

**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.)	

**MOTION OF DUKE ENERGY OHIO, INC.
TO COMPEL DISCOVERY FROM
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND MEMORANDUM IN SUPPORT**

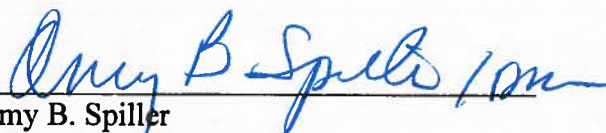
Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and hereby moves the Public Utilities Commission of Ohio (Commission) for an order, pursuant to O.A.C. 4901-1-23, compelling the Office of the Ohio Consumers' Counsel (OCC) to respond to discovery requests. The OCC has refused to provide substantive responses to certain discovery requests propounded upon it by Duke Energy Ohio, claiming that such responses are privileged from discovery under the joint defense or common interest doctrine. But as the joint defense agreement into which the OCC has entered with the Ohio Manufacturers' Association (OMA) and the Ohio Partners for Affordable Energy (OPAE) confirms, there is no proper common legal interest and thus no permissible bar from disclosure. The information requested by Duke Energy Ohio is relevant or reasonably calculated to lead to the discovery of admissible evidence. And, as demonstrated herein, it is not privileged from discovery. Thus, pursuant to O.A.C. 4901-1-16, the

OCC has unjustifiably and unreasonably failed to engage in discovery. It should be compelled to do so now.

Duke Energy Ohio offers the following memorandum in support of its motion, as well as the affidavit of Amy B. Spiller.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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I. Introduction

On June 19, 2014, Duke Energy Ohio tendered its first set of discovery to the OCC. Therein, Duke Energy Ohio requested that the OCC identify all communications that it has had with any other intervenor in these proceedings, or a member thereof, regarding any of the components of the Company's electric security plan as proposed in its Application (see Interrogatory No. 10 of Duke Energy Ohio's First Set of Interrogatories, a copy of which is attached hereto as Exhibit A). In response, the OCC claimed that communications were made between intervening parties that "share a common interest in opposing the application." (See Exhibit -B OCC response to Interrogatory No. 10).

In a related question, Duke Energy Ohio requested that the OCC identify all agreements into which it had entered with other intervenors in these proceedings, such agreements including, but not limited to, joint defense agreements (see Interrogatory No. 11 of Duke Energy Ohio's First Set of Interrogatories, a copy of which is attached hereto as Exhibit A). Duke Energy Ohio also requested that the OCC identify the other parties to any such agreements (see Interrogatory No. 12 of Duke Energy Ohio's First Set of Interrogatories, a copy of which is attached hereto as Exhibit A). In response, the OCC referenced a Joint Defense Confidentiality Agreement between it, OMA, and OPAE. (See Exhibits B, OCC responses to Interrogatory Nos. 11 and 12, respectively). The OCC also produced a copy of the Joint Defense Confidentiality Agreement (see Document Request No. 3 of Duke Energy Ohio's First Set of Document Requests and OCC's response thereto, copies of which it attached hereto as Exhibits C and D respectively. See also, Exhibit E, a copy of the Joint Defense Confidentiality Agreement).

The exact nature of the common interest allegedly excusing the OCC (and OMA and OPAE) from engaging in discovery is admittedly uncertain. The Joint Defense Confidentiality Agreement describes as its common purpose and benefit the following: “enabling the Parties to monitor the direction of the litigation in cases and to minimize the aggregate and individual-case costs of legal representation and consulting services during the litigation of any of the above mentioned actions or subsequently added proceedings, and to make the most efficient use of resources available to the Parties.” (See Exhibit E, paragraph 3). In other words, the common interest that allegedly binds the parties to the Joint Defense Confidentiality Agreement is administrative efficiency.

OPAE – another party to the Joint Defense Confidentiality Agreement – asserts that this is the single purpose. Indeed, OPAE insists that the alleged common interest is set forth only in the agreement itself. (See communication from Duke Energy Ohio to OPAE dated July 27, 2014, a copy of which is attached hereto as Exhibit F, and OPAE’s response of the same date, a copy of which is attached hereto as Exhibit G.) OPAE is adamant that the agreement speaks for itself and it is thus the one source to define the claimed common interest. The OCC contends otherwise.

Unlike the other parties to the Joint Defense Confidentiality Agreement, the OCC suggests that the purported common interest is more expansive. Specifically, the OCC contends that the common interest giving rise to the Joint Defense Confidentiality Agreement between it, OMA, and OPAE relates to these three intervenors “advocating for the reasonably priced electric service and advocating for a fair and reasonable procedural schedule for this case.” (See Interrogatory 1.a. of Duke Energy Ohio’s Third Set of Interrogatories and OCC’s response thereto, a copy of which is attached as Exhibit H).

Duke Energy Ohio questioned the purported claim of privilege, via communication to the OCC (see correspondence dated August 18, 2014, a copy of which it attached hereto as Exhibit I). The OCC disagreed, refusing to concede that its alleged justifications were insufficient to establish a privilege shielding communications from discovery (see correspondence dated September 4, 2014, a copy of which is attached hereto as Exhibit J).

As discussed herein, none of the reasons offered by the OCC properly support a claim of common interest sufficient to protect its communications with other intervenors from discovery.

II. Discussion

A. The common interest doctrine extends only to identical legal interests and not commercial interests.

As a general rule, the disclosure of confidential or privileged information to third parties waives any applicable privilege. *In re: Commercial Money Center, Inc.*, 248 F.R.D. 532, 536 (N.D. Ohio 2008). The common interest doctrine is an exception to this general rule that allows attorneys to share with third parties information that is otherwise protected by the attorney client privilege or work product doctrine. Significantly, the common interest doctrine “is not an independent source of privilege or confidentiality.” *Id.* Thus, “[i]f a communication or document is not otherwise protected by the attorney-client communication or work product doctrine, the common interest doctrine has no application.” *Id.*

The common interest doctrine also requires the existence of “an identical legal interest with respect to the subject matter of the communication.” *Libbey Glass, Inc., v. Oneida*, 197 F.R.D. 342, 347 (N.D. Ohio 1999)(internal citations omitted). Importantly, a commercial interest cannot establish a common interest worthy of protection. Rather, “the parties must have a ‘common legal, as opposed to, commercial interest.’” *Id.* (Emphasis in original.) *See also, North American Rescue Products, Inc., v. Bound Tree Medical, LLC*, 2010 U.S. Dist. LEXIS 45302,

*11 (S.D. Ohio 2010)(commercial interest “insufficient to establish the applicability of the common interest exception”); and *Cigna Ins. Co. v. Cooper Tires and Rubber, Inc.*, 2001 U.S. Dist. LEXIS 7546, *4-5 (N.D. Ohio 2001).

The common interest doctrine must be applied narrowly. *See generally, Libbey Glass, Inc.*, 197 F.R.D. at 348; *Cigna Ins. Co.*, 2001 U.S. Dist. LEXIS 7546, *5; and *Buckeye Corrugated, Inc., v. The Cincinnati Ins. Co.*, 2013-Ohio-3508, ¶16 (Summit Cty. 2013). Additionally, even if the doctrine does exist, it is limited in its application to those “communications regarding the common interest and intended to further that interest.” *Cooey v. Strickland*, 269 F.R.D. 643, 652 (S.D. Ohio 2010). It is not an absolute shield behind which the OCC can hide in refusing to identify in discovery all requested communications.

B. There is no identical legal interest between the OCC, OMA, and OPAE.

As stated above, the Joint Defense Confidentiality Agreement between the OCC, OMA, and OPAE concerns only the desire to achieve administrative efficiencies. As the document unambiguously provides and as OPAE admits, the only common purpose or benefit is to minimize litigation costs and use resources efficiently. This is not a legal interest; it is a commercial interest. And it is not an interest that is unique to the OCC, OMA, and OPAE. All litigants are motivated by an efficient use of resources and in controlling litigation costs.

The OCC has attempted to cure the deficiencies in the Joint Defense Confidentiality Agreement by suggesting that the common interest is more than administrative efficiency. This attempt is dubious, given that no other party to the agreement has offered such a purpose. But even giving the OCC the benefit of the doubt, it cannot save the Joint Defense Confidentiality Agreement by suggesting that the common interest is procedural preference and the approval of reasonably priced electric service. As to the former, this is not a legal interest worthy of

protection – it instead reflects a desire for a particular hearing date. And as to the latter, all parties to these proceedings, as well as the Commission, appreciate the need for reasonably priced electric service. Again, this is not a legal interest. And to the extent it could be construed, albeit incorrectly, as unique to and common between two residential constituents (OCC and OPAE) and one non-residential organization (OMA), it is clearly a commercial interest.

C. The OCC refuses to acknowledge the parameters for invoking the common interest doctrine and thus refuses to answer discovery.

Upon receipt of the OCC's discovery responses, Duke Energy Ohio attempted to informally resolve those issues related to the claimed privilege of common interest. Specifically, it sought to have the OCC acknowledge, based upon its discovery responses, that there exists no common interest that properly shields the requested communications from discovery. (See Exhibit I). The response by counsel for the OCC reflects a misunderstanding of the law and fails to demonstrate any interest worthy of protection. (See Exhibit J). Again, the OCC reiterates positions that do not reflect an identical legal interest – "administrative efficiency," "controlling litigation costs," "reasonably priced electric service," opposition to a hearing schedule, and perhaps the most broadly worded and generic statement of all, "opposing the application." With consideration to the narrow view with which the common interest doctrine must be evaluated, it is apparent that the OCC's claimed rationale is insufficient. The claimed rationale is void of any reference to an identical legal interest and instead reflects commercial motivations.

Should the reasons espoused by the OCC be sufficient to establish a common interest, the discovery process will be upended. Any unsubstantiated claim of support for, or opposition to, any filing will be enough to assert a privilege. Any unsubstantiated claim of support for, or opposition to, any filing will serve to prevent mutual discovery. Further, ongoing discovery disputes will ensue, so that the claimed common interest can be examined and litigants can be

assured that they will not be unfairly prejudiced in their desire to engage in discovery. This is not the manner in which discovery is to be undertaken – with a party manufacturing a purported absolute bar to discovery by simply claiming a general position in favor of or against any filing. The OCC has failed to demonstrate that there exist a valid common interest – created by an identical legal interest between it, OMA, and OPAGE. And the OCC has expressly stated that it will not acknowledge the lack of validity to its claimed Joint Defense Confidentiality Agreement. Thus, absent Commission intervention, Duke Energy Ohio will be deprived of its right to participate in discovery in these proceedings. (See Affidavit of Amy B. Spiller, a copy of which is attached hereto as Exhibit K.)

III. Conclusion

Duke Energy Ohio has endeavored to resolve this discovery dispute through extrajudicial means, but the OCC has firmly indicated that it will stand behind the purported common interest underlying its Joint Defense Confidentiality Agreement. As demonstrated above, however, the OCC cannot demonstrate anything more than a commercial interest. And such an interest fails to shield the requested information from discovery. Therefore, for the reasons stated herein, Duke Energy Ohio respectfully requests that the OCC be compelled to supplement its responses to Duke Energy Ohio Interrogatories No. 10, 11, and 12, and Document Request No. 3, from its first set of discovery.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of Duke Energy Ohio, Inc., to Compel Discovery was served on the following parties this 22 day of Sept 2014, by regular U.S. mail, overnight delivery or electronic delivery.


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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)	
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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'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED TO
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Comes now Duke Energy Ohio (Duke Energy Ohio), and addresses the following First Set of Interrogatories and Request for Production of Documents to The Office of the Ohio Consumers' Counsel (OCC) pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code. These discovery requests are to be answered within ten (10) days of the date appearing on the certificate of service appended hereto.

I. DEFINITIONS AND INSTRUCTIONS

1. With respect to each discovery request, all information is to be divulged that is within the knowledge, possession or control of the parties to whom it is addressed, including their agents, employees, attorneys and/or investigators.
2. Where an interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.
3. All answers must be separately and fully stated in writing under oath.
4. Pursuant to Rules 4901-1-16(D) and (E) of the Ohio Administrative Code, you are under a continuing duty to seasonably supplement all discovery responses with respect to any question directly addressed to the identity and locations of persons having knowledge of discoverable matters, the identity of each person expected to be called as an expert witness at the hearing, and the subject matter on which the expert is expected to

testify. Further, a party who knows or later learns that a response is incorrect is under a duty to seasonably correct the response.

5. For purpose of these discovery requests, the following terms shall have meanings set forth below:

(a) As used herein, "document," "documentation" and/or "record," whether stated as the singular or the plural, means any course of binders, book, pamphlet, periodical, letter, correspondence, memoranda, including but not limited to, any memorandum or report of a meeting or telephone or other conversation, invoice, account, credit memo, debit memo, financial statement, general ledger, ledger, journal, work papers, account work papers, report, diary, telegram, record, contract, agreement, study, draft, telex, handwritten or other note, sketch, picture, photograph, plan, chart, paper, graph, index, tape, data processing card, data processing disc, data cells or sheet, check acceptance draft, e-mail, studies, analyses, contracts, estimates, summaries, statistical statements, analytical records, reports and/or summaries of investigations, opinions or reports of consultants, opinions or reports of accountants, trade letters, comparisons, brochures, pamphlets, circulars, bulletins, notices, forecasts, electronic communication, printouts, all other data compilations from which information can be obtained (translated if necessary by defendants into usable form), any preliminary versions, drafts or revisions of any of the foregoing, and/or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced and regardless of origin or location, in the possession, custody and/or control of the defendant and/or their agents, accountants, employees, representatives and/or attorneys. "Document" and "record" also mean all copies of documents by whatever means made, if the copy bears any other markings or notations not found on the original.

(b) The terms "relating to," "referring to," "referred to," "pertaining to," "pertained to" and "relates to" means referring to, reporting, embodying, establishing, evidencing, comprising, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, presenting and/or constituting and/or in any way involving.

(c) The terms "and," "or," and "and/or" within the meaning of this document shall include each other and shall be both inclusive and disjunctive and shall be construed to require production of all documents, as above-described, in the broadest possible fashion and manner.

(d) The term "OCC" shall mean The Office of the Ohio Consumers' Counsel, and shall include, but is not limited to, each and every agent, employee, servant, insurer and/or attorney of OCC. The term "you" shall be deemed to refer to OCC.

(e) The term "Duke Energy Ohio" shall mean Duke Energy Ohio, Inc., its employees, agents, officers, directors and representatives.

(f) To "identify" shall mean:

- (1) With respect to a document, to state its date, its author, its type (for example, letter, memorandum, chart, photograph, sound reproduction, etc.), its subject matter, its present location, and the name of its present custodian. The document may be produced in lieu of supplying the foregoing information. For each document which contains information as privileged or otherwise excludable from discovery, there shall be included a statement as to the basis for such claim of privilege or other grounds for exclusion.
 - (2) With regard to a natural person, to state his or her full name, last known employer or business affiliation, title and last known home address.
 - (3) With regard to a person other than a natural person, state the title of that person, any trade name, or corporate name or partnership name used by that person, and the principal business address of that person.
- (g) To "produce" or to "identify and produce," shall mean that plaintiffs shall produce each document or other requested tangible thing. For each tangible thing which plaintiffs contend are privileged or otherwise excludable from discovery, there shall be included a statement as to the basis for such claim of privilege or other grounds for exclusion.
- (h) The terms "Party or Parties" shall mean any organization, person, corporation, entity, etc, which intervened in the above-captioned proceeding and shall further include Staff of the Public Utilities Commission of Ohio.

security plan described in the above-referenced matter. For purposes of this Interrogatory, "entity exhibiting interest" includes any interested party that has not filed a motion to intervene in the above-captioned proceeding and "list" means to identify the date of each meeting, teleconference, or communication and the person in attendance at same. To the extent that OCC contends that any such documents are privileged, please provide a privilege log for same.

RESPONSE:

10. Provide a list of each meeting, teleconference, or communication (written or oral), between OCC and any Intervening Party, or member of any Intervening Party, regarding the any or all of the components of the electric security plan described in the above-referenced matter. For purposes of this Interrogatory, "intervening party" includes any party to have filed a motion to intervene in the above-captioned proceeding and "list" means to identify the date of each meeting, teleconference, or communication and the person in attendance at same. To the extent that OCC contends that any such documents are privileged, please provide a privilege log for same.

RESPONSE:

11. Please state whether there are any agreements between OCC and any Intervening Party to the above-captioned proceeding, or any member or affiliate of an Intervening Party to the proceeding, that concern said proceeding. "Agreements" mean written or oral terms agreed upon by the participants and include, but are not limited to, protective agreements, confidentiality agreements, joint defense agreements, agreements to support or oppose any item or position, and any other commitments made among OCC and any Intervening Party. For purposes of this Interrogatory, "intervening party" includes any party to have filed a motion to intervene in the above-captioned proceeding. To the extent that OCC contends that any such documents are privileged, please provide a privilege log for same.

RESPONSE:

12. If the answer to Interrogatory No. 11, above, is in the affirmative, please identify each agreement and the other parties to same. To the extent that OCC contends that any such documents are privileged, please provide a privilege log for same.

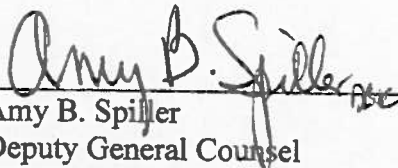
RESPONSE:

13. Please state whether there are any agreements between OCC and any entity exhibiting interest in the above-captioned proceeding, or any member or affiliate of an entity exhibiting interest to the proceeding, that concern said proceeding. "Agreements" mean written or oral terms agreed upon by the participants and include, but are not limited to, protective agreements, confidentiality agreements, joint defense agreements, agreements to support or oppose any item or position, and any other commitments made among OCC and any entity exhibiting interest in the above-captioned proceeding. For purposes of this Interrogatory, "entity

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Respectfully submitted,

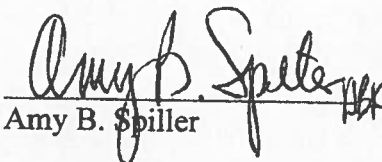
DUKE ENERGY OHIO, INC.

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

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Duke Energy Ohio's First Set of Interrogatories and Request for Production of Documents Propounded to The Office of the Ohio Consumers' Counsel was served on the following parties this 19th day of June, 2014 by regular U. S. Mail, overnight delivery or electronic delivery.


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**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	)	Case No. 14-842-EL-ATA
Energy Ohio for Authority to Amend its)	
Certified Supplier Tariff, P.U.C.O. No. 20.)	

**RESPONSES AND OBJECTIONS TO DUKE ENERGY OHIO'S FIRST SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

7

The Office of the Ohio Consumers' Counsel ("OCC") by and through its counsel, hereby submits its Responses and Objections to the First Set of Interrogatories and Requests for Production of Documents submitted to the OCC by Duke Energy Ohio ("Duke" "Company" or "Utility") in the above-captioned cases.

The OCC's responses to these discovery requests are being provided subject to, and without waiver of, the general objections stated below and the specific objections posed in response to each interrogatory and request for production of documents. The general objections are hereby incorporated by reference into the individual response made to each discovery request. The OCC's responses to these discovery requests are submitted without prejudice to, and without in respect waiving, any general objections not expressly set forth therein.

The provisions of any response below shall not waive the OCC's objections. The response below, while based on diligent investigation and reasonable inquiry by OCC, reflect only the current state of the OCC's knowledge and understanding and belief with respect to the matters about which the discovery requests seek information, based upon the information and discovery to date. The OCC's investigation is not yet complete and is continuing as of the date of the responses below. The OCC anticipates the possibility that it may discover additional information and/or documents, and without obligating itself to do so, the OCC reserves the right to continue its investigation and to modify or supplement the responses below, with such pertinent information or documents. The responses below are made without prejudice to the OCC's right to rely upon or use subsequently discovered information or documents, or documents of information inadvertently omitted from the responses below as a result of mistake, error, or oversight. The OCC reserves the right to object on appropriate grounds to the use of such information and documents. The fact that the OCC, in the spirit of cooperation, has elected to provide relevant information below in response to the Company's discovery requests shall not constitute or be deemed a waiver of the OCC's objections. The OCC hereby fully preserves all of its objections to the discovery request or the use of its responses for any purpose.

Furthermore, OCC's provision of responses to these discovery requests shall not be construed as a waiver of the attorney-client privilege or any other applicable privilege or doctrine, and OCC reserves its right to file a motion for protective order under Ohio Adm. Code 4901-1-24 in order to protect OCC from annoyance, embarrassment, oppression, or undue burden or expense or for any other reason.

GENERAL OBJECTIONS

1. The OCC objects to any discovery requests as improper, overbroad, and unduly burdensome to the extent that they purport to impose upon the OCC any obligations broader than those set forth in the Public Utilities Commission of Ohio's rules or otherwise permitted by law. The rules of discovery require, among other matters, that matters inquired into must be relevant to the subject matter of the proceeding, and must appear to be "reasonably calculated to lead to the discovery of admissible evidence." Ohio Adm. Code 4901-1-16(B).
2. The OCC objects to these discovery requests and to the Companies' Definitions and instructions as improper, overbroad, and unduly burdensome to the extent that they improperly seek or purport to require the disclosure of information protected by the attorney-client privilege, trial preparation doctrine, attorney work-product doctrine or any other applicable privilege or doctrine. Such responses as may hereafter be given shall not include any information protected by such privileges or doctrines, and the inadvertent disclosure of such information shall not be deemed as a waiver of any such privilege or doctrine.
3. The OCC objects to these discovery requests and to the Company's' Definitions and instructions to the extent that they improperly seek or purport to require the OCC to provide documents and information not in the OCC's possession, custody or control.
4. The objections and responses contained herein and documents produced in response hereto are not intended nor should they be construed to waive the OCC's

right to object to these requests, responses or documents produced in response hereto, or the subject matter of such requests, responses, or documents, as to their competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, in or at any hearing of this or any other proceeding.

5. The OCC objects to these discovery requests to the extent they improperly seek or purport to require the production of documents or information which is not relevant to the subject matter of the proceeding or not reasonably calculated to lead to the discovery of admissible evidence.
6. The OCC objects to these discovery requests and to the Companies' Definition and instructions to the extent they improperly seek or purport to require production of documents in a form other than how the documents are maintained in the regular course of business.
7. The OCC objects to these discovery requests insofar as they request the production of documents or information that are publicly available or already in the Companies' possession, custody, or control.
8. The OCC objects to each and every data request that seeks to obtain "all," "each" or "any" document to the extent that such requests are overbroad and unduly burdensome and seek information that is not relevant to the subject matter of this proceeding or not reasonably calculated to lead to the discovery of admissible evidence.
9. The OCC objects to these discovery requests to the extent that such requests are not limited to any stated time period or identify a stated period of time that is

longer than is relevant for purposes of this proceeding, as such discovery is unduly burdensome and overly broad.

10. The OCC objects to these discovery requests to the extent they are vague, ambiguous, use terms that are subject to multiple interpretations but are not properly defined for purposes of these discovery requests, or otherwise provide no basis from which OCC can determine what information is sought.
11. The objections and responses contained herein are not intended nor should they be construed to waive the OCC's rights to object to other discovery involving or relating to the subject matter of these requests, responses or documents produced in response hereto.

10. Please provide copies of any transcripts of depositions of each witness identified in Interrogatory No. 16. If a transcript is not available, please provide the name, address, and telephone number of the court reporting service used for purposes of each deposition.

RESPONSE:

OCC objects to Request for Production of Documents No. 11 because it is overly broad and unduly burdensome. In addition, this request inquiries into matters that are not relevant to the subject matter of the proceeding and are not “reasonably calculated to lead to discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).

Without waiving any specific or general objection, the following response is provided:

OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party. (Bate Nos. 1023-1119).

Prepared by: Counsel

11. Provide copies of any transcripts of depositions of each witness identified in Interrogatory No. 18. If a transcript is not available, please provide the name, address, and telephone number of the court reporting service used for purposes of each deposition.

RESPONSE:

See OCC’s response and objections to Request for Production of Documents No. 10.

Prepared by: Counsel

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Responses and Objections to Duke Energy Ohio's First Set of Interrogatories and Request for Production of Documents was served in accordance with Ohio Adm. Code 4901-1-18, by electronic transmission, this 30th day of June 2014, upon the following:

/s/ Maureen R. Grady
Maureen R. Grady
Assistant Consumers' Counsel

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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'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED TO
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Comes now Duke Energy Ohio (Duke Energy Ohio), and addresses the following First Set of Interrogatories and Request for Production of Documents to The Office of the Ohio Consumers' Counsel (OCC) pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code. These discovery requests are to be answered within ten (10) days of the date appearing on the certificate of service appended hereto.

I. DEFINITIONS AND INSTRUCTIONS

1. With respect to each discovery request, all information is to be divulged that is within the knowledge, possession or control of the parties to whom it is addressed, including their agents, employees, attorneys and/or investigators.
2. Where an interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.
3. All answers must be separately and fully stated in writing under oath.
4. Pursuant to Rules 4901-1-16(D) and (E) of the Ohio Administrative Code, you are under a continuing duty to seasonably supplement all discovery responses with respect to any question directly addressed to the identity and locations of persons having knowledge of discoverable matters, the identity of each person expected to be called as an expert witness at the hearing, and the subject matter on which the expert is expected to

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testify. Further, a party who knows or later learns that a response is incorrect is under a duty to seasonably correct the response.

5. For purpose of these discovery requests, the following terms shall have meanings set forth below:

(a) As used herein, "document," "documentation" and/or "record," whether stated as the singular or the plural, means any course of binders, book, pamphlet, periodical, letter, correspondence, memoranda, including but not limited to, any memorandum or report of a meeting or telephone or other conversation, invoice, account, credit memo, debit memo, financial statement, general ledger, ledger, journal, work papers, account work papers, report, diary, telegram, record, contract, agreement, study, draft, telex, handwritten or other note, sketch, picture, photograph, plan, chart, paper, graph, index, tape, data processing card, data processing disc, data cells or sheet, check acceptance draft, e-mail, studies, analyses, contracts, estimates, summaries, statistical statements, analytical records, reports and/or summaries of investigations, opinions or reports of consultants, opinions or reports of accountants, trade letters, comparisons, brochures, pamphlets, circulars, bulletins, notices, forecasts, electronic communication, printouts, all other data compilations from which information can be obtained (translated if necessary by defendants into usable form), any preliminary versions, drafts or revisions of any of the foregoing, and/or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced and regardless of origin or location, in the possession, custody and/or control of the defendant and/or their agents, accountants, employees, representatives and/or attorneys. "Document" and "record" also mean all copies of documents by whatever means made, if the copy bears any other markings or notations not found on the original.

(b) The terms "relating to," "referring to," "referred to," "pertaining to," "pertained to" and "relates to" means referring to, reporting, embodying, establishing, evidencing, comprising, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, presenting and/or constituting and/or in any way involving.

(c) The terms "and," "or," and "and/or" within the meaning of this document shall include each other and shall be both inclusive and disjunctive and shall be construed to require production of all documents, as above-described, in the broadest possible fashion and manner.

(d) The term "OCC" shall mean The Office of the Ohio Consumers' Counsel, and shall include, but is not limited to, each and every agent, employee, servant, insurer and/or attorney of OCC. The term "you" shall be deemed to refer to OCC.

(e) The term "Duke Energy Ohio" shall mean Duke Energy Ohio, Inc., its employees, agents, officers, directors and representatives.

(f) To "identify" shall mean:

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- (1) With respect to a document, to state its date, its author, its type (for example, letter, memorandum, chart, photograph, sound reproduction, etc.), its subject matter, its present location, and the name of its present custodian. The document may be produced in lieu of supplying the foregoing information. For each document which contains information as privileged or otherwise excludable from discovery, there shall be included a statement as to the basis for such claim of privilege or other grounds for exclusion.
 - (2) With regard to a natural person, to state his or her full name, last known employer or business affiliation, title and last known home address.
 - (3) With regard to a person other than a natural person, state the title of that person, any trade name, or corporate name or partnership name used by that person, and the principal business address of that person.
- (g) To "produce" or to "identify and produce," shall mean that plaintiffs shall produce each document or other requested tangible thing. For each tangible thing which plaintiffs contend are privileged or otherwise excludable from discovery, there shall be included a statement as to the basis for such claim of privilege or other grounds for exclusion.
- (h) The terms "Party or Parties" shall mean any organization, person, corporation, entity, etc, which intervened in the above-captioned proceeding and shall further include Staff of the Public Utilities Commission of Ohio.

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2. Produce all forecasts of the wholesale capacity market in the possession, custody, or control of OCC, regardless of the person or entity to have prepared said forecast.

RESPONSE:

3. Any and all documents identified or referenced in response to any of the foregoing Interrogatories.

RESPONSE:

4. Any and all documents that contain any information used, reviewed, or referenced in preparing OCC's responses to any of the foregoing Interrogatories.

RESPONSE:

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Respectfully submitted,

DUKE ENERGY OHIO, INC.



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Jeanne W. Kingery
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Duke Energy Ohio's First Set of Interrogatories and Request for Production of Documents Propounded to The Office of the Ohio Consumers' Counsel was served on the following parties this 19th day of June, 2014 by regular U. S. Mail, overnight delivery or electronic delivery.


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**Counsel for Ohio Partners for
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	
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**RESPONSES AND OBJECTIONS TO DUKE ENERGY OHIO'S FIRST SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") by and through its counsel, hereby submits its Responses and Objections to the First Set of Interrogatories and Requests for Production of Documents submitted to the OCC by Duke Energy Ohio ("Duke" "Company" or "Utility") in the above-captioned cases.

The OCC's responses to these discovery requests are being provided subject to, and without waiver of, the general objections stated below and the specific objections posed in response to each interrogatory and request for production of documents. The general objections are hereby incorporated by reference into the individual response made to each discovery request. The OCC's responses to these discovery requests are submitted without prejudice to, and without in respect waiving, any general objections not expressly set forth therein.

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The provisions of any response below shall not waive the OCC's objections. The response below, while based on diligent investigation and reasonable inquiry by OCC, reflect only the current state of the OCC's knowledge and understanding and belief with respect to the matters about which the discovery requests seek information, based upon the information and discovery to date. The OCC's investigation is not yet complete and is continuing as of the date of the responses below. The OCC anticipates the possibility that it may discover additional information and/or documents, and without obligating itself to do so, the OCC reserves the right to continue its investigation and to modify or supplement the responses below, with such pertinent information or documents. The responses below are made without prejudice to the OCC's right to rely upon or use subsequently discovered information or documents, or documents of information inadvertently omitted from the responses below as a result of mistake, error, or oversight. The OCC reserves the right to object on appropriate grounds to the use of such information and documents. The fact that the OCC, in the spirit of cooperation, has elected to provide relevant information below in response to the Company's discovery requests shall not constitute or be deemed a waiver of the OCC's objections. The OCC hereby fully preserves all of its objections to the discovery request or the use of its responses for any purpose.

Furthermore, OCC's provision of responses to these discovery requests shall not be construed as a waiver of the attorney-client privilege or any other applicable privilege or doctrine, and OCC reserves its right to file a motion for protective order under Ohio Adm. Code 4901-1-24 in order to protect OCC from annoyance, embarrassment, oppression, or undue burden or expense or for any other reason.

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GENERAL OBJECTIONS

1. The OCC objects to any discovery requests as improper, overbroad, and unduly burdensome to the extent that they purport to impose upon the OCC any obligations broader than those set forth in the Public Utilities Commission of Ohio's rules or otherwise permitted by law. The rules of discovery require, among other matters, that matters inquired into must be relevant to the subject matter of the proceeding, and must appear to be "reasonably calculated to lead to the discovery of admissible evidence." Ohio Adm. Code 4901-1-16(B).
2. The OCC objects to these discovery requests and to the Companies' Definitions and instructions as improper, overbroad, and unduly burdensome to the extent that they improperly seek or purport to require the disclosure of information protected by the attorney-client privilege, trial preparation doctrine, attorney work-product doctrine or any other applicable privilege or doctrine. Such responses as may hereafter be given shall not include any information protected by such privileges or doctrines, and the inadvertent disclosure of such information shall not be deemed as a waiver of any such privilege or doctrine.
3. The OCC objects to these discovery requests and to the Company's' Definitions and instructions to the extent that they improperly seek or purport to require the OCC to provide documents and information not in the OCC's possession, custody or control.
4. The objections and responses contained herein and documents produced in response hereto are not intended nor should they be construed to waive the OCC's

D

right to object to these requests, responses or documents produced in response hereto, or the subject matter of such requests, responses, or documents, as to their competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, in or at any hearing of this or any other proceeding.

5. The OCC objects to these discovery requests to the extent they improperly seek or purport to require the production of documents or information which is not relevant to the subject matter of the proceeding or not reasonably calculated to lead to the discovery of admissible evidence.
6. The OCC objects to these discovery requests and to the Companies' Definition and instructions to the extent they improperly seek or purport to require production of documents in a form other than how the documents are maintained in the regular course of business.
7. The OCC objects to these discovery requests insofar as they request the production of documents or information that are publicly available or already in the Companies' possession, custody, or control.
8. The OCC objects to each and every data request that seeks to obtain "all," "each" or "any" document to the extent that such requests are overbroad and unduly burdensome and seek information that is not relevant to the subject matter of this proceeding or not reasonably calculated to lead to the discovery of admissible evidence.
9. The OCC objects to these discovery requests to the extent that such requests are not limited to any stated time period or identify a stated period of time that is

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longer than is relevant for purposes of this proceeding, as such discovery is unduly burdensome and overly broad.

10. The OCC objects to these discovery requests to the extent they are vague, ambiguous, use terms that are subject to multiple interpretations but are not properly defined for purposes of these discovery requests, or otherwise provide no basis from which OCC can determine what information is sought.
11. The objections and responses contained herein are not intended nor should they be construed to waive the OCC's rights to object to other discovery involving or relating to the subject matter of these requests, responses or documents produced in response hereto.

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Otherwise, OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party. (Bate Nos. 30-967).

Prepared by: Counsel

3. Any and all documents identified or referenced in response to any of the foregoing Interrogatories.

RESPONSE:

Objection. The Company's Request for Production No. 3 seeks information that was objected to in response to the Company's Interrogatories Nos. 1 through 22 above, and those objections are incorporated herein. Without waiving any specific or general objection, the following response is provided:

OCC has identified documents responsive to this request that will be provided, by inspection or otherwise, to the requesting party. (Bate Nos. 968-987).

Prepared by: Counsel

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Responses and Objections to Duke Energy Ohio's First Set of Interrogatories and Request for Production of Documents was served in accordance with Ohio Adm. Code 4901-1-18, by electronic transmission, this 30th day of June 2014, upon the following:

/s/ Maureen R. Grady
Maureen R. Grady
Assistant Consumers' Counsel

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E

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

JOINT DEFENSE CONFIDENTIALITY AGREEMENT

Now come the parties (designated by their execution of this document),
hereinafter collectively referred to as the "Parties" (or, when referred to individually,
"Party"), and agree to the following terms and conditions of a Joint Defense
Confidentiality Agreement ("Agreement").¹

1. This Agreement shall apply to the above-captioned case(s), including any appeals,
remands and other cases or subsequent matters involving the above-captioned case(s).

This Agreement may be further extended to apply to other actions or proceedings by
separate execution of an addendum to this Agreement.

2. The Agreement is a written embodiment of the understanding entered into by and
among the undersigned Parties as of June 6, 2014 which shall be the effective

¹ "The 'common interest privilege' of the attorney-client privilege is another step beyond the joint client situation, where two or more clients, each represented by their own lawyers, meet to discuss matters of common interest-commonly called a joint defense agreement or pooled information situation. Such communications among the clients and their lawyers are within the privilege. Although it originated in the context of criminal cases, the doctrine has been applied in civil cases and to plaintiffs in litigation as well as defendants." *Bardwell v. Attorney General*, Case No. 181 Ohio App. 3d 661 (March 19, 2009), HN 12.

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commencement date of the Agreement regardless of the date on which a Party may sign this Agreement.

3. To that end, the Parties wish to share information in confidence for their common purpose and benefit. The purpose and benefit includes, but is not limited to, enabling the Parties to monitor the direction of the litigation in cases and to minimize the aggregate and individual-case costs of legal representation and consulting services during the litigation of any of the above mentioned actions or subsequently added proceedings, and to make the most efficient use of the resources available to the Parties. In sharing information and resources, the Parties expressly preserve and retain the privilege conferred by the trial preparation doctrine, the attorney-client privilege, and all other applicable doctrines or privileges during this litigation and in any subsequent proceeding which constitutes the continuation, re-filing, or appeal of those matters listed in paragraph 1 and all matters subsequently added to the subject of this Agreement.
4. Except as provided in paragraph 15, the Parties agree that any information exchanged among them pursuant to this Agreement shall remain confidential and subject to the Parties' trial preparation privileges, attorney-client privileges, and all other applicable doctrines or privileges. The Parties further intend that any exchange of information will be made within the "joint defense privilege" as recognized by numerous authorities to the maximum extent allowed by law. In that regard, "information" includes, but is not limited to, oral communication, all writings (including graphs, charts, and other displays), recordings, photographs, originals and duplicates ("Original" and "Duplicate" as defined under the Ohio Rules of Evidence).

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5. Except as provided in paragraph 15, the Parties hereby agree that all information that they receive pursuant to this Agreement, from any Party to this Agreement, or such Parties' counsel or consultants retained by any Party to this Agreement, shall be treated and maintained by them as a privileged and confidential communication among or between the Parties (hereinafter "Joint Defense Communication"). A Joint Defense Communication may be disclosed to those individuals assisting a Party to this Agreement, including consultants retained by any Party in connection with the cases identified in paragraph 1 of this Agreement, but such individuals may not disclose such Joint Defense Communications, either directly or indirectly (e.g. a Party's consultant may not disclose the information) to any person who is not a Party to this Agreement without the express prior consent of the Party providing the information and the other Parties to this Agreement.

6. Information, which is otherwise not privileged, shall not gain any privilege by virtue of its being disclosed as a Joint Defense Communication; however, the fact of its communications between Parties to this Agreement shall be privileged.

7. Any Party who independently develops information which is protected by the trial preparation doctrine, or any Party who receives information from anyone other than the Parties to this Agreement, may, at their discretion, disclose such information to any Third Party. For purposes of this paragraph, information which would be independently available but which also was part of a Joint Defense Communication shall be considered independently developed for purposes of the operation of this provision.

8. Each Party to this Agreement agrees that Joint Defense Communications shall be used only in connection with the defense of the above-mentioned matters (see paragraph

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1) or any related action, including appeal arising out of the issues before the Public Utilities Commission or other body hearing the above-mentioned matters. Joint Defense Communications shall not be used for any other purpose without the prior written consent of each of the Parties hereto.

9. Each Party understands and acknowledges by its execution of this Agreement that the Party is still represented only by the Party's own counsel, if any, in this matter and that while the attorneys representing the other Parties have a duty to preserve confidentiality of Joint Defense Communications disclosed to them pursuant to this Agreement, they will be acting solely as their client's legal counsel in this matter, and such attorneys will owe a duty of loyalty only to their respective client except for the duties as specified in this Agreement.

10. Each Party further understands and acknowledges that the Parties have the right, and may have the obligation, to take positions that may be adverse to the interests of other signatory Parties to the Agreement. In the case that Parties to this Agreement find themselves in adverse positions, a Joint Defense Communication originating with another Party cannot be used in any administrative or judicial proceeding, used or relied upon to advance a position, or used or relied upon in cross-examination of the witness provided by a fellow Party to this Agreement.

11. The Parties hereto understand and agree that, should any employee or representative of a Party testify in any of the above-mentioned matters stated in paragraph 1, the other Parties to this Agreement will not be disqualified from cross-examining the witness, whether in hearing or deposition, by reason of this Agreement. Any cross-examination, however, may not use, rely upon, or introduce Joint Defense

Communications. When cross-examining another Party's employee, witness, or representative at trial, all Parties may use information obtained or derived independently from Joint Defense Communications.

12. While the precise nature of each possible conflict that may arise in the future cannot be identified at the present time, each Party knowingly and intelligently waives any conflict of interest that may arise on account of this Agreement, including any conflict arising as a result of the cross-examination of any Party at trial, or at any other proceeding related to this Agreement.

13. The Parties agree that the confidentiality and privileges prescribed above will not become retrospectively inoperative if adversity should subsequently arise between the Parties (or any of them), irrespective of any claim that the joint defense privilege may otherwise become prospectively inoperative by virtue of such claimed adversity.

14. Any Party may withdraw from this Agreement by prior written notice of such withdrawal to all other Parties. Any such withdrawal will be solely prospective and shall in no way affect the privileged and confidential nature of Joint Defense Communications between or among the Parties prior to the departure of the withdrawing party. Upon satisfaction of the withdrawing Party's record retention requirements (if any) under Ohio law, the withdrawing Party shall return all Joint Defense Communications materials and all writings and recordings containing confidential and privileged materials obtained pursuant to this Agreement, including all copies thereof, or shall destroy such Joint Defense Communications upon withdrawing from this Agreement. The withdrawing Party may retain its own trial preparation materials and privileged communications even if those materials and writings contain references to Joint Defense Communications.

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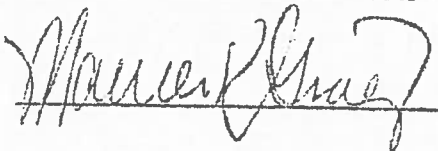
15. A Party that is subject to Ohio's Public Records Law and receives a public records request ("Requested Records") for any Joint Defense Communication shall give all other Parties to this Agreement prompt notice of the request. Such notice shall be provided to the other Parties by one of the following methods: (1) sending the notice to the Parties or a Party's counsel via e-mail; (2) hand-delivering the notice to the Parties or a Party's counsel in person at any location; or (3) sending the notice by an overnight delivery service to the Parties or a Party's counsel. After providing such notice in accordance with this paragraph, the Party that received the public records request will disclose a Joint Defense Communication only if such disclosure is mandated by Ohio's Public Records Law.

16. Each counsel that signs this Agreement represents that he or she is fully authorized to enter into the terms and conditions of the Agreement, and to execute this Agreement on his or her own behalf as well as on behalf of his or her respective Party.

17. This Agreement represents the entire understanding of the Parties with respect to the Joint Defense Communications and supersedes all other understandings, written or oral, with respect to the Joint Defense Communications. The Parties acknowledge that it may be necessary to negotiate and execute changes and/or amendments to the Agreement. No amendment, modification, or waiver of any provision of this Agreement shall be valid, however, unless contained in a writing signed by all Parties.

Office of the Ohio Consumers' Counsel

By:



Date:

6/23/14

E

Ohio Partners For Affordable Energy

By: _____ Date: _____

Ohio Energy Group

By: _____ Date: _____

Ohio Manufacturers Association

By:  Date: 6/20/14

F

Spiller, Amy B

From: Spiller, Amy B
Sent: Sunday, July 27, 2014 1:14 PM
To: 'cmooney@ohiopartners.org'
Cc: Kingery, Jeanne W; Kuhnell, Dianne B
Subject: Duke Energy Ohio ESP - OPAE Discovery Responses

Tracking:	Recipient	Read
	'cmooney@ohiopartners.org'	
	Kingery, Jeanne W	Read: 7/27/2014 1:20 PM
	Kuhnell, Dianne B	Read: 7/28/2014 8:26 AM

Colleen

I've reviewed OPAE's responses to the First Set of Interrogatories propounded by Duke Energy Ohio and am admittedly perplexed. We had asked for the identification of all parties to a joint defense agreement signed by OPAE on or about June 17, 2014. In responding, you have stated that OPAE is not the custodian of the joint defense agreement and, as such, cannot identify the other parties to it.

I would kindly ask that you revisit this response. I am simply asking for the identity of all parties with whom the OPAE has joint defense agreement. I have to believe that the OPAE knows the identity of all parties with whom it has entered into this agreement, even if it is not the custodian.

Also, we are entitled to discover the "common interest" that underlies this agreement. As it is not articulated in the document itself, we'd ask that you please provide a substantive response to the second interrogatory contained in Duke Energy Ohio's First Set of Interrogatories to OPAE.

Thank you for your attention to this matter.

Amy B. Spiller
Deputy General Counsel
Duke Energy Business Services
139 E. Main Street, 1303-Main
Cincinnati, Ohio 45202
(513) 287-4359 (telephone)
(513) 287-4385 (facsimile)

CONFIDENTIAL NOTIFICATION:

The information in this e-mail may be confidential and/or privileged. This e-mail is intended to be reviewed only by the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this e-mail or its attachments, if any, or the information contained herein is prohibited. If you have received this e-mail in error, please immediately notify the sender by return mail and delete this e-mail from your system. Thank you.

G

Spiller, Amy B

From: Colleen Mooney <cmooney@ohiopartners.org>
Sent: Sunday, July 27, 2014 5:31 PM
To: Spiller, Amy B
Cc: Kingery, Jeanne W; Kuhnell, Dianne B; drinebolt@ohiopartners.org; 'Grady, Maureen'
Subject: RE: Duke Energy Ohio ESP - OPAE Discovery Responses

*** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ***

OPAE stands by its responses. OPAE received the agreement from the Office of the Consumers' Counsel and signed it on June 17. OPAE returned the signature page to OCC on June 17 via e-mail. OPAE only has a copy of the agreement OPAE signed. OPAE does not know what other parties signed the agreement. OPAE believes that the Joint Defense Agreement speaks for itself.

From: Spiller, Amy B [<mailto:Amy.Spiller@duke-energy.com>]
Sent: Sunday, July 27, 2014 1:14 PM
To: cmooney@ohiopartners.org
Cc: Kingery, Jeanne W; Kuhnell, Dianne B
Subject: Duke Energy Ohio ESP - OPAE Discovery Responses

Colleen

I've reviewed OPAE's responses to the First Set of Interrogatories propounded by Duke Energy Ohio and am admittedly perplexed. We had asked for the identification of all parties to a joint defense agreement signed by OPAE on or about June 17, 2014. In responding, you have stated that OPAE is not the custodian of the joint defense agreement and, as such, cannot identify the other parties to it.

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Also, we are entitled to discover the "common interest" that underlies this agreement. As it is not articulated in the document itself, we'd ask that you please provide a substantive response to the second interrogatory contained in Duke Energy Ohio's First Set of Interrogatories to OPAE.

Thank you for your attention to this matter.

Amy B. Spiller
Deputy General Counsel
Duke Energy Business Services
139 E. Main Street, 1303-Main
Cincinnati, Ohio 45202
(513) 287-4359 (telephone)
(513) 287-4385 (facsimile)

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CONFIDENTIAL NOTIFICATION:

The information in this e-mail may be confidential and/or privileged. This e-mail is intended to be reviewed only by the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this e-mail or its attachments, if any, or the information contained herein is prohibited. If you have received this e-mail in error, please immediately notify the sender by return mail and delete this e-mail from your system. Thank you.



This email is free from viruses and malware because avast! Antivirus protection is active.

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**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.)	

**RESPONSES AND OBJECTIONS TO DUKE ENERGY OHIO'S
THIRD SET OF INTERROGATORIES
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") by and through its counsel, hereby submits its Responses and Objections to the Third Set of Interrogatories submitted to the OCC by Duke Energy Ohio ("Duke" "Company" or "Utility") in the above-captioned cases.

The OCC's responses to these discovery requests are being provided subject to, and without waiver of, the general objections stated below and the specific objections posed in response to each interrogatory and request for production of documents. The general objections are hereby incorporated by reference into the individual response made to each discovery request. The OCC's responses to these discovery requests are submitted without prejudice to, and without in respect waiving, any general objections not expressly set forth therein.

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The provisions of any response below shall not waive the OCC's objections. The response below, while based on diligent investigation and reasonable inquiry by OCC, reflect only the current state of the OCC's knowledge and understanding and belief with respect to the matters about which the discovery requests seek information, based upon the information and discovery to date. The OCC's investigation is not yet complete and is continuing as of the date of the responses below. The OCC anticipates the possibility that it may discover additional information and/or documents, and without obligating itself to do so, the OCC reserves the right to continue its investigation and to modify or supplement the responses below, with such pertinent information or documents. The responses below are made without prejudice to the OCC's right to rely upon or use subsequently discovered information or documents, or documents of information inadvertently omitted from the responses below as a result of mistake, error, or oversight. The OCC reserves the right to object on appropriate grounds to the use of such information and documents. The fact that the OCC, in the spirit of cooperation, has elected to provide relevant information below in response to the Company's discovery requests shall not constitute or be deemed a waiver of the OCC's objections. The OCC hereby fully preserves all of its objections to the discovery request or the use of its responses for any purpose.

Furthermore, OCC's provision of responses to these discovery requests shall not be construed as a waiver of the attorney-client privilege or any other applicable privilege or doctrine, and OCC reserves its right to file a motion for protective order under Ohio Adm. Code 4901-1-24 in order to protect OCC from annoyance, embarrassment, oppression, or undue burden or expense or for any other reason.

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GENERAL OBJECTIONS

1. The OCC objects to any discovery requests as improper, overbroad, and unduly burdensome to the extent that they purport to impose upon the OCC any obligations broader than those set forth in the Public Utilities Commission of Ohio's rules or otherwise permitted by law. The rules of discovery require, among other matters, that matters inquired into must be relevant to the subject matter of the proceeding, and must appear to be "reasonably calculated to lead to the discovery of admissible evidence." Ohio Adm. Code 4901-1-16(B).
2. The OCC objects to these discovery requests and to the Companies' Definitions and instructions as improper, overbroad, and unduly burdensome to the extent that they improperly seek or purport to require the disclosure of information protected by the attorney-client privilege, trial preparation doctrine, attorney work-product doctrine or any other applicable privilege or doctrine. Such responses as may hereafter be given shall not include any information protected by such privileges or doctrines, and the inadvertent disclosure of such information shall not be deemed as a waiver of any such privilege or doctrine.
3. The OCC objects to these discovery requests and to the Company's' Definitions and instructions to the extent that they improperly seek or purport to require the OCC to provide documents and information not in the OCC's possession, custody or control.
4. The objections and responses contained herein and documents produced in response hereto are not intended nor should they be construed to waive the OCC's

right to object to these requests, responses or documents produced in response hereto, or the subject matter of such requests, responses, or documents, as to their competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, in or at any hearing of this or any other proceeding.

5. The OCC objects to these discovery requests to the extent they improperly seek or purport to require the production of documents or information which is not relevant to the subject matter of the proceeding or not reasonably calculated to lead to the discovery of admissible evidence.
6. The OCC objects to these discovery requests and to the Companies' Definition and instructions to the extent they improperly seek or purport to require production of documents in a form other than how the documents are maintained in the regular course of business.
7. The OCC objects to these discovery requests insofar as they request the production of documents or information that are publicly available or already in the Companies' possession, custody, or control.
8. The OCC objects to each and every data request that seeks to obtain "all," "each" or "any" document to the extent that such requests are overbroad and unduly burdensome and seek information that is not relevant to the subject matter of this proceeding or not reasonably calculated to lead to the discovery of admissible evidence.
9. The OCC objects to these discovery requests to the extent that such requests are not limited to any stated time period or identify a stated period of time that is

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longer than is relevant for purposes of this proceeding, as such discovery is unduly burdensome and overly broad.

10. The OCC objects to these discovery requests to the extent they are vague, ambiguous, use terms that are subject to multiple interpretations but are not properly defined for purposes of these discovery requests, or otherwise provide no basis from which OCC can determine what information is sought.
11. The objections and responses contained herein are not intended nor should they be construed to waive the OCC's rights to object to other discovery involving or relating to the subject matter of these requests, responses or documents produced in response hereto.

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OBJECTIONS AND RESPONSES TO
INTERROGATORIES

1. With regard to the joint defense agreement produced by the Ohio Manufacturer's Association (OMA) please answer the following:
 - a. Identify the date on which the OCC signed the joint defense agreement.
 - b. Have any other parties to these proceedings signed the joint defense agreement?
"Parties to these proceedings" here means any entity that has filed a motion to intervene in these proceedings, whether or not such motion has been granted.
 - c. If the answer to part (b) is yes, identify each such signatory party.
 - d. If the answer to part (b) is yes, identify the date on which such agreement was so signed, by each signatory party.

RESPONSE:

Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege.

Without waiving any specific or general objections, OCC responds as follows:

- a. **OCC signed the Joint Defense Agreement produced by the Ohio Manufacturer's Association on June 17, 2014 (after receiving the signed Joint Defense Agreement from OPAE) and on June 23, 2014, after receiving the signed Joint Defense Agreement from OMA's Counsel.**

- H
- b. Other parties to this proceeding signed the same Joint Defense Agreement produced by the Ohio Manufacturers' Association.
 - c. The Ohio Partners for Affordable Energy signed the same Joint Defense agreement produced by the Ohio Manufacturers' Association.
 - d. Ohio Partners for Affordable Energy signed the same Joint Defense agreement produced by the Ohio Manufacturer's Association on June 17, 2014. OCC also signed the Joint Defense Agreement, after receiving the signed Joint Defense Agreement from OPAE's counsel, on June 17, 2014.

By: Counsel

- a. Please describe, with specificity, the common interest that purportedly establishes the confidential nature of the joint defense agreement.

RESPONSE:

Objection to the extent that the Company is inquiring into analysis exempt from discovery under the trial preparation doctrine and/or the attorney-client privilege.

Without waiving any specific or general objections, OCC responds as follows:

OMA, OCC and OPAE, while representing different customer groups, share a common interest, inter alia, advocating for reasonably priced electric service and advocating for a fair and reasonable procedural schedule for this case.

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In particular OCC and these Intervening Parties share a common interest in opposing the expedited schedule requested by Duke and modified by AE Entry. These parties (and OEG and IGS) filed a joint motion for continuance on June 18, 2014 and filed a joint reply to Duke's Memorandum Contra on June 26, 2014. Consistent with the common interest in opposing the expedited schedule, both OMA and OPAE filed with OCC a Joint Motion to Reject Duke's Application and Vacate Procedural Schedule. These same parties also joined to file a Joint Reply to Duke's Memorandum Contra, on July 17, 2014.

By: Counsel

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Responses and Objections to Duke Energy Ohio's Third Set of Interrogatories was served in accordance with Ohio Adm. Code 4901-1-18, by electronic transmission, this 24th day of July 2014, upon the following:

/s/ Maureen R. Grady
Maureen R. Grady
Assistant Consumers' Counsel

SERVICE LIST

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mohler@carpenterlipps.com
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cloucas@ohiopartners.org
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H
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Cincinnati, Ohio 45201-0960
Tel: 513-287-4359
Fax: 513-287-4385
Amy.Spiller@duke-energy.com

Amy B. Spiller
Deputy General Counsel

August 18, 2014

VIA ELECTRONIC MAIL DELIVERY

Maureen Grady
Office of the Ohio Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215

Re: *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*
Case No. 14-841-EL-SSO, et al.

Dear Maureen:

As you will recall, Duke Energy Ohio propounded discovery upon the Office of the Ohio's Consumers' Counsel (OCC) relative to the captioned matter. Several of the questions relate to the joint defense agreements into which the OCC has entered. For purposes of illustration only, reference is made to Duke Energy Ohio's Third Set of Interrogatories propounded upon the OCC.

From the discovery responses, it is evident that OCC has entered into various joint defense agreements. One such agreement is between the OCC, the Ohio Partners for Affordable Energy (OPAE), and the Ohio Manufacturer's Association (OMA). The purported common interest includes administrative efficiency and controlled litigation costs (see Paragraph 3 of the Joint Defense Agreement) and "advocating for reasonably priced electric service" (see OCC's response to Interrogatory No. 1 of the Third Set of Interrogatories propounded upon it). These interests do not support a claimed privilege. All litigants have a desire for efficiency and to control litigation costs. Further, it is undeniable that the provision of reasonably priced electric service is an objective of the Commission and its staff. This is not an objective that reflects any unique legal interest of the OCC, OPAE, and OMA.

Please confirm that there is no valid common interest sufficient to support the joint defense agreement entered into between the OCC, OPAE, and the OMA. In doing so, please also supplement the OCC's discovery requests to identify, and provide documents related to, all communications and documents exchanged between the OCC, OPAE, and the OMA.

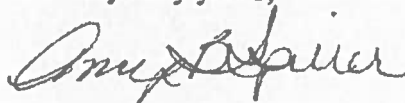
Maureen Grady
August 18, 2014
Page Two

Duke Energy Ohio requests that forgoing discovery requests be supplemented by August 25, 2014.

Please accept this correspondence as Duke Energy Ohio's effort under O.A.C. 4901-1-23 to employ reasonable, extrajudicial means of resolving discovery disputes.

Please do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Amy B. Spiller".

Amy B. Spiller

I



139 East Fourth Street-1303-Main
P.O. Box 960
Cincinnati, Ohio 45201-0960
Tel: 513-287-4359
Fax: 513-287-4385
Amy.Spiller@duke-energy.com

Amy B. Spiller
Deputy General Counsel

August 18, 2014

VIA ELECTRONIC MAIL DELIVERY

Maureen Grady
Office of the Ohio Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215

Re: *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*
Case No. 14-841-EL-SSO, *et al.*

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Please confirm that there is no valid common interest sufficient to support the joint defense agreement entered into between the OCC, OPAE, and the OMA. In doing so, please also supplement the OCC's discovery requests to identify, and provide documents related to, all communications and documents exchanged between the OCC, OPAE, and the OMA.

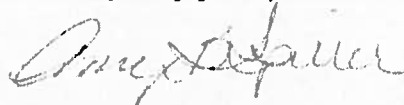
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Maureen Grady
August 18, 2014
Page Two

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Please do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Amy B. Spiller".

Amy B. Spiller



Office of the Ohio Consumers' Counsel

Your Residential Utility Consumer Advocate

September 4, 2014

Amy B. Spiller, Esq.
Deputy General Counsel
Duke Energy
139 East Fourth Street
1303 Main, P.O. Box 960
Cincinnati, Ohio 45201-0960

Via Electronic Transmission

Re: *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan, Case No. 14-841-EL-SSO*

Dear Ms. Spiller:

I am writing in response to your letter of August 18, 2014. Your letter is part of what appears to be Duke's intention to challenge a Joint Defense Agreement in the above case. The Ohio Consumers' Counsel ("OCC") is relying on that Agreement for its representation of 611,000 consumers in this case where Duke is seeking, among other things, to charge consumers to guarantee a profit for deregulated power plants. In your letter, you are asking OCC to invalidate our own Joint Defense Agreement. We decline. Duke is mistaken, as we already have explained. The Joint Defense Agreement among OCC, The Ohio Manufacturers' Association ("OMA"), and the Ohio Partners for Affordable Energy ("OPAE"), (the "JDA Parties") is both legally permissible and enforceable.

The JDA Parties have common interests. The common interest between the JDA Parties has been explained already in responses that OCC provided to Duke in discovery. OCC's response to Duke Interrogatory No. 10, noted that communications were made evidencing a "common interest in opposing the application." The common interest was further explained as one in which each of the parties "oppose the expedited procedural schedule requested by Duke and modified by the AE Entry." The common interest is also defined within the joint defense agreement, as you have noted. It includes advocating for "administrative efficiency and controlling litigation costs" and "advocating for reasonably priced service." Those common interests are similarly adverse to Duke Energy.

It is a simple fact that Duke Energy, the applicant, is on one side of the referenced proceedings and the JDA Parties are on another side. You claim that everyone wants "reasonably priced electric service." But what Duke Energy views as "reasonably priced electric service" to support its desire for profit and what the JDA Parties as customers view as "reasonably priced electric service" are very different.

You indicate that a joint defense agreement must be supported by a "unique legal interest." This is an incorrect statement of the law. What is required is that the parties to the joint defense agreement share common interests in the outcome of the contested matter. Simply because others outside the agreement may have similar interests does not invalidate the agreement.

J

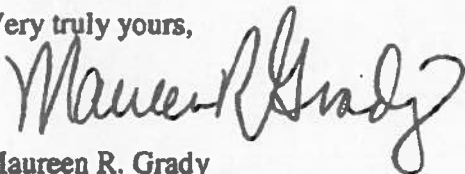
Page Two
September 4, 2014

Accordingly, the OCC declines your request that we invalidate our own Joint Defense Agreement by accepting your statement "that there is no valid common interest sufficient to support the joint defense agreement." Such a common interest does exist and is appropriate.

You also requested that OCC supplement its response to the "forgoing discovery requests." Once you identify which responses you are requesting to be supplemented, we will address your request within the ten-day period for responding to discovery. Please note that OCC has already supplemented a number of its responses to Duke's discovery consistent with Ohio Admin. Code 4901:1-16(E).

Thank you.

Very truly yours,




Maureen R. Grady
Assistant Consumers' Counsel

AFFIDAVIT OF AMY B. SPILLER


STATE OF OHIO)
) SS
COUNTY OF HAMILTON)

1. I am the attorney of record for Duke Energy Ohio, Inc., (Duke Energy Ohio) relative to the captioned matter.
2. On June 19, 2014, I tendered to the Office of the Ohio Consumers' Counsel (OCC) the First Set of Interrogatories and Document Requests on behalf of Duke Energy Ohio. Exhibits A and C to the Motion to Compel reflect a true and accurate copy of the relevant excerpts of those discovery requests.
3. On June 30, 2014, I received the OCC's responses to Duke Energy Ohio's First Set of Discovery. Exhibits B, D, and E to the Motion to Compel reflect true and accurate copies of the relevant excerpts of the OCC's responses.
4. On July 13, 2014, I tendered the Office of the Ohio Consumers' Counsel (OCC) the Third Set of Interrogatories and Document Requests on behalf of Duke Energy Ohio. Exhibit H to the Motion to Compel reflect a true and accurate copy of the relevant excerpts of those discovery requests, including the OCC's responses thereto.
5. On July 27, 2014, I attempted to confirm the exact nature of the alleged common interest supporting the Joint Defense Confidentiality Agreement, via communication to counsel for the Ohio Partners for Affordable Energy (OPAE). OPAE had been identified as one of three parties to the Joint Defense Confidentiality Agreement. Exhibit F is a true and accurate copy of my communication.

6. Counsel for OPAE responded, summarily stating that the Joint Defense Confidentiality Agreement speaks for itself. No further explanation of or support for the alleged common interest was offered. Exhibit G is a true and accurate copy of the response from OPAE.
7. On August 18, 2014, I sent correspondence to counsel for the OCC, questioning the purported common interest supporting the Joint Defense Confidentiality Agreement. Such communication was sent for the purpose of resolving disagreements with regard to the OCC's discovery responses and alleged claim of privilege. Exhibit I is a true and accurate copy of the communication.
8. On September 4, 2014, I received a response from the OCC, wherein its counsel refused to agree that a legally recognized common interest was present. Exhibit J is a true and accurate copy of the response from the OCC.
9. I do not believe that ongoing efforts at informally resolving this discovery dispute would be meaningful. Both OPAE and the OCC are standing firm on their prior responses and their claim of privilege.


Amy B. Spiller

Sworn to and subscribed in my presence this 22ND day of September, 2014


Notary Public

My commission expires: 1/5/2019

This foregoing document was electronically filed with the Public Utilities

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9/22/2014 5:53:35 PM

in

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

Summary: Motion Motion of Duke Energy Ohio, Inc. to Compel Discovery from the Office of the OHio Consumers' Counsel electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Kingery, Jeanne W.