

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	
Standard Service Offer Pursuant to Section)	
4928.143, Revised Code, in the Form of)	Case No. 14-841-EL-SSO
an Electric Security Plan, Accounting)	
Modifications and Tariffs for Generation)	
Service.)	
In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its)	Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)	

**DUKE ENERGY OHIO, INC.'S
MOTION FOR PROTECTIVE ORDER**

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company), pursuant to O.A.C. 4901-1-24(A), hereby moves the Public Utilities Commission of Ohio (Commission) for a protective order in respect of the confidential, trade secret, and proprietary information (collectively, confidential information) requested of Duke Energy Ohio by the Office of the Ohio Consumers' Counsel (OCC) in connection with these proceedings. Specifically, Duke Energy Ohio respectfully requests that the Commission allow the exchange and production of such confidential information pursuant to the form of confidentiality agreement attached hereto as Exhibit 1 and incorporated herein by reference.

The basis for Duke Energy Ohio's motion is set forth in the following Memorandum in Support, as well as Duke Energy Ohio's Response to [OCC's] Memorandum Contra filed with the Commission on June 23, 2014.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

Amy B. Spiller (Counsel of Record)

Deputy General Counsel

Rocco O. D'Ascenzo

Associate General Counsel

Jeanne W. Kingery

Associate General Counsel

Elizabeth H. Watts

Associate General Counsel

139 E. Fourth Street, 1303-Main

P.O. Box 961

Cincinnati, Ohio 45201-0960

(513) 287-4359 (telephone)

(513) 287-4385 (facsimile)

Amy.Spiller@duke-energy.com (e-mail)

MEMORANDUM IN SUPPORT

O.A.C. 4901-1-24(A) allows a party from whom discovery is sought to seek an order from the Commission or the assigned attorney examiner, establishing parameters pursuant to which discovery may be had. Such parameters extend to confidential information. Indeed, the Commission's regulations contemplate issuance of an order restricting the production of confidential information in its entirety or allowing the production of confidential information "only in a designated way." See O.A.C. 4901-1-24(A)(7). Herein, consistent with past practice, Duke Energy Ohio has tendered to the OCC a confidentiality agreement that would enable the Company to produce to the OCC, via discovery, Duke Energy Ohio's confidential information. The OCC has objected to the use of the confidentiality agreement tendered by the Company and, instead, insists upon using a document that is no longer acceptable. The OCC's request (made in the form of a memorandum contra a motion by another intervenor) and Duke Energy Ohio's response thereto are pending before the Commission.¹

Subsequent to replying to OCC's filing, Duke Energy Ohio and the OCC engaged in conversations aimed at resolving any disagreements as to the form of the confidentiality agreement. Indeed, Duke Energy Ohio has previously offered substantial revision to its tendered agreement; such revisions serving to address almost all of the concerns identified by the OCC. Significantly, the revised confidentiality agreement still appropriately balances the desire of the OCC to receive confidential information and the needs of Duke Energy Ohio to protect its confidential information from public circulation. But the OCC has refused to execute this confidentiality agreement, instead persisting in its request to use an old agreement.²

¹ Memorandum Contra OEG's Motion to Establish Protective Agreement by the Office of the Ohio Consumers' Counsel (June 18, 2014); Duke Energy Ohio's Response to Ohio Consumers' Counsel Memorandum Contra (June 23, 2014).

² Exhibit 2, Affidavit of Amy B. Spiller, paragraph 6.

There is no precedent that compels Duke Energy Ohio to continue to provide its confidential information to the OCC pursuant to an agreement that, given changed circumstances, fails to provide adequate assurance that the Company's confidential information will be properly protected or, alternatively, that affords sufficient remedies should the agreement be breached. Indeed, the OCC has identified no such legal right and instead refers only to past dealings between it and Duke Energy Ohio – and between it and other utilities in other cases – as its justifying its continued reliance upon document that is now unacceptable.

Duke Energy Ohio acknowledges that the OCC has requested confidential information in connection with these proceedings and it is prepared to disclose same to the OCC pursuant to the confidentiality agreement attached hereto as Exhibit 1. Thus, to enable discovery to proceed under terms that are fair, reasonable, and not unduly burdensome to both Duke Energy Ohio and the OCC, Duke Energy Ohio respectfully seeks a protective order adopting the agreement reflected in Exhibit 1. In this regard, Duke Energy Ohio further states that the proposed confidentiality agreement has been tailored to accommodate the OCC, addressing such matters as the records retentions policies of a state agency and the OCC's reliance upon a public records coordinator.³ As such, the proposed confidentiality agreement is not applicable to other intervenors in these proceedings. That agreement is currently before the Commission for review in connection with the OEG's request.

Duke Energy Ohio states that, since filing its application in these proceedings, it has endeavored to reach a resolution with the OCC that would not involve the Commission or its attorney examiner.⁴ Such efforts have included multiple communications as well as significant

³ Exhibit 3, Redlined Confidentiality Agreement, para. 8 and 6.b.

⁴ Exhibit 2, Affidavit of Amy B. Spiller.

revision to the original confidentiality agreement offered by the Company.⁵ However, OCC has refused to consider the revisions, instead informing the Company of its intent to compel discovery.⁶ As the Company's efforts in resolving this matter directly with the OCC have been unsuccessful, it now moves the Commission or its attorney examiner to issue an order adopting, for use between Duke Energy Ohio and the OCC, the confidentiality agreement attached hereto as Exhibit 1.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

Amy B. Spiller (Counsel of Record)

Deputy General Counsel

Rocco O. D'Ascenzo

Associate General Counsel

Jeanne W. Kingery

Associate General Counsel

Elizabeth H. Watts

Associate General Counsel

139 E. Fourth Street, 1303-Main

P.O. Box 961

Cincinnati, Ohio 45201-0960

(513) 287-4359 (telephone)

(513) 287-4385 (facsimile)

Amy.Spiller@duke-energy.com (e-mail)

⁵ *Id.*

⁶ *Id.* at para. 8.

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 8th day of July 2014, to the following parties.

/s/ Jeanne W. Kingery
Jeanne W. Kingery

Steven Beeler
Thomas Lindgren
Ryan ORourke
Assistant Attorneys General
Public Utilities Section
180 East Broad St., 6th Floor
Columbus, Ohio 43215
Steven.beeler@puc.state.oh.us
Thomas.lindgren@puc.state.oh.us
Ryan.orourke@puc.state.oh.us

Counsel for Staff of the Commission

Kevin R. Schmidt
88 East Broad Street, Suite 1770
Columbus, Ohio 43215
schmidt@sppgrp.com

Counsel for the Energy Professionals of Ohio

David F. Boehm
Michael L. Kurtz
Jody M. Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com

Counsel for the Ohio Energy Group

Mark A. Hayden
Jacob A. McDermott
Scott J. Casto
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com

Counsel for FirstEnergy Solutions Corp.

Maureen R. Grady
Joseph P. Serio
Edmund "Tad" Berger
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Maureen.grady@occ.ohio.gov
Joseph.serio@occ.ohio.gov
Edmund.berger@occ.ohio.gov

Counsel for the Ohio Consumers' Counsel

Kimberly W. Bojko
Mallory M. Mohler
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Bojko@carpenterlipps.com
Mohler@carpenterlipps.com

Counsel for the Ohio Manufacturers' Association

Joseph M. Clark
21 East State Street, 19th Floor
Columbus, Ohio 43215
joseph.clark@directenergy.com

Counsel for Direct Energy Services, LLC and Direct Energy Business, LLC

Judi L. Sobecki
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432
Judi.sobecki@aes.com

Counsel for The Dayton Power and Light Company

Joseph Olikier
Matthew White
6100 Emerald Parkway
Dublin, Ohio 43016
joliker@igsenergy.com
mwhite@igsenergy.com

Counsel for Interstate Gas Supply, Inc.

Samuel C. Randazzo
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

Counsel for Industrial Energy Users-Ohio

Colleen L. Mooney
Cathryn N. Loucas
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839-1793
cmooney@ohiopartners.org
cloucas@ohiopartners.org

Counsel for Ohio Partners for Affordable Energy

Trent Dougherty
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
tdougherty@theOEC.org

Counsel for the Ohio Environmental Council

Andrew J. Sonderman
Margeaux Kimbrough
Kegler Brown Hill & Ritter LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 43215-4294
asonderman@keglerbrown.com
mkimbrough@keglerbrown.com

Counsel for People Working Cooperatively, Inc.

Steven T. Nourse
Matthew J. Satterwhite
Yazen Alami
American Electric Power Service Corporation
1 Riverside Plaza 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com

Counsel for Ohio Power Company

Christopher J. Allwein
Todd M. Williams
Williams Allwein and Moser, LLC
1500 West Third Avenue, Suite 330
Columbus, Ohio 43212
callwein@wamenergylaw.com
toddm@wamenergylaw.com

Counsel for the Sierra Club

Douglas E. Hart
441 Vine Street
Suite 4192
Cincinnati, Ohio 45202
dhart@douglasehart.com

Counsel for The Greater Cincinnati Health Council

Rebecca L. Hussey
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Hussey@carpenterlipps.com

Counsel for The Kroger Company

M. Howard Petricoff
Michael J. Settineri
Gretchen L. Petrucci
VORYS, SATER, SEYMOUR & PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com

**Attorneys for Constellation NewEnergy, Inc.,
Exelon Generation Company, LLC, the
University of Cincinnati, Retail Energy Supply
Association and Miami University**

EXHIBIT 1

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	
Standard Service Offer Pursuant to Section)	
4928.143, Revised Code, in the Form of)	Case No. 14-841-EL-SSO
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Certified Supplier Tariff, P.U.C.O. No. 20.)	

CONFIDENTIALITY AGREEMENT
BETWEEN
DUKE ENERGY OHIO, INC.
AND
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

This Confidentiality Agreement (Agreement) is made and entered into by and between Duke Energy Ohio, Inc., (Duke Energy Ohio) and the Office of the Ohio Consumers' Counsel (Recipient) (each individually a Party and, collectively, the Parties), effective as of _____.

Recitals

- A. Duke Energy Ohio is an Ohio public utility, as defined in Revised Code (R.C.) 4905.02 and an electric utility, as defined in R.C. 4928.01(A)(11). As such, Duke Energy Ohio is subject to the jurisdiction of the Public Utilities Commission of Ohio (Commission).
- B. Recipient is the representative of residential customers of Duke Energy Ohio and has filed (or expects to file) a motion seeking leave to intervene in the Proceeding, as defined herein, which motion has not been denied.

- C. Certain written, verbal, and electronic information anticipated to be disclosed by Duke Energy Ohio to Recipient contains proprietary, confidential, and competitive information of Duke Energy Ohio and, potentially, third parties.

Now, therefore, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

Agreement

1. Definitions

For purposes of this Agreement, the term “Confidential” means that counsel for Duke Energy Ohio deems, in good faith, the information to which the term refers to be subject to protection either under Rule 26(c) of the Federal or Ohio Rules of Civil Procedure or under Rule 4901-1-24(D) of the Ohio Administrative Code because it constitutes a trade secret or other confidential business information of Duke Energy Ohio or Duke Energy Ohio’s customers or Duke Energy Ohio’s affiliates, including but not limited to plant and product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, research and development, customer lists, current and anticipate customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), databases (including technologies, systems, structures, and architectures), contracts, or any other information, however documented, that is a trade secret within the meaning of applicable law and including other commercial information and/or confidential information that is subject to a further confidentiality provision with a third party. However, the term “Confidential” does not refer to any information or document that is either (i) contained in the public files of any state or federal administrative agency or court or (ii) at or prior to the commencement of the Proceeding is or was otherwise in the public domain, or enters into the public domain as a result of publication by Duke Energy Ohio.

For purposes of this Agreement, the term “Highly Confidential” means that counsel for Duke Energy Ohio deems, in good faith, the information to which the term refers to be “Confidential” and also to be information that, if disclosed, might damage the Company’s current or prospective business or any current or prospective financial position and is, therefore, disclosed only for review by attorneys representing the Recipient.

For purposes of this Agreement, the term “Confidential Information” or “Highly Confidential Information” means information that is designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” by Duke Energy Ohio in writing or, if recorded as part of a deposition or transcribed testimony, orally. “Confidential Information” and “Highly Confidential Information” shall refer to such designated information whether revealed during deposition, in a document, by production of tangible evidence, in a hearing or oral testimony of

any sort, or otherwise. "Confidential Information" and "Highly Confidential Information" shall also include all copies or reproductions, in any medium, or any so designated information. In addition, "Confidential Information" and "Highly Confidential Information" shall include all notes, analyses, compilations, studies, summaries, and other material prepared by the Recipient or the Recipient's Representatives (as defined below) containing or based, in whole or in part, on any Confidential Information or "Highly Confidential Information" provided from or on behalf of Duke Energy Ohio. Where reasonably possible, "Confidential Information" or "Highly Confidential Information" shall bear a legend to that effect, record or affixed on it in such a way as to be obvious to a reasonable examiner.

For purposes of this Agreement, the term "Proceeding" means the Commission proceeding or proceedings captioned above, including any appeal to the Ohio Supreme Court that stems directly from the Commission's decision therein and any remand by the Ohio Supreme Court to the Commission. The term "Proceeding" does NOT include any cases that may be substantively or procedurally related but are not captioned above, other than appeals and remands; provided, however, that the Parties may agree in writing, pursuant to Section 9(c), below, to modify this definition such that other legal proceeding(s) may be included with the definition of the term "Proceeding" and, provided further, that the specific reference to the ability of the Parties to agree in writing to modify such definition does not alter the Parties' ability to modify other provisions of this Agreement or the requirement that such other modification requires written agreement.

2. Identification of Confidential Information and Highly Confidential Information

Duke Energy Ohio will conspicuously mark all written and electronic data containing Confidential Information or Highly Confidential Information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only." In the event that Duke Energy Ohio notifies the Recipient after providing Confidential Information or Highly Confidential Information that such information was not appropriately so marked, the Recipient shall add such marking to the Confidential Information or Highly Confidential Information and shall treat it as such under the terms of this Agreement.

By entering into this Agreement, the Recipient acknowledges the Confidential or Highly Confidential nature of the Confidential Information or Highly Confidential Information and that any unauthorized disclosure or unauthorized use thereof by the Recipient will injure Duke Energy Ohio's business and/or the business of the customer(s) and/or affiliate(s) of Duke Energy Ohio; provided, however, that the Recipient shall retain the right to dispute, at the Public Utilities Commission of Ohio, the confidentiality of the Confidential Information or Highly Confidential Information.

3. Protection of Confidential Information

The Recipient agrees that (i) it will hold all Confidential Information and Highly Confidential Information as required by this Agreement and will not, without the specific prior written consent of Duke Energy Ohio, disclose any Confidential Information or Highly Confidential Information (including the fact that the Confidential Information or Highly Confidential Information has been made available to the Recipient or that the Recipient has inspected any portion of the Confidential Information or Highly Confidential Information) to any person other than as allowed hereunder, (ii) it will not use any of the Confidential Information or Highly Confidential Information for any reason or purpose other than the Proceeding, and (iii) in the event the Recipient has a need to publicly file any document containing Confidential Information or Highly Confidential Information, with the Confidential Information or Highly Confidential Information redacted, the Recipient shall ensure that the redacted information cannot, technologically, be obtained by third parties.

All Confidential Information and Highly Confidential Information shall be held by the Recipient in separate and identifiable files, with access to such files restricted to persons to whom disclosure is permitted hereunder.

The Recipient is fully responsible for enforcing, with regard to its Representatives (including legal counsel), the obligations of this Agreement and for taking such action, legal or otherwise (including all actions that the Recipient would take to protect its own confidential information and trade secrets), as may be necessary to cause its Representatives (including legal counsel) to comply with such obligations.

4. Permitted Disclosure

a. Disclosure of Confidential Information is permitted only as follows:

- 1) The Recipient may disclose Confidential Information to those representatives of the Recipient (including directors, officers, employees, agents, consultants, advisors, legal counsel, paralegals, economists, statisticians, accountants, and financial advisors (Representatives)) who (a) in the judgment of the Recipient, require access to such material for the purpose of assisting the Recipient in performing work directly associated with the Proceeding; (b) are informed by the Recipient and/or Duke Energy Ohio of the Confidential nature of the Confidential Information and the obligations of this Agreement and agree to be bound by all the provisions hereof; and (c) have executed a Nondisclosure Certificate in the form attached hereto and have returned a copy of such executed Nondisclosure Certificate to Duke Energy Ohio prior to obtaining access to Confidential Information.

- 2) The Recipient may also disclose Confidential Information to any party to the Proceeding that is bound by the terms of a similar Confidentiality Agreement with Duke Energy Ohio; provided that such other party is included on a list of parties so bound, which list will be maintained and updated as necessary by the Company. Furthermore, the Recipient shall abide by any restrictions that are set forth on such list and shall, also, ensure that all individual party representatives to whom disclosure is made have signed the Nondisclosure Certificate required by this Confidentiality Agreement and have returned such certificate to Duke Energy Ohio.
 - 3) In connection with the Proceeding, the Recipient may also disclose Confidential Information to (a) employees of the Commission or (b) counsel for the Commission or for Commission employees.
 - 4) In the event the Commission requires disclosure of Confidential Information, the Recipient shall follow the procedures set forth in paragraph 6, below.
- b. Highly Confidential Information is disclosed by Duke Energy Ohio under this Agreement, for attorneys' eyes only. Disclosure of Highly Confidential Information is permitted only as follows:
- 1) The Recipient may not disclose Highly Confidential Information to any Representative other than legal counsel of record in the Proceeding, and may only do so provided such counsel (a) is informed by the Recipient and/or Duke Energy Ohio of the Highly Confidential nature of the Highly Confidential Information and the obligations of this Agreement and agrees to be bound by all the provisions hereof, including the obligation not to disclose the Highly Confidential Information other than as permitted herein, and (b) has executed a Nondisclosure Certificate in the form attached hereto and has returned a copy of such executed Nondisclosure Certificate to Duke Energy Ohio prior to obtaining access to Highly Confidential Information.
 - 2) The Recipient may also disclose Highly Confidential Information to legal counsel of record in the Proceeding, which legal counsel represents any party to the Proceeding that is bound by the terms of a similar Confidentiality Agreement with Duke Energy Ohio; provided that such other party is included on a list of parties so bound, which list will be maintained and updated as necessary by the Company. Furthermore, the Recipient shall abide by any restrictions that are set forth on such list and shall, also, ensure that all attorneys to whom disclosure is made have

signed the Nondisclosure Certificate required by this Confidentiality Agreement and have returned such certificate to Duke Energy Ohio.

- 3) In connection with the Proceeding, the Recipient may also disclose Confidential Information to (a) employees of the Commission or (b) counsel for the Commission or for Commission employees.
- 4) In the event the Commission requires disclosure of Highly Confidential Information, the Recipient shall follow the procedures set forth in paragraph 6, below.

5. Ownership

All Confidential Information and Highly Confidential Information shall remain the property of Duke Energy Ohio. No license or other rights under any patents, trademarks, copyrights, or other proprietary rights is granted or implied by this Agreement or the disclosure of the Confidential Information or Highly Confidential Information.

6. Limited Use of Confidential Information

The Recipient shall not reveal Confidential Information or Highly Confidential Information or otherwise disclose such information other than as expressly authorized in this Agreement and only for the purpose of the Proceeding.

- a. If the Recipient or any one or more of the Recipient's Representatives attempts to use the Confidential Information or Highly Confidential Information in any legal proceeding (whether before the Commission or any other court or agency) other than this Proceeding, neither Recipient nor any of its Representatives shall oppose a motion by Duke Energy Ohio to strike such use or any other such motion deemed appropriate by counsel for Duke Energy Ohio and the Recipient shall be responsible for reimbursing Duke Energy Ohio for any and all costs that incurs in defending the Confidentiality of such Confidential Information or Highly Confidential Information. Similarly, if the Recipient is a party to a subsequent legal proceeding in any administrative agency or court (which subsequent proceeding is not included in the definition of the Proceeding) and another entity or person (that was also a party to the Proceeding and had executed a confidentiality agreement with Duke Energy Ohio with regard to the Proceeding) attempts to use Confidential Information or Highly Confidential Information in that subsequent proceeding, the Recipient agrees not to oppose any motion by Duke Energy Ohio to strike or otherwise prevent such unauthorized use of the Confidential Information or Highly Confidential Information.

- b. If the Recipient is legally compelled (by oral questions, interrogatories, requests for information or documents, subpoenas, civil or criminal investigative demands, regulatory requirements, or other similar processes) to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Recipient will provide Duke Energy Ohio notice, within three business days' of the receipt thereof, so that Duke Energy Ohio may determine whether to seek an appropriate protective order or other appropriate remedy. Subject to the foregoing, the Recipient may furnish that portion (and only that portion) of the Confidential Information or Highly Confidential Information that, in the written opinion of its public records officer, the Recipient is legally compelled to disclose. A copy of such written opinion shall be provided to Duke Energy Ohio.

7. Remedies

The Parties stipulate and agree that disclosure of such information without the protection of this Agreement would likely damage Duke Energy Ohio, such damage would likely be material, but the measure of such damage is difficult to quantify. The Parties stipulate and agree that monetary damages would therefore not be an adequate remedy for a breach of this Agreement by the Recipient or any of its Representatives and that Duke Energy Ohio will suffer irreparable harm because of any such breach. In addition to any legal remedies and any sanctions that may be imposed by the Commission or a court of competent jurisdiction for a violation of this Agreement, the Parties agree that Duke Energy Ohio may, without the requirement that it post a bond or other security, take any actions available at law or at equity for a breach of this Agreement. Thus, Duke Energy Ohio may, in addition to any other remedies that might otherwise be available to it, seek specific performance and injunctive or other equitable relief in the courts of Ohio or any other court of competent jurisdiction as a remedy for the commission or continuance of any such breach or anticipated breach.

8. Return and/or Destruction of Confidential Information or Highly Confidential Information

If any individual Representative of the Recipient ceases to be employed by the Recipient or otherwise engaged in the Proceeding, access to any Confidential Information will be terminated immediately and such individual shall (a) promptly return all Confidential Information and Highly Confidential Information in his or her possession to another Representative of the Recipient who has signed the Nondisclosure Certificate or, (2) if there is no such other Representative of the Recipient, treat the Confidential Information and Highly Confidential Information as described below, as if the Proceeding had been concluded. Any person who has signed the Nondisclosure Certificate will continue to be bound by the provisions of this Agreement even if no longer employed by the Recipient or engaged in the Proceeding.

Confidential Information or Highly Confidential Information provided under the terms of this Agreement must be returned to Duke Energy Ohio or destroyed, as described in this section, under the following circumstances:

- a. The Commission issues a final order in the Proceeding, assuming it is not appealed to the Ohio Supreme Court.
- b. If appealed to the Ohio Supreme Court, such Court issues its opinion, assuming it is not remanded to the Commission.
- c. If remanded to the Commission, the Commission issues a final order in the Proceeding.

In any of the above-listed circumstances, the Recipient shall, within 15 days after it has complied with its records retention schedule(s) pertaining to the Confidential Information or Highly Confidential Information, either return to Duke Energy Ohio or destroy (as instructed by Duke Energy Ohio) the Confidential Information and Highly Confidential Information furnished by Duke Energy Ohio, together with all copies and summaries thereof in the possession or under the control of the Recipient or its Representatives, and shall destroy all materials generated by the Recipient or the Recipient's Representatives that include or refer to any part of the Confidential Information or Highly Confidential Information. Furthermore, the terms of this Agreement shall remain in full force and effect after the final conclusion of the Proceeding.

The Recipient shall, within 15 days of the conclusion of its required record retention period, provide written, notarized and sworn certification of its compliance with this section. The Parties acknowledge that failure to abide by the requirements of this section may result in Duke Energy Ohio not being willing to enter into similar confidentiality agreements in future cases.

9. Miscellaneous

a. Notices

Notices required or permitted by this Agreement shall be served by certified mail, return receipt requested, or reputable overnight courier service to the following addresses:

To Duke Energy Ohio: Amy B. Spiller, Deputy General Counsel
139 East Fourth Street, 1303-Main
Cincinnati, OH 45202

To _____:

b. Authority

The undersigned individuals represent that they are authorized to sign this Agreement on behalf the respective Parties.

c. Entire Agreement, Severability, and Waiver

This Agreement constitutes the entire Agreement among the Parties with respect to the subject matter hereof, supersedes any prior understandings or representations among all of the Parties to this Agreement relating to the confidential treatment of the Confidential Information and Highly Confidential Information, and shall not be modified except by a written agreement signed by all Parties.

All provisions of this Agreement are severable and the unenforceability of any of the Provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

The failure of any Party to insist upon strict performance of any of the terms and conditions shall not be deemed to be a waiver of those or any other terms and conditions of this Agreement.

d. Assignability

This Agreement may not be assigned by any Party without the prior written consent of the other Party.

e. Governing Law and Venue

This Agreement shall be construed and enforced in accordance with the laws of the state of Ohio. Any action to enforce the terms of this Agreement shall be brought in a court located within Hamilton County, Ohio, and both Parties hereby consent to the jurisdiction of such court.

f. Counterparts and Facsimile or Electronic Signatures

This Agreement may be executed in counterparts and, in the absence of an original signature, faxed signatures (or signatures transmitted by other electronic media) will be considered the equivalent of an original signature.

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

DUKE ENERGY OHIO, INC.

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THE PUBLIC UTILITIES COMMISSION OF OHIO

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NONDISCLOSURE CERTIFICATE

I certify my understanding that Confidential Information or Highly Confidential Information may be provided to me, but only pursuant to the terms and restrictions of the Confidentiality Agreement executed on _____, and certify that I have been given a copy of and have read such Confidentiality Agreement, and that I agree to be bound by it (including the definitions therein of any terms in this certificate). I understand that the contents of Confidential Information or Highly Confidential Information, and any writings, memoranda, or any other form of information regarding or derived from Confidential Information or Highly Confidential Information, shall not be voluntarily disclosed to anyone other than in accordance with such Confidentiality Agreement. Furthermore, I understand that the Confidential Information and Highly Confidential Information shall only be used for purposes of the above-captioned Proceeding.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

EXHIBIT 2

BEFORE**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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 Certified Supplier Tariff, P.U.C.O. No. 20.)

AFFIDAVIT OF AMY B. SPILLER

State of Ohio }
 }
 County of Hamilton } SS

Comes now Affiant, Amy B. Spiller, after having been duly cautioned and sworn, and hereby states as follows:

1. I am one of the attorneys of record for Duke Energy Ohio, Inc., (Duke Energy Ohio) in connection with these proceedings.
2. I directed my administrative staff to tender to Maureen Grady, counsel for the Office of the Ohio Consumers' Counsel (OCC), a confidentiality agreement pursuant to which Duke Energy Ohio's confidential, proprietary, and trade secret information (collectively, confidential information) would be disclosed during the discovery phase of this case. The confidentiality agreement was provided to Ms. Grady on June 10, 2014.

3. The OCC, through Ms. Grady, objected to the proposed confidentiality agreement and instead requested that the OCC's draft of a confidentiality agreement be used.
4. Without any further attempts to negotiate, the OCC filed a memorandum contra a motion by another party, wherein OCC suggested that the Commission adopt OCC's draft of a confidentiality agreement.
5. On June 27, 2014, my co-counsel, Jeanne Kingery, and I discussed with Ms. Grady the OCC's concerns with the confidentiality agreement tendered by Duke Energy Ohio. Following this lengthy conversation, counsel for Duke Energy Ohio made substantial revision to the confidentiality agreement to address many of the concerns raised by Ms. Grady. The revised confidentiality agreement was provided to Ms. Grady on July 2, 2014.
6. On July 3, 2014, Melissa Yost, OCC Deputy Counsel, contacted me and asked that Duke Energy Ohio consider using the OCC's draft. I explained to Ms. Yost why that document was not acceptable and asked Ms. Yost to consider the revisions shared with her colleague the day prior.
7. On July 8, 2014, I confirmed with Ms. Yost that Duke Energy Ohio was unable to execute the OCC's draft of the confidentiality agreement and again advised of the revisions Duke Energy Ohio had proposed on July 2 to alleviate the OCC's concerns. Ms. Yost did not indicate a willingness to review those revisions.
8. On July 8, 2014, I contacted Ms. Grady regarding the proposed revisions and the OCC's response to same. Ms. Grady did not comment on the substantive revisions to the confidentiality agreement and instead responded that the OCC would pursue discovery via motion practice.


9. Given the OCC's refusal to consider the proposed revisions offered by Duke Energy Ohio, I believe that we have reasonably exhausted all extra-judicial means of resolving this matter.
10. Upon the execution of an appropriate confidentiality agreement, Duke Energy Ohio is prepared to provide its confidential information to the OCC.

Further Affiant Sayeth Naught.


Amy B. Spiller

Sworn to and subscribed before me, a notary public for the state of Ohio, on this the 8TH day of July 2014.


ADELE M. FRISCH
Notary Public, State of Ohio
My Commission Expires 01-05-2019


Notary Public

My commission expires: 1/5/2019

EXHIBIT 3

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

CONFIDENTIALITY AGREEMENT

BETWEEN

DUKE ENERGY OHIO, INC.

AND

THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

This Confidentiality Agreement (Agreement) is made and entered into by and between Duke Energy Ohio, Inc., (Duke Energy Ohio) and the Office of the Ohio Consumers' Counsel (Recipient) (each individually a Party and, collectively, the Parties), effective as of _____.

Recitals

- A. Duke Energy Ohio is an Ohio public utility, as defined in Revised Code (R.C.) 4905.02 and an electric utility, as defined in R.C. 4928.01(A)(11). As such, Duke Energy Ohio is subject to the jurisdiction of the Public Utilities Commission of Ohio (Commission).
- B. Recipient is the representative of residential customers of Duke Energy Ohio and has filed (or expects to file) a motion seeking leave to intervene in the Proceeding, as defined herein, which motion has not been denied.

- C. Certain written, verbal, and electronic information anticipated to be disclosed by Duke Energy Ohio to Recipient contains proprietary, confidential, and competitive information of Duke Energy Ohio and, potentially, third parties.

Now, therefore, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

Agreement

1. Definitions

For purposes of this Agreement, the term “Confidential” means that counsel for Duke Energy Ohio deems, in good faith, the information to which the term refers to be subject to protection either under Rule 26(c) of the Federal or Ohio Rules of Civil Procedure or under Rule 4901-1-24(D) of the Ohio Administrative Code because it constitutes a trade secret or other confidential business information of Duke Energy Ohio or Duke Energy Ohio’s customers or Duke Energy Ohio’s affiliates, including but not limited to plant and product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, research and development, customer lists, current and anticipate customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), databases (including technologies, systems, structures, and architectures), contracts, or any other information, however documented, that is a trade secret within the meaning of applicable law and including other commercial information and/or confidential information that is subject to a further confidentiality provision with a third party. However, the term “Confidential” does not refer to any information or document that is either (i) contained in the public files of any state or federal administrative agency or court or (ii) at or prior to the commencement of the Proceeding is or was otherwise in the public domain, or enters into the public domain as a result of publication by Duke Energy Ohio.

For purposes of this Agreement, the term “Highly Confidential” means that counsel for Duke Energy Ohio deems, in good faith, the information to which the term refers to be “Confidential” and also to be information that, if disclosed, might damage the Company’s current or prospective business or any current or prospective financial position and is, therefore, disclosed only for review by attorneys representing the Recipient.

For purposes of this Agreement, the term “Confidential Information” or “Highly Confidential Information” means information that is designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” by Duke Energy Ohio in writing or, if recorded as part of a deposition or transcribed testimony, orally. “Confidential Information” and “Highly Confidential Information” shall refer to such designated information whether revealed during deposition, in a document, by production of tangible evidence, in a hearing or oral testimony of

any sort, or otherwise. "Confidential Information" and "Highly Confidential Information" shall also include all copies or reproductions, in any medium, or any so designated information. In addition, "Confidential Information" and "Highly Confidential Information" shall include all notes, analyses, compilations, studies, summaries, and other material prepared by the Recipient or the Recipient's Representatives (as defined below) containing or based, in whole or in part, on any Confidential Information or "Highly Confidential Information" provided from or on behalf of Duke Energy Ohio. Where reasonably possible, "Confidential Information" or "Highly Confidential Information" shall bear a legend to that effect, record or affixed on it in such a way as to be obvious to a reasonable examiner.

For purposes of this Agreement, the term "Proceeding" means the Commission proceeding or proceedings captioned above, including any appeal to the Ohio Supreme Court that stems directly from the Commission's decision therein and any remand by the Ohio Supreme Court to the Commission. The term "Proceeding" does NOT include any cases that may be substantively or procedurally related but are not captioned above, other than appeals and remands; provided, however, that the Parties may agree in writing, pursuant to Section 9(c), below, to modify this definition such that other legal proceeding(s) may be included with the definition of the term "Proceeding" and, provided further, that the specific reference to the ability of the Parties to agree in writing to modify such definition does not alter the Parties' ability to modify other provisions of this Agreement or the requirement that such other modification requires written agreement.

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Comment [JWK1]: Duke Energy Ohio has added a specific statement indicating that we can agree to modify what proceedings are covered by this agreement. We have also clarified that no other change in modification rights or requirements are intended to be impacted by the fact that we are specifically identifying this possible modification.

2. Identification of Confidential Information and Highly Confidential Information

Duke Energy Ohio will conspicuously mark all written and electronic data containing Confidential Information or Highly Confidential Information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only." In the event that Duke Energy Ohio notifies the Recipient after providing Confidential Information or Highly Confidential Information that such information was not appropriately so marked, the Recipient shall add such marking to the Confidential Information or Highly Confidential Information and shall treat it as such under the terms of this Agreement.

By entering into this Agreement, the Recipient acknowledges the Confidential or Highly Confidential nature of the Confidential Information or Highly Confidential Information and that any unauthorized disclosure or unauthorized use thereof by the Recipient will injure Duke Energy Ohio's business and/or the business of the customer(s) and/or affiliate(s) of Duke Energy Ohio; provided, however, that the Recipient shall retain the right to dispute, at the Public Utilities Commission of Ohio, the confidentiality of the Confidential Information or Highly Confidential Information.

Comment [JWK2]: Duke Energy Ohio is not changing this paragraph. As discussed, it is important to us that the Recipient of our information acknowledge its confidential nature. This provision still enables the Recipient to dispute that character. But if there is no challenge, then you will treat the information as confidential.

3. Protection of Confidential Information

The Recipient agrees that (i) it will hold all Confidential Information and Highly Confidential Information as required by this Agreement and will not, without the specific prior written consent of Duke Energy Ohio, disclose any Confidential Information or Highly Confidential Information (including the fact that the Confidential Information or Highly Confidential Information has been made available to the Recipient or that the Recipient has inspected any portion of the Confidential Information or Highly Confidential Information) to any person other than as allowed hereunder, (ii) it will not use any of the Confidential Information or Highly Confidential Information for any reason or purpose other than the Proceeding, and (iii) in the event the Recipient has a need to publicly file any document containing Confidential Information or Highly Confidential Information, with the Confidential Information or Highly Confidential Information redacted, the Recipient shall ensure that the redacted information cannot, technologically, be obtained by third parties.

All Confidential Information and Highly Confidential Information shall be held by the Recipient in separate and identifiable files, with access to such files restricted to persons to whom disclosure is permitted hereunder.

The Recipient is fully responsible for enforcing, with regard to its Representatives (including legal counsel), the obligations of this Agreement and for taking such action, legal or otherwise (including all actions that the Recipient would take to protect its own confidential information and trade secrets), as may be necessary to cause its Representatives (including legal counsel) to comply with such obligations.

4. Permitted Disclosure

a. Disclosure of Confidential Information is permitted only as follows:

- 1) The Recipient may disclose Confidential Information to those representatives of the Recipient (including directors, officers, employees, agents, consultants, advisors, legal counsel, paralegals, economists, statisticians, accountants, and financial advisors (Representatives)) who (a) in the judgment of the Recipient, require access to such material for the purpose of assisting the Recipient in performing work directly associated with the Proceeding; (b) are informed by the Recipient and/or Duke Energy Ohio of the Confidential nature of the Confidential Information and the obligations of this Agreement and agree to be bound by all the provisions hereof; and (c) have executed a Nondisclosure Certificate in the form attached hereto and have returned a copy of such executed Nondisclosure Certificate to Duke Energy Ohio prior to obtaining access to Confidential Information.

2) The Recipient may also disclose Confidential Information to any party to the Proceeding that is bound by the terms of a similar Confidentiality Agreement with Duke Energy Ohio; provided that such other party is included on a list of parties so bound, which list will be maintained and updated as necessary by the Company. Furthermore, the Recipient shall abide by any restrictions that are set forth on such list and shall, also, ensure that all individual party representatives to whom disclosure is made have signed the Nondisclosure Certificate required by this Confidentiality Agreement and have returned such certificate to Duke Energy Ohio.

Comment [JWK3]: As discussed, the changes in this paragraph will replace the requirement for the Recipient to get permission to discuss with other parties. Instead, we will maintain a list of parties with whom conversation is allowed. The onus is still on the Recipient to ensure the people in the discussion have all signed nondisclosure certificates.

3) In connection with the Proceeding, the Recipient may also disclose Confidential Information to (a) employees of the Commission or (b) counsel for the Commission or for Commission employees.

Deleted: similar Confidentiality Agreement is applicable only to the Proceeding and, provided further, that, prior to such disclosure by the Recipient, the Recipient has received from Duke Energy Ohio written permission for the disclosure of Confidential Information to such other party to the Proceeding.

4) In the event the Commission requires disclosure of Confidential Information, the Recipient shall follow the procedures set forth in paragraph 6, below.

Comment [JWK4]: This new paragraph allows disclosure to the Commission, staff, and their counsel.

Comment [JWK5]: To avoid confusion or duplication, Duke Energy Ohio has revised this paragraph to refer to the process in paragraph 6.

b. Highly Confidential Information is disclosed by Duke Energy Ohio under this Agreement, for attorneys' eyes only. Disclosure of Highly Confidential Information is permitted only as follows:

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Deleted: As described more fully

1) The Recipient may not disclose Highly Confidential Information to any Representative other than legal counsel of record in the Proceeding, and may only do so provided such counsel (a) is informed by the Recipient and/or Duke Energy Ohio of the Highly Confidential nature of the Highly Confidential Information and the obligations of this Agreement and agrees to be bound by all the provisions hereof, including the obligation not to disclose the Highly Confidential Information other than as permitted herein, and (b) has executed a Nondisclosure Certificate in the form attached hereto and has returned a copy of such executed Nondisclosure Certificate to Duke Energy Ohio prior to obtaining access to Highly Confidential Information.

Deleted: , the Recipient may disclose Confidential Information as ordered by the Commission or its personnel, provided, however, that the Recipient shall provide notice to Duke Energy Ohio that such an order has been received, at least three business days prior to disclosure, and, provided further, that the Recipient shall not disclose Confidential Information pursuant to such an order if Duke Energy Ohio has informed the Recipient that it has initiated an effort (through a formal filing or otherwise) to appeal that order or otherwise to petition the Commission or its personnel to change the order

2) The Recipient may also disclose Highly Confidential Information to legal counsel of record in the Proceeding, which legal counsel represents any party to the Proceeding that is bound by the terms of a similar Confidentiality Agreement with Duke Energy Ohio; provided that such other party is included on a list of parties so bound, which list will be maintained and updated as necessary by the Company. Furthermore, the Recipient shall abide by any restrictions that are set forth on such list and shall, also, ensure that all attorneys to whom disclosure is made have

Comment [JWK6]: As discussed, the changes in this paragraph will replace the requirement for the Recipient to get permission to discuss with other parties. Instead, we will maintain a list of parties with whom conversation is allowed. The onus is still on the Recipient to ensure the people in the discussion have all signed nondisclosure certificates.

signed the Nondisclosure Certificate required by this Confidentiality Agreement and have returned such certificate to Duke Energy Ohio,

- 3) In connection with the Proceeding, the Recipient may also disclose Confidential Information to (a) employees of the Commission or (b) counsel for the Commission or for Commission employees.
- 4) In the event the Commission requires disclosure of Highly Confidential Information, the Recipient shall follow the procedures set forth in paragraph 6, below.

Deleted: similar Confidentiality Agreement is applicable only to the Proceeding and, provided further, that, prior to such disclosure by the Recipient, the Recipient has received from Duke Energy Ohio written permission for the disclosure of Highly Confidential Information to such legal counsel for such other party to the proceeding.

Comment [JWK7]: This new paragraph allows disclosure to the Commission, staff, and their counsel.

Comment [JWK8]: To avoid confusion or duplication, Duke Energy Ohio has revised this paragraph to refer to the process in paragraph 6.

Deleted: As described more fully

Deleted: , the Recipient may disclose Highly Confidential Information as ordered by the Commission or its personnel, provided, however, that the Recipient shall provide at least three business days' prior notice to Duke Energy Ohio that such an order has been received and, provided further, that the Recipient shall not disclose Highly Confidential Information pursuant to such an order if Duke Energy Ohio has informed the Recipient that it has initiated an effort (through a formal filing or otherwise) to appeal that order or otherwise to petition the Commission or its personnel to change the order

5. Ownership

All Confidential Information and Highly Confidential Information shall remain the property of Duke Energy Ohio. No license or other rights under any patents, trademarks, copyrights, or other proprietary rights is granted or implied by this Agreement or the disclosure of the Confidential Information or Highly Confidential Information.

6. Limited Use of Confidential Information

The Recipient shall not reveal Confidential Information or Highly Confidential Information or otherwise disclose such information other than as expressly authorized in this Agreement and only for the purpose of the Proceeding.

- a. If the Recipient or any one or more of the Recipient's Representatives attempts to use the Confidential Information or Highly Confidential Information in any legal proceeding (whether before the Commission or any other court or agency) other than this Proceeding, neither Recipient nor any of its Representatives shall oppose a motion by Duke Energy Ohio to strike such use or any other such motion deemed appropriate by counsel for Duke Energy Ohio and the Recipient shall be responsible for reimbursing Duke Energy Ohio for any and all costs that incurs in defending the Confidentiality of such Confidential Information or Highly Confidential Information. Similarly, if the Recipient is a party to a subsequent legal proceeding in any administrative agency or court (which subsequent proceeding is not included in the definition of the Proceeding) and another entity or person (that was also a party to the Proceeding and had executed a confidentiality agreement with Duke Energy Ohio with regard to the Proceeding) attempts to use Confidential Information or Highly Confidential Information in that subsequent proceeding, the Recipient agrees not to oppose any motion by Duke Energy Ohio to strike or otherwise prevent such unauthorized use of the Confidential Information or Highly Confidential Information.

Comment [JWK9]: The change in this section is intended to clarify that this provision only applies to use of the information in another case.

Deleted: for any purpose

- b. If the Recipient is legally compelled (by oral questions, interrogatories, requests for information or documents, subpoenas, civil or criminal investigative demands, regulatory requirements, or other similar processes) to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Recipient will provide Duke Energy Ohio notice, within three business days' of the receipt thereof, so that Duke Energy Ohio may determine whether to seek an appropriate protective order or other appropriate remedy. Subject to the foregoing, the Recipient may furnish that portion (and only that portion) of the Confidential Information or Highly Confidential Information that, in the written opinion of its public records officer, the Recipient is legally compelled to disclose. A copy of such written opinion shall be provided to Duke Energy Ohio.

Comment [JWK10]: The changes in this section are intended:

- to allow the OCC's public records officer to opine as to the need to disclose, and
- to delete the need for OCC to encourage confidential treatment by those who may receive the information.

Deleted: counsel (reasonably acceptable to Duke Energy Ohio)

Deleted: In addition, the Recipient shall use reasonable efforts to obtain reliable assurances that confidential treatment will be accorded any Confidential Information or Highly Confidential Information so disclosed.

7. Remedies

The Parties stipulate and agree that disclosure of such information without the protection of this Agreement would likely damage Duke Energy Ohio, such damage would likely be material, but the measure of such damage is difficult to quantify. The Parties stipulate and agree that monetary damages would therefore not be an adequate remedy for a breach of this Agreement by the Recipient or any of its Representatives and that Duke Energy Ohio will suffer irreparable harm because of any such breach. In addition to any legal remedies and any sanctions that may be imposed by the Commission or a court of competent jurisdiction for a violation of this Agreement, the Parties agree that Duke Energy Ohio may, without the requirement that it post a bond or other security, take any actions available at law or at equity for a breach of this Agreement. Thus, Duke Energy Ohio may, in addition to any other remedies that might otherwise be available to it, seek specific performance and injunctive or other equitable relief in the courts of Ohio or any other court of competent jurisdiction as a remedy for the commission or continuance of any such breach or anticipated breach.

Comment [JWK11]: For purposes of reaching a compromise here, Duke Energy Ohio is willing to delete the liquidated damages provision, based on OCC's concern about the lack of clarity in actual practice, potentially leading to accidental disclosure. However, we are not willing to delete the specific agreements that would assist us in obtaining equitable relief in the event of a breach.

Deleted: and

Deleted: herefore, t

Deleted: agree to the following remedies ¶

¶ In the event that either (1) during the pendency of the Proceeding, the Recipient discloses any Highly Confidential Information other than as authorized under this Agreement or (2) after the pendency of the Proceeding, the Recipient discloses any Confidential Information or Highly Confidential Information, the Parties agree that damages shall be calculated at the greater of actual damages to Duke Energy Ohio or \$500,000. In addition, the Recipient so breaching this Agreement shall be responsible for reimbursing Duke Energy Ohio for all costs of pursuing its legal and/or equitable remedies hereunder, including, but not limited to, attorneys' fees, court costs, and expert witnesses. ¶

Furthermore, the Parties

Deleted: Therefore, i

Deleted: shall thus be entitled

Deleted: to

Comment [JWK12]: The changes in the section are intended to address OCC's record retention requirements.

8. Return and/or Destruction of Confidential Information or Highly Confidential Information

If any individual Representative of the Recipient ceases to be employed by the Recipient or otherwise engaged in the Proceeding, access to any Confidential Information will be terminated immediately and such individual shall (a) promptly return all Confidential Information and Highly Confidential Information in his or her possession to another Representative of the Recipient who has signed the Nondisclosure Certificate or, (2) if there is no such other Representative of the Recipient, treat the Confidential Information and Highly Confidential Information as described below, as if the Proceeding had been concluded. Any person who has signed the Nondisclosure Certificate will continue to be bound by the provisions of this Agreement even if no longer employed by the Recipient or engaged in the Proceeding.

Confidential Information or Highly Confidential Information provided under the terms of this Agreement must be returned to Duke Energy Ohio or destroyed, as described in this section, under the following circumstances:

- a. The Commission issues a final order in the Proceeding, assuming it is not appealed to the Ohio Supreme Court.
- b. If appealed to the Ohio Supreme Court, such Court issues its opinion, assuming it is not remanded to the Commission.
- c. If remanded to the Commission, the Commission issues a final order in the Proceeding.

Comment [JWK13]: The first two subsections are being deleted because the retention schedule would still require the retention of the information.

Deleted: <#>The Recipient's intervention in the Proceeding is denied by the Commission or its personnel ¶

<#>The Recipient determines that it does not wish to continue its participation in the Proceeding and files a notice of such withdrawal ¶

¶

In any of the above-listed circumstances, the Recipient shall, within 15 days after it has complied with its records retention schedule(s) pertaining to the Confidential Information or Highly Confidential Information, either return to Duke Energy Ohio or destroy (as instructed by Duke Energy Ohio) the Confidential Information and Highly Confidential Information, furnished by Duke Energy Ohio, together with all copies and summaries thereof in the possession or under the control of the Recipient or its Representatives, and shall destroy all materials generated by the Recipient or the Recipient's Representatives that include or refer to any part of the Confidential Information or Highly Confidential Information. Furthermore, the terms of this Agreement shall remain in full force and effect after the final conclusion of the Proceeding.

Deleted: within 15 days from its receipt of notification from Duke Energy Ohio

Deleted: , as instructed by Duke Energy Ohio in such notification. In that event, the Recipient shall promptly deliver to Duke Energy Ohio any Confidential Information and Highly Confidential Information

Deleted: One copy of the Confidential Information or Highly Confidential Information may be retained by the Recipient for record purposes only, but only if the Recipient is a governmental entity and such retention is mandated by law. If such a record is retained by the Recipient, it shall under no circumstances be used for any purpose other than the Proceeding

Deleted: , regardless of whether the Recipient retained a record copy of the Confidential Information or Highly Confidential Information or not

Deleted: from its receipt of notification from Duke Energy Ohio to return to Duke Energy Ohio or destroy the Confidential Information and Highly Confidential Information, the Recipient shall also

The Recipient shall, within 15 days of the conclusion of its required record retention period, provide written, notarized and sworn certification of its compliance with this section. The Parties acknowledge that failure to abide by the requirements of this section may result in Duke Energy Ohio not being willing to enter into similar confidentiality agreements in future cases.

9. Miscellaneous

a. Notices

Notices required or permitted by this Agreement shall be served by certified mail, return receipt requested, or reputable overnight courier service to the following addresses:

To Duke Energy Ohio: Amy B. Spiller, Deputy General Counsel
139 East Fourth Street, 1303-Main
Cincinnati, OH 45202

To _____:

b. Authority

The undersigned individuals represent that they are authorized to sign this Agreement on behalf the respective Parties.

c. Entire Agreement, Severability, and Waiver

This Agreement constitutes the entire Agreement among the Parties with respect to the subject matter hereof, supersedes any prior understandings or representations among all of the Parties to this Agreement relating to the confidential treatment of the Confidential Information and Highly Confidential Information, and shall not be modified except by a written agreement signed by all Parties.

All provisions of this Agreement are severable and the unenforceability of any of the Provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

The failure of any Party to insist upon strict performance of any of the terms and conditions shall not be deemed to be a waiver of those or any other terms and conditions of this Agreement.

d. Assignability

This Agreement may not be assigned by any Party without the prior written consent of the other Party.

e. Governing Law and Venue

This Agreement shall be construed and enforced in accordance with the laws of the state of Ohio. Any action to enforce the terms of this Agreement shall be brought in a court located within Hamilton County, Ohio, and both Parties hereby consent to the jurisdiction of such court.

f. Counterparts and Facsimile or Electronic Signatures

This Agreement may be executed in counterparts and, in the absence of an original signature, faxed signatures (or signatures transmitted by other electronic media) will be considered the equivalent of an original signature.

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

DUKE ENERGY OHIO, INC.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

NONDISCLOSURE CERTIFICATE

I certify my understanding that Confidential Information or Highly Confidential Information may be provided to me, but only pursuant to the terms and restrictions of the Confidentiality Agreement executed on _____, and certify that I have been given a copy of and have read such Confidentiality Agreement, and that I agree to be bound by it (including the definitions therein of any terms in this certificate). I understand that the contents of Confidential Information or Highly Confidential Information, and any writings, memoranda, or any other form of information regarding or derived from Confidential Information or Highly Confidential Information, shall not be voluntarily disclosed to anyone other than in accordance with such Confidentiality Agreement. Furthermore, I understand that the Confidential Information and Highly Confidential Information shall only be used for purposes of the above-captioned Proceeding.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/8/2014 5:26:10 PM

in

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

Summary: Motion Duke Energy Ohio's Motion for Protective Order electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Kingery, Jeanne W.