnel, any clearing price information not released by the PUCO. The PUCO releases clearing price information after the end of the last Solicitation in a CBP.

**Appendix B: Signature Page on Confidentiality for Lists A, B, C
and D**

I acknowledge that I have read and understand the obligations regarding treatment of confidential information related to the CBP for List_____.

I certify that I have abided by its terms up until today and that I agree to continue to abide by its terms and conditions. I acknowledge that I may be subject to potential injunctive action to enforce this confidentiality agreement, as well as liability from parties participating in the 2009 CBP should I be found in violation of this confidentiality agreement.

Signed by

Date

Please return the signed form to the CBP Manager Office or Fax to:

CBP Manager Team

XXX St. XX FL

Columbus, Ohio 43XXX

Fax No. (614) xx-xxxx

Appendix C: Confidentiality Agreement for the CBP Manager

CONFIDENTIALITY AGREEMENT

Any information regarding bidding in the CBP is of a highly confidential nature. Confidential information regarding bidding includes, but is not limited to:

- Any information relating to a bidder including, but not limited to, the bidder's identity, any information pertaining to the bidder's bidding strategy, particular bids submitted by the bidder, the bidder's eligibility, the bidder's remaining recess requests or bidding extensions, the exercise by a bidder of an extension or a recess, information provided to the bidder to enable the bidder to bid such as the bidder's identifier and password, the bidder's use of the back-up bidding procedure, the particular round results for a bidder, the bidder's participation status in bidding, the bidder's financial circumstances, the bidder's contractual arrangements for power – whether such information is obtained directly from the bidder, through reports of bidding results, or inferred from conversation with the bidder;
- Any information relating to the progress of the bidding, including but not limited to, the going prices for the round, eligibility in a round, the reason for time-outs for the bidding, round results for any particular bidder in any particular round, the number of bidders remaining in the bidding, the number of recesses requested or the number of extensions requested or granted, the identities of active bidders, the expected duration of the bidding;
- Any information relating to the bids by product in the bidding, including but not limited to the going prices in any particular round, the exit prices submitted or any other information that could reveal a bidder's bidding strategy.

Disclosure of any such confidential information that may cause competitive harm to the parties involved in the CBP and may compromise the CBP. Any person who participates in the management of the CBP in any capacity or observes the bidding is subject to the following measures designed to protect the strict confidentiality of bidding information, and must acknowledge and agree to adhere to these measures.

1. All bidding information shall be used solely for purposes of performing duties related to the management of the CBP and shall not be revealed or used, directly or indirectly, by any person receiving it for or in connection with any other purpose of any kind;

2. All persons who gain access to any bidding information shall be and are hereby prohibited and enjoined from disclosing or using such bidding information except as required for the conduct of the CBP;

3. All persons to whom bidding information is disclosed shall take reasonable and appropriate precautions to avoid misuse, loss, and/or unauthorized disclosure of bidding information;

4. Bidding information shall not be disclosed, repeated, given, shown, made available, or communicated in any way to anyone other than members of the CBP Manager Team, PUCO Representatives present at the CBP Manager Office and on List D, the PUCO Advisor representative(s) present at the CBP Manager Office and on List D, or Brattle's academic and legal advisors on List D, as necessary to carry out the CBP;

5. Should there be any question as to whether information is confidential bidding information, it will be presumed to be confidential and subject to these requirements unless and until the CBP Manager under instructions of the FirstEnergy Ohio Utilities and PUCO Representatives authorizes its disclosure in writing.

I acknowledge that I have read and understand this Confidentiality Agreement. I certify that I have abided by its terms up until today and that I agree to continue to abide by its terms and conditions.

Signed by

Date

Appendix D: Summary of Bidder Non-Disclosure Requirements

Bidder non-disclosure requirements are found in the CBP Rules. This attachment excerpts those requirements.

For each Solicitation, bidders will be required to make the following certifications. This is a partial list of certifications that address confidentiality.

1. A prospective bidder must certify that if it becomes a qualified bidder, the prospective bidder will not disclose information regarding the list of qualified bidders, including the number of qualified bidders, the identity of any or all qualified bidders, or the fact that an entity has not been qualified for further participation.

2. A qualified bidder must certify that it will not disclose confidential information relative to its own bidding strategy except to entities that were explicitly named in its Part 1 Application as entities with whom the bidder has entered into a bidding agreement, or a joint venture for the purpose of participating in the Solicitation, or a bidding consortium, or any other arrangement pertaining to participating in the Solicitation, to bidders with which it is associated as disclosed through certification 5, to its Advisor, and to its financial institution.

3. A qualified bidder must certify that if it becomes a registered bidder, the qualified bidder will not, at any time, disclose information regarding the total initial eligibility or the list of registered bidders, including the number of registered bidders, the identity of any or all registered bidders, or the fact that an entity has not been registered for further participation in the Solicitation.

4. A qualified bidder must certify that it will not, at any time, disclose any Confidential Information regarding the CBP other than to: i) entities explicitly named in the Part 1 Application as entities with which the qualified bidder has entered into a bidding agreement, or a joint venture for the purpose of participating in the CBP, or a bidding consortium, or any other arrangement pertaining to participating in the CBP; or ii) its Advisor; or iii) bidders with which it is associated as disclosed through certification 5.

Following a successful Part 2 Application, the registered bidder will be required to certify that it will continue to abide by its prior commitment to maintain the confidentiality of information regarding the CBP. The registered bidder will be required to do so before obtaining critical information essential to submit bids.

Appendix E: Bidder Signature Page

To Be Returned to the CBP Manager No Later Than xxxxxxxx __, 2008

Bidder Authorized Representative

Date :

CBP Manager

To: CBP Manager

From: Bidder Authorized Representative

RE: Representations regarding the Solicitation

This is to confirm that I have now received the letter from the CBP Manager confirming my status as a Registered Bidder.

I will receive a Confidential Information packet after I have executed in full and returned this letter by fax to the CBP Manager. I will send the original of this letter subsequently by courier. The Confidential Information packet includes information essential to submit bids.

I make the following representations:

(1) I certify that I will continue to abide by all certifications and commitments made in the Part 1 Application and the Part 2 Application.

Authorized Representative

Date

continued

(2) I understand that I am the only person authorized to distribute Confidential Information to other representatives of my company. The integrity of the process depends upon each Authorized Representative safeguarding Confidential Information regarding the CBP. I understand that this Confidential Information is to be used only for the purposes of participation in the CBP.

Authorized Representative

Date

(3) As Authorized Representative, I will ensure that only authorized persons act on behalf of my company in submitting bids.

Authorized Representative

Date

(4) I certify that I will destroy all documents provided by the CBP Manager that contain Confidential Information within one week of the Commission selecting least cost bidders as SSO Suppliers, including but not limited to, the list of Qualified Bidders and the list of Registered Bidders.

Authorized Representative

Date

(5) I understand that failure to adhere to any of the certifications or commitments made in the Part 1 and 2 Applications, or failure to adhere to certifications (1) through (4) in this letter may result in sanctions, including, but not limited to, loss of all rights to serve any SSO Load won, forfeiture of financial guarantees and other fees posted or paid, prosecution under applicable state and federal laws, or any other sanctions that the Commission deems appropriate.

Authorized Representative

Date

continued

(6) I understand that during bidding, all telephone calls to the CBP Manager and to Technical Assistants will be recorded. Calls are recorded for bid verification purposes and a written transcript of such calls may be made. I consent on behalf of my company, and all authorized persons that will act on behalf of my company during bidding, to the recording and transcription of such telephone calls. I further consent to the CBP Manager's use of any such recordings and transcripts for purposes related to the CBP.

Authorized Representative

Date

Please return the signed form to the CBP Office and Fax to:

CBP Manager Team

XXX St. XX FL

Columbus, Ohio 43XXX

Fax No. (614) xx-xxxx

CERTIFICATE OF SERVICE

The foregoing *FirstEnergy Solutions Corp.'s Comments Regarding the Confidentiality of the Report of the Commission's Consultant* was served via electronic mail on this 7th day of June, 2011, upon parties on the attached service list.

/s/ Kevin P. Shannon
One of Attorneys for FirstEnergy Solutions Corp.

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Summary: Comments Regarding the Disclosure of the Report of the Commission's Consultant electronically filed by Mr. Kevin P. Shannon on behalf of FirstEnergy Solutions Corp.