

**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.	)	

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**INTERLOCUTORY APPEAL  
AND  
APPLICATION FOR REVIEW  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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We file this appeal in the interest of preserving the benefits of joint defense agreements for facilitating consensus-building among parties with like interests, for the efficiencies inherent in joint legal work and for protecting the privilege that is foundational to effective legal services. The Office of the Ohio Consumers' Counsel ("OCC) urges the Commissioners of the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant this Interlocutory Appeal.<sup>1</sup> OCC respectfully requests the PUCO to reverse the Attorney Examiner's oral ruling issued in these proceedings on October 22, 2014.

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<sup>1</sup> The appeal is filed pursuant to Ohio Adm. Code 4901-1-15.

The ruling addressed another in a line of vexatious Duke legal positions that began early in this case and have subjected various parties to delay, distraction and continuing defense against Duke's litigiousness. The ruling grants Duke Energy Ohio's ("Duke") motion to compel discovery, and requires OCC to disclose all confidential e-mail communications among the attorneys whose clients (such as the Ohio Manufacturers' Association) entered into a joint defense agreement with OCC.<sup>2</sup> The ruling can be interpreted to require OCC to provide discovery documents that are privileged from disclosure under attorney-client and/or the trial preparation privilege. OCC has attached transcripts (Attachment A) that include the ruling, in accordance with the provisions of Ohio Admin. Code 4901-1-15(C).

Reversal of the ruling is needed to prevent severe prejudice to OCC and others that will otherwise result. The ruling requires OCC to turn over documents that contains opinion work product revealing the mental impressions, legal theories, and conclusions of OCC's lawyers (and other intervenor party lawyers). There is also information about legal advice given by OCC, where the client has not waived the attorney client privilege.

The disclosure ordered will have a chilling effect on complete and candid communication between and among other intervenors and OCC and its client. It will impede the ability of parties to work effectively in joint efforts on issues of common interest. Thus, the Attorney Examiner's ruling creates far reaching implications for OCC and others, and for the way OCC fulfills its statutory duties with respect to the representation of residential customers in Ohio. In turn the ruling will impact other

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<sup>2</sup> The OCC has already produced a redacted copy of the e-mails at issue to Duke, along with a privilege log describing the subject of the privileged communications. See Attachment B.

parties who practice before the PUCO and work jointly in coalitions to represent common and joint interests.

Those coalitions work effectively to speak with one voice in one pleading, thereby significantly reducing the administrative burden on the Commission by having multiple individual pleadings to read and consider in what are sometimes short timeframes. The ability of parties to work together and submit joint filings contributes to narrowing the issues before the Commission and to judicial economy. This ruling will have a chilling and adverse impact on the ability of parties to work together towards joint resolution – a time-honored practice that has been one of the hallmarks of PUCO administrative proceedings for more than three decades.

The reasons supporting this Interlocutory Appeal are set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

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Maureen R. Grady, Counsel of Record  
Joseph P. Serio  
Edmund "Tad" Berger  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: (Grady) (614) 466-9567  
Telephone: (Serio) (614) 466-9565  
Telephone: (Berger) (614) 466-1292  
Maureen.grady@occ.ohio.gov  
Joseph.serio@occ.ohio.gov  
Edmund.berger@occ.ohio.gov

Dane Stinson  
Bricker & Eckler  
100 South Third Street  
Columbus, Ohio 43215  
dstinson@bricker.com

*Outside Counsel for the Office of the Ohio  
Consumers' Counsel*

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. FACTS .....	3
III. ARGUMENT .....	5
A. The Appeal Can Be Taken to the Commission Without the Need for It to be Certified. ....	5
B. Joint Defense/Common Interest Privilege .....	5
1. The Joint Defense Privilege Protects the Documents at Issue. ....	6
2. OCC Has Not Waived the Applicable Privileges. ....	7
3. Duke Mischaracterizes Applicable Law .....	9
IV. CONCLUSION.....	11

## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION**

This interlocutory appeal has enormous ramifications for the continued sanctity of the attorney work product privilege and the attorney/client privilege in proceedings before the Public Utilities Commission of Ohio (“Commission” or “PUCO”). It seeks to prevent extreme prejudice to the Office of the Ohio Consumers’ Counsel (“OCC”), as well as other parties to these (and future) proceedings, if the oral ruling issued on October 22, 2014, is affirmed and serves as precedent.

OCC agrees with the Attorney Examiner presiding over the hearing that the parties and the bench have been confronted with challenging and complex discovery issues in this proceeding.<sup>3</sup> The Attorney Examiner stated an intention to rule in a way that would not set future precedent.<sup>4</sup> But experience with the use (misuse) of settlements that are not to be used as precedent -- but have been used as precedent -- shows the likely result of this ruling. Future intentions aside, the ruling should be reversed to protect OCC from surrendering its privileged and confidential information to Duke and others.

The unintended consequence of the bench ruling can be that attorney work product and attorney client communications used to prepare filings with the Commission must be disclosed once the filing is made in the public record. The ruling could be interpreted to mean that the filing of testimony by a party (such as PUCO Staff), will allow adversaries to discover edits and comments made by reviewing attorneys. This is a slippery slope that the PUCO should not travel, and in the immediate case the slope is straight down for what will be the loss of OCC’s confidential attorney information.

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<sup>3</sup> See Attachment A (Tr. I, at 43).

<sup>4</sup> *Id.*

And, most importantly as discussed below, the Attorney Examiner's ruling was incorrect. Contrary to the Attorney Examiner's ruling, the public filing of a pleading does not waive the protection afforded the attorneys' opinion work product used in preparing the document. As stated in *Scourtes v. Fred W. Albreacht Grocery Co.*, D.C.N.D. Ohio E.D. 1953, 15 F.R.D. 55, 58:

The 'work product of the attorney'\*\*\*is accorded protection for the purpose of preserving our adversary system of litigation by assuring an attorney that his private files shall, except in unusual circumstances, remain free from the encroachments of opposing counsel."

Nor does the filing of a pleading waive attorney client privilege. In Ohio the statutory attorney-client privilege can only be waived if one of two conditions are met: if the client expressly consents, or if the client voluntarily testifies on the subject.<sup>5</sup> Neither is applicable here.

Regrettably, by its insistence that OCC produce the protected communications among counsel opposing its electric security plan ("ESP") application, Duke Energy Ohio ("Duke") is engaging in a deliberate attack on the adversarial system. And its attack inhibits the ability of parties opposing Duke's current and future applications to mount an effective joint defense. Allowing the Attorney Examiner's ruling to stand will create a new precedent that will fundamentally change how parties practice and participate in before the Commission.

The Attorney Examiner's ruling will have adverse and far reaching implications on numerous other parties practicing before the PUCO. The Attorney Examiner's ruling has a chilling effect on joint representation of common interests, contrary to the choice parties should be free to make for joint advocacy and the administrative efficiencies that joint advocacy brings to PUCO proceedings.

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<sup>5</sup> *State v. McDermott*, 72 Ohio St.3d 570, 572.

## II. FACTS

Duke filed its ESP application in these proceedings on May 29, 2014. OCC, the Ohio Manufacturers' Association, and Ohio Partners for Affordable Energy (collectively, the "JDA Signatories") separately intervened in these proceedings and subsequently entered into a joint defense agreement ("JDA") on June 17, 2014. The JDA's stated purpose was to "share information in confidence for [the JDA Signatories'] common purpose and benefit," which included the ability to "monitor the direction of the litigation,\*\*\*minimize\*\*\*costs of legal representation and consulting services during the litigation" in these proceedings, and to "make the most efficient use of the resources of the parties."<sup>6</sup> To that end, the JDA Signatories specifically agreed that all information exchanged between them shall remain confidential and protected by the various privileges available to them individually, including attorney-client privilege and attorney work product privilege.<sup>7</sup> It is common practice for parties to execute joint defense agreements in PUCO proceedings. It allows parties to freely exchange information, and contributes to administrative efficiency and judicial economy.

Duke served discovery requests upon OCC on June 19, 2014, requesting that it identify all communications with any other intervenor in these proceedings, or a member thereof, regarding any of the components of Duke's ESP Application. Duke also requested that the OCC identify all agreements it had entered into with other intervenors, including joint defense agreements, and identify the other parties to any such agreements.<sup>8</sup> In response, OCC produced a copy of the JDA to Duke. However, OCC objected to producing the communications

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<sup>6</sup> See Duke's September 23, 2014 Motion to Compel (hereinafter "Motion to Compel").

<sup>7</sup> *Id.*, at paragraphs 4 and 5.

<sup>8</sup> *Id.*, at Interrogatory Nos. 11 and 12.



requested, citing the “trial preparation doctrine and/or the attorney-client privilege” based on the common interests as set forth in the JDA.<sup>9</sup>

On September 23, 2014, Duke filed its Motion to Compel OCC to produce the requested information. OCC filed its memorandum contra on September 29, 2014, and Duke filed its reply on October 1, 2014. By entry issued October 20, 2014, the Attorney Examiner granted Duke’s motion in part, ordering OCC to produce documents that do not reflect the signatories’ “legal strategies in these cases.” OCC was also ordered to provide the documents for which privilege is claimed for the Attorney Examiner’s *in camera* review.<sup>10</sup>

OCC complied. The Attorney Examiner was provided with a privilege log and the unredacted (and redacted) e-mails between counsel for the parties to this proceeding. OCC also provided Duke with a privilege log and redacted copies of the e-mail communications at issue. (Attachment B). On October 22, 2014, after reviewing the withheld communications, the Attorney Examiner, ordered OCC to produce the *unredacted* e-mails to Duke. The Attorney Examiner recognized that counsel in the e-mails at issue were discussing “how to go forward on a specific pleading,” and reasoned that, after reviewing the e-mails, “that information is already in the open record. It has been filed.”<sup>11</sup>

However, the pleadings filed do not contain the opinion work product of the attorneys who participated in drafting the documents. Nor do they reveal attorney-client communications. Such opinion work product and attorney client communications are privileged and confidential. It was error for the Attorney Examiner to order the e-mails to be disclosed to an adverse party when these privileges were not waived with the filing of the pleadings.

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<sup>9</sup> See OCC’s responses to Interrogatory Nos. 11 and 12 and Document Request No. 3, attached to Duke’s Motion to Compel as Exhibits B, C, D, and E.

<sup>10</sup> See October 20, 2014 Entry of Attorney-Examiner, at 3-4.

<sup>11</sup> Transcript of October 22, 2014 hearing at p. 47-48.

### **III. ARGUMENT**

#### **A. The Appeal Can Be Taken to the Commission Without the Need for It to be Certified.**

Under Ohio Admin. Code 4901-1-15(A), there are certain circumstances adversely affecting a party that allow the party to take an interlocutory appeal to the Commission without the appeal being certified to the Commission by the Attorney Examiner. Appeals can be taken without certification when an Attorney Examiner has granted a motion to compel discovery and/or required documents to be produced “over an objection based on privilege.”<sup>12</sup> Both of these circumstances are present and thus OCC has the right to take this direct interlocutory appeal to the Commission.<sup>13</sup>

#### **B. Joint Defense/Common Interest Privilege**

The proper disposition of this discovery dispute requires an understanding of the distinctions between the attorney-client privilege (which protects against disclosure of communications between attorney and client) and the attorney work-product privilege which protects an attorney’s work “reflected in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs and countless other tangible and intangible ways.” *Hickman v. Taylor* (1947), 329 U.S. 495, 508, 511, 67 S.Ct. 385, 393, 91 L.Ed. 451 (“*Hickman*”). The *Hickman* court defined “[o]pinion work product [a]s any material reflecting the attorney’s mental impressions, opinions, conclusions, judgments or legal theories.” In *Hickman*, the U.S. Supreme Court stated that “not even the most liberal of discovery theories can justify unwarranted inquiries into the files and the mental impressions of an attorney.” *Hickman*, 329 U.S. at 510-511.

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<sup>12</sup> Ohio Admin. Code 4901-1-15(A)(4).

<sup>13</sup> See Tr. 116-117, where the Attorney Examiner acknowledged OCC’s right to a direct appeal of the ruling to the Commission without the need for certification.

The common interest doctrine is an extension of the attorney-client and work product privileges. *See, e.g., Condominiums at Stonebridge v. K & D Group*, 2014-Ohio-503; 214 Ohio Appl. Lexis 493.<sup>14</sup> The doctrine permits parties and their counsel to share privileged information without waiving the privileges. The doctrine applies even when there is no pending or imminent litigation. *See U.S. v. Suarez*, No. 5:13 CR 420, 2014 U.S. Dist. LEXIS 63687, \*19 (N.D. Ohio May 8, 2014) (explaining that the common interest privilege applies when communication is in connection with legal services or advice, regardless of whether litigation is pending); *Broessel v. Triad Guaranty Ins. Corp.*, 238 F.R.D. 215, 219 (W.D. Ky. 2006) (stating that the common interest privilege can preclude disclosure both in the context of litigation and in the context of a transaction—where there is no implication of suit or actual suit pending).

The related joint defense privilege also is an extension of the attorney-client privilege and attorney work product doctrine. The privilege requires the existence of actual or potential litigation, and protects shared information when the parties are engaged in a joint defense effort. *Travelers Cas. and Sur. Co. v. Excess Ins. Co. Ltd.*, 197 F.R.D. 601, 606 (S.D. Ohio 2000). Where the privilege exists, disclosure of protected materials to “friendly litigants” in related cases or others with friendly interests will not vitiate the privilege. *Id.*

### **1. The Joint Defense Privilege Protects the Documents at Issue.**

The JDA Signatories entered the JDA after Duke had filed its ESP application with the Commission and after they had individually intervened in these proceedings. Thus, with the existence of actual litigation, the joint defense privilege is available to them. *Id.* To assert the privilege, a party must show that (1) the information was shared in the course of a joint defense

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<sup>14</sup> *But see Adkins Energy, LLC v. Farmland Mut. Ins. Co.*, No. 04 CV 50482, 2009 U.S. Dist. LEXIS 38099, 2009 WL 1259344, at \*3 (N.D. Ill. May 6, 2009) which recognizes that the work product privilege is waived only with disclosure to an adversarial party, thus potentially obviating the need for a joint defense agreement.

effort; (2) the information was designed to further the efforts; and (3) the privilege has not been waived. *Id.*

The information at issue in the discovery dispute is the numerous e-mails exchanged by counsel for the parties subject to the JDA. The e-mails comprise communications among counsel for the parties to the JDA regarding the filing of a motion to reject Duke's ESP application and regarding the counsel's impression of Duke's motivation and leverage in this litigation. Counsel traded drafts of the parties' combined pleading and requested the insertion *and deletion* of certain text via the e-mails in question. Counsel also conferred regarding Duke's overall strategy relating to its filing to which the parties to the JDA objected. As such, the e-mails at issue consisted of attorney opinion work product and attorney client communications designed to further the parties' efforts pursuant to the JDA and are privileged.

## **2. OCC Has Not Waived the Applicable Privileges.**

The Attorney Examiner's oral ruling on October 22, 2014 is based on the conclusion that by filing the joint pleadings "in the open record," the parties had waived the attorney opinion work product and/or attorney client privilege. Tr. Vol. I, at 43. This is, respectfully, inconsistent with applicable case law. *See, Cooley v. Strickland*, 269 F.R.D. 643, 652 (S.D. Ohio 2010) citing 2-501 Fed.R. Evid. Manual 501.02(5)(e)(ii), disclosure of the final product did not waive attorney-client privilege.<sup>15</sup> Likewise, in *Libbey Glass, Inc. v. Oneida, Ltd.*, 197 F.R.D. 342, 347 (N.D. Ohio 1999) ("*Libbey Glass*"), the court explained that courts "have perceived a difference between opaque reference to an attorney's advice and disclosure that illuminates the facts and analysis underlying that advice." *Id.* at 346. In *Libbey*, the court did not find waiver because the

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<sup>15</sup> *See, also, Woyczynski v. Wolf*, 11 Ohio App.3d 226, 229, 464 N.E.2d 612 (8th Dist. 1983) (holding that there is no automatic waiver of privilege based upon pleading in a case).

passing allusions did not disclose the substance of communications between counsel and clients.  
*Id.* at 346-47.

Closer to home, in the recent DP&L electric security plan proceeding, a similar issue arose.<sup>16</sup> There, Industrial Energy Users-Ohio filed a motion to compel DP&L's analyses regarding their ability to increase revenue through increases in distribution and transmission rates.<sup>17</sup> The Commission affirmed the Attorney Examiner's ruling denying the IEU's motion and protecting the analyses from disclosure under both the attorney-client privilege and work product doctrine.<sup>18</sup> The PUCO found that the attorney-client privilege "can only be waived if the client expressly consents or voluntarily testifies to the communications."<sup>19</sup> Although DP&L provided a witness that testified to the existence of the analyses and transmission and distribution rates, the Commission found that it was not sufficient to waive the privilege.<sup>20</sup> The PUCO ruled that testimony regarding the same subject matter will not waive privilege absent express consent or voluntary testimony to the communications at issue.<sup>21</sup>

Just like the filing of testimony does not cause attorney client communications/work product to be waived, neither does the filing of a pleading. The filing of the final pleading in this case, contrary to the Attorney Examiner's ruling, did not divulge the attorneys' opinion work product. Nowhere in the pleading is the work product or advice conveyed regarding what to include or exclude in the final draft of the pleading. Nor did the ultimate filing divulge counsel's

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<sup>16</sup> *In the Matter of the Application of The Dayton Power and Light Co. for Approval of its Electric Security Plan*, Pub. Util. Comm. No. 12-426-EL-SSO et al., 2013 Ohio PUC LEXIS 193, at 17 (Sept. 4, 2013).

<sup>17</sup> *In the Matter of the Application of The Dayton Power and Light Co. for Approval of its Electric Security Plan*, Pub. Util. Comm. No. 12-426-EL-SSO et al., 2013 Ohio PUC LEXIS 193, at 17 (Sept. 4, 2013).

<sup>18</sup> *Id.* at 18.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

impressions regarding Duke's motivation or leverage—all of which appear in the e-mails at issue.

### **3. Duke Mischaracterizes Applicable Law**

In seeking to compel OCC to produce the attorney work product at issue, Duke relies primarily on *Libbey Glass*. *Libbey Glass* generally recognizes that the “a) ‘joint client,’ b) ‘joint litigant’ and c) ‘common interest’ relationships” are extensions of the attorney-client privilege. Specifically, the “‘joint litigant’ privilege protects attorney-client privileged matters when they are shared with co-parties, even though those parties are represented by separate counsel.” *Id.*, [internal citations omitted]. *Libbey Glass* recognized, as in these proceedings, that the “joint litigant” arrangement often is memorialized by a formal agreement (*Id.*); here, the JDA.

On the other hand, under the *Libbey Glass* facts, the “common interest arrangement” involved one party subject to an attorney-client relationship, who shared his attorney's legal advice with a third party as a part of commercial transaction. *Id.* The court found that for the attorney-client privilege to attach to the information provided to the third party under those circumstances, the parties must have “‘an identical legal interest with respect the subject matter of the communication.’” *Id.* The concern in *Libbey Glass* was that the attorney-client privilege, which extends to legal advice provided to a client by an attorney, not be extended to protect two parties' discussions of merely a commercial transaction, when no formal arrangements existed between them.

*Libbey Glass* is distinguishable from these proceedings on its facts primarily because it involves the sharing of an attorney-client communication in the context of a commercial transaction and not for the purpose of existing litigation, as here. Moreover, assuming *arguendo* that Ohio law requires “an identical legal interest,” counsel who participated in exchanging

information in these proceedings had the identical legal interest in preparing the motion to reject Duke's ESP pleading.

Duke's interpretation of *Libbey Glass* mischaracterizes Ohio law. Although the *Libbey Glass* court used the term "identical," its further explanation and interpretation of case law demonstrates the appropriate lens through which the term should be understood. Specifically, the *Libbey* court stated that "[t]he parties must show that the disclosures are made in the course of 'formulating a *common legal strategy*.'" *Id.* (emphasis in original). The Attorney Examiner recognized as much in the entry issued October 20, 2014, at 3.

The proposition that the parties' interest must be common, not identical, in order for the common interest privilege to apply is supported by analysis of other Ohio courts. In *Cooey v. Strickland*, the court explained that "it is not necessary that parties be in agreement on every point; a communication is privileged as long as it deals with a matter on which parties have agreed to work toward a mutually beneficial goal, even if the parties are in conflict on some points." *Cooey v. Strickland*, 269 F.R.D. 643, 652 (S.D. Ohio 2010) citing 2-501 Fed.R. Evid. Manual 501.02(5)(e)(ii).

Indeed, Ohio courts have held that there "need not be an absolute congruence in litigation involving the parties" in order for the common interest privilege to apply. *Official Committee of Administrative Claimants v. Bricker*, No. 1:05 CV 2158, 2011 U.S. Dist. LEXIS 49504, \*11 (N.D. Ohio May 9, 2011) quoting *Travelers Cas. and Sur. Co. v. Excess Ins. Co., Ltd.*, 197 F.R.D. 601, 607 (S.D. Ohio 2000; *see also Carolina Cas. Ins. Co. v. Sharp*, No. 1:10cv2492, 2013 U.S. Dist. LEXIS 39628, \*10-11 (N.D. Ohio Mar. 1, 2013) (citing *Bricker* and *Travelers* for the above stated proposition).

In fact, the *Bricker* court stated that “it is sufficient if the parties at issue reasonably anticipate involvement in the litigation in which common issues, and common positions, would arise.” *Bricker*, 2011 U.S. Dist. LEXIS 49504 at \*11. Applying this reasoning to the facts in the *Bricker* case, the court found that the common interest privilege applied even though the interests of the parties asserting the privilege differed in some respects.

Here, even assuming the applicability of *Libbey Glass* and the subject e-mails included attorney-client communications, OCC does not need to prove that the JDA Signatories’ legal interests are identical. OCC needs only to demonstrate that the JDA signatories share a common legal interest, which is undisputed given the existence of the JDA and their communications concerning the content of their combined pleading and their interpretation of Duke’s litigation strategy.

#### **IV. CONCLUSION**

This Application for Review meets the terms of Ohio Adm. Code 4901-1-15(C) because the Application meets the timing requirement set out in the Commission’s rules<sup>22</sup> and the application “set[s] forth the basis of the appeal and citations of any authorities relied upon.” The Attorney Examiner’s ruling should be reversed and OCC should not be required to turn over any further documents to Duke, beyond those already produced. The communications were protected by attorney-work product and attorney client privilege.

OCC will be severely prejudiced if it is required to turn over numerous documents that contain attorney-client privileged information and attorney work product/trial preparation materials. Allowing the Attorney Examiner’s ruling to stand will create a new precedent that

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<sup>22</sup> Ohio Adm. Code 4901-1-15(C) provides for an Application for Review to be filed five days after the ruling is issued. The ruling was issued on October 22, 2014



will fundamentally change how parties practice and participate in before the Commission. The Attorney Examiner's ruling will have adverse and far reaching implications on numerous other parties practicing before the PUCO. The Attorney Examiner's ruling threatens to have a chilling effect on joint representation of common interests, contrary to the choice parties should be free to make for joint advocacy and the administrative efficiencies that joint advocacy brings to PUCO proceedings.

Parties typically engaged in common interest representation at the PUCO have been historically working with the reasonable expectation that attorney-client communications made in confidence and in pursuit of that common interest are protected from disclosure. The Attorney Examiner's ruling in this case jeopardizes the viability of such joint representation by requiring disclosure of such communications.

For the foregoing reasons, the OCC respectfully requests that the Attorney Examiner's order compelling OCC to produce unredacted copies of the e-mails at issue to Duke be reversed.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

Maureen R. Grady, Counsel of Record  
Joseph P. Serio  
Edmund "Tad" Berger  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: (Grady) (614) 466-9567  
Telephone: (Serio) (614) 466-9565  
Telephone: (Berger) (614) 466-1292  
Maureen.grady@occ.ohio.gov  
Joseph.serio@occ.ohio.gov  
Edmund.berger@occ.ohio.gov

Dane Stinson  
Bricker & Eckler  
100 South Third Street  
Columbus, Ohio 43215  
dstinson@bricker.com

***Outside Counsel for the Office of the Ohio  
Consumers' Counsel***

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Interlocutory Appeal has been served electronically upon those persons listed below this 27<sup>th</sup> day of October, 2014.

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

### **SERVICE LIST**

[Steven.beeler@puc.state.oh.us](mailto:Steven.beeler@puc.state.oh.us)  
[Thomas.lindgren@puc.state.oh.us](mailto:Thomas.lindgren@puc.state.oh.us)  
[Ryan.orourke@puc.state.oh.us](mailto:Ryan.orourke@puc.state.oh.us)  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)  
[Schmidt@sppgrp.com](mailto:Schmidt@sppgrp.com)  
[Judi.sobecki@aes.com](mailto:Judi.sobecki@aes.com)  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
[Allison@carpenterlipps.com](mailto:Allison@carpenterlipps.com)  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[yalami@aep.com](mailto:yalami@aep.com)  
[asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com)  
[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)  
[hussey@carpenterlipps.com](mailto:hussey@carpenterlipps.com)  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsettinieri@vorys.com](mailto:mjsettinieri@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[dmason@ralaw.com](mailto:dmason@ralaw.com)  
[mtraven@ralaw.com](mailto:mtraven@ralaw.com)  
[rchamberlain@okenergylaw.com](mailto:rchamberlain@okenergylaw.com)

Attorney Examiner:

[Christine.pirik@puc.state.oh.us](mailto:Christine.pirik@puc.state.oh.us)  
[Nicholas.walstra@puc.state.oh.us](mailto:Nicholas.walstra@puc.state.oh.us)

[Amy.Spiller@duke-energy.com](mailto:Amy.Spiller@duke-energy.com)  
[Elizabeth.watts@duke-energy.com](mailto:Elizabeth.watts@duke-energy.com)  
[Rocco.dascenzo@duke-energy.com](mailto:Rocco.dascenzo@duke-energy.com)  
[Jeanne.Kingery@duke-energy.com](mailto:Jeanne.Kingery@duke-energy.com)  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)  
[jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com)  
[scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com)  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[mwhite@igsenergy.com](mailto:mwhite@igsenergy.com)  
[joseph.clark@directenergy.com](mailto:joseph.clark@directenergy.com)  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
[callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)  
[dhart@douglasshart.com](mailto:dhart@douglasshart.com)  
[cloucas@ohiopartners.org](mailto:cloucas@ohiopartners.org)  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)  
[swilliams@nrdc.org](mailto:swilliams@nrdc.org)  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[ghull@eckertseamans.com](mailto:ghull@eckertseamans.com)  
[jvickers@elpc.org](mailto:jvickers@elpc.org)  
[tony.mendoza@sierraclub.org](mailto:tony.mendoza@sierraclub.org)  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)

Excerpt Duke Energy Ohio Vol I

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 : Case No. 14-841-EL-SSO  
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 : Case No. 14-842-EL-ATA  
Amend its Certified :  
Supplier Tariff, P.U.C.O. :  
No. 20. :

- - -

EXCERPT OF PROCEEDINGS

before Ms. Christine M.T. Pirik and Mr. Nick Walstra,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 10 a.m. on Wednesday,  
October 22, 2014.

- - -

VOLUME I

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481  
Fax - (614) 224-5724

- - -

Duke Energy Ohio Volume I

46

1 MS. KINGERY: Thank you.

2 EXAMINER PIRIK: Are there any other  
3 questions with regard to that issue?

4 Speaking of privilege logs, there is a  
5 privilege log outstanding that OCC provided to the  
6 Bench yesterday. We have reviewed that privilege  
7 log.

8 I'm taking it, Ms. Grady, you would  
9 actually like to make an argument on this point,  
10 because I was ready to rule, because we have reviewed  
11 it, and we do have an opinion about this, but we will  
12 allow to you make a statement.

13 MS. GRADY: Your Honor, very briefly, we  
14 did -- as you know, your Honors issued a ruling that  
15 we were to produce to Duke per discovery any  
16 documents we were claiming had common interest  
17 privilege that did not reveal legal strategy.

18 So yesterday we complied with the ruling,  
19 produced a privilege log, produced documents that we  
20 redacted so that the majority of the document could  
21 be seen. We tried to be very specific about our  
22 redactions and not to be over-inclusive in what was  
23 given.

24 We did then produce numerous documents, I  
25 believe up in the hundreds of pages of documents, to

Duke Energy Ohio Volume I

47

1 the company. We believe that what is on our  
2 privilege log does reveal legal strategy; and,  
3 therefore, consistent with your Honors' rulings, it  
4 would be subject to the common interest privilege as  
5 the order indicates. That's it.

6 EXAMINER PIRIK: Does Duke have anything  
7 to say with regard to the privilege log issue?

8 MS. SPILLER: No, your Honor.

9 EXAMINER PIRIK: We did review the  
10 privilege log and the document that went with it.  
11 While it may very well be that at one point in time,  
12 the information that has been redacted is information  
13 that the parties were discussing how to go forward on  
14 a specific pleading. After looking at it,  
15 essentially that information is already in the open  
16 record. It's already been filed.

17 So as not to make any kind of a precedent  
18 with regard to our ruling here, that is the only  
19 reason why we're saying that OCC needs to turn over  
20 that information unredacted to the company. So this  
21 is not a precedent to be set for any other type of  
22 case. It is just in this situation what we saw in  
23 the redacted information was information that is  
24 already in the open record in the docket in this case  
25 as far as the arguments the company made -- or the

Duke Energy Ohio Volume I

48

1 OCC and the parties made with regard to a certain  
2 filing are in that filing.

3 So there's no need to protect information  
4 that has essentially been disseminated to everyone.  
5 So we are asking that you turn over that information  
6 as soon as possible to the company.

7 MS. BOJKO: I'm sorry, your Honor. Given  
8 that I am party to the common interest claim, may I  
9 seek clarification of your ruling? Comments of what  
10 to remove out of pleadings, what not to remove, and  
11 opinions about what the company is trying to do or  
12 not do in its filing, those would not have been made  
13 public in the ultimate document that was seen at the  
14 Commission.

15 EXAMINER PIRIK: Did you see the  
16 document? Did you look over what OCC had given us to  
17 review that was redacted?

18 MS. BOJKO: Indeed I did.

19 EXAMINER PIRIK: My ruling is that they  
20 need to turn the information over to the company.  
21 There is no need to keep that information  
22 confidential.

23 MS. BOJKO: You mean the e-mails that  
24 talk about what we believe the intent of the company  
25 is and what we believe the company is doing in X

Duke Energy Ohio Volume I

49

1 strategy and --

2 EXAMINER PIRIK: Yes, yes.

3 Are there any other questions?

4 Hearing none, are there any other issues  
5 that we need to discuss on the record before we go  
6 forward with the first witness?

7 MR. DARR: Your Honor, order of  
8 cross-examination.

9 EXAMINER PIRIK: That's a good question.  
10 It could be different for every witness.

11 MR. DARR: That was what I was going to  
12 raise, your Honor. There are a multitude of  
13 alignments in terms of the way the issues have been  
14 presented to the Commission through both testimony  
15 and various pleadings.

16 As a result, for example, with regard to  
17 the stability rider -- I am trying to think of the  
18 right way to describe it. With regard to the  
19 stability rider, we have a number of companies that  
20 are appearing here that have an interest in assuring  
21 that Duke is successful in pursuing that rider with  
22 the Commission and many other parties that are not.

23 Given that we are talking about  
24 cross-examination here, to the extent that a party  
25 might be aligned, it's not clear that they would be,



Duke Energy Ohio Volume I

50

1 in fact, adverse to Duke. For example, we have our  
2 colleagues at Ohio Power who are pursuing not only a  
3 similar rider, also seeking to expand it. DP&L has  
4 made a similar argument in pleadings with regard to  
5 the generation transfer. FirstEnergy Solutions is a  
6 party to a proposed contract with regard to the  
7 transfer of certain assets, including OVEC as well,  
8 or the contracting of certain assets including OVEC.

9 With regard to the fact that there are  
10 those kinds of alignments, we would request that the  
11 Bench order the cross-examination so that parties  
12 that are more likely to be aligned than not be  
13 required to cross-examine first or waive their right  
14 to cross-examination and thereby avoid the problem  
15 that has appeared in other proceedings in which a  
16 party which has an alignment that is more close to  
17 the companies than not is taken out of order and  
18 thereby raises the opportunity strategically to  
19 prepare arguments on behalf of the company because of  
20 the alignment.

21 Thank you, your Honor.

22 EXAMINER PIRIK: Thank you.

23 I also know that typically there is some  
24 coordination between intervenors who have common  
25 interests as far as who takes the lead on a certain

Duke Energy Ohio Volume I

51

1 witness, and the Bench is open to having that  
2 individual go first in the hopes that then  
3 cross-examination later will be less, and we are open  
4 to that. Otherwise, we will go around the table in  
5 order, with staff going last.

6 MS. SPILLER: And, your Honor, if I may,  
7 this may be a comment to Mr. Darr's remarks, and  
8 there was a suggestion of an alignment between the  
9 company and other intervenors in this proceeding. I  
10 just would like to raise the issue of friendly cross  
11 because I think there are alleged alignments beyond  
12 those involving the company, and so we would just  
13 elicit the Court's guidance -- or the Bench's  
14 guidance in terms of prohibiting friendly  
15 cross-examination among and between Intervenor.

16 EXAMINER PIRIK: The expectation would be  
17 that what's in the prefiled testimony is in the  
18 prefiled testimony, and there would not be friendly  
19 cross. Of course, it will be incumbent upon the  
20 parties to bring that to the Bench's attention if, in  
21 fact, it starts going down a different road. And, as  
22 I said, with every witness, cross-examination order  
23 could be different based upon what those interests  
24 are.

25 I think what Mr. Darr is bringing up is a

Duke Energy Ohio Volume I

52

1 good point at this point in time, where we will have  
2 Ohio Power, DP&L and FES cross first, and then we  
3 will go in order of the table, unless there is some  
4 reason to do otherwise, with staff going last.

5 And so we are open to having the same  
6 type of a discussion if there is a need to have a  
7 different order of cross on different intervenors.  
8 We are open to those requests.

9 MS. SPILLER: Thank you, your Honor.

10 EXAMINER PIRIK: I am not saying we are  
11 going to grant those requests every time. I am  
12 saying we are open to them.

13 MS. SPILLER: Thank you, your Honor, and  
14 I appreciate that. I suspect that there may be  
15 requests as we approach the intervenors' witnesses.

16 MR. NOURSE: Your Honor, that was my  
17 question. So your comment just now related to  
18 company witnesses? There would be similar alignments  
19 most certainly for intervenor cross as well, correct?

20 EXAMINER PIRIK: Correct.

21 MR. NOURSE: Okay. Thank you.

22 EXAMINER PIRIK: Correct. It will go  
23 both directions.

24 MS. SPILLER: Thank you, your Honor.

25 EXAMINER PIRIK: Thank you. So at this

Duke Energy Ohio Volume I

53

1 time, we will have Duke call their first witness.

2 MS. SPILLER: Your Honor, at this time,  
3 Duke Energy Ohio calls to the stand James P. Henning.

4 (Witness sworn.)

5 MS. SPILLER: Thank you, your Honor.

6 And if I may, before Mr. Henning's direct  
7 examination, if I could ask to be marked as Duke  
8 Energy Ohio Exhibit 1 the application, including the  
9 attachments, that the company filed in this matter on  
10 May 29, 2014.

11 I would also ask, your Honor, for  
12 purposes of the record that Mr. Henning's direct  
13 testimony also filed on May 29, 2014, in this matter  
14 be marked as Duke Energy Ohio Exhibit 2.

15 And if I may approach, I have copies of  
16 the application and Mr. Henning's testimony for the  
17 reporter, as well as a copy of his testimony for the  
18 witness.

19 EXAMINER PIRIK: Yes. And those  
20 documents will be so marked.

21 MS. SPILLER: Thank you, your Honor.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 - - -  
24  
25

Bates #	Docum	Date	OCC Privilege Log			From	Subject Matter	Privilege Invoked
			Privilege Log	CC'd				
1	Email	6/10/2014 @ 3:38 PM	Jody Kyler Cohn			Maureen Grady	Protective Agreement	Common Interest Privilege
3	Email	6/23/2014 @ 4:34 PM	Debra Bingham			Michael Kurtz	Joint Defense Agreement	Common Interest Privilege
3	Email	6/23/2014 @ 4:07 PM	Michael Kurtz		Maureen Grady	Debra Bingham	Joint Defense Agreement	Common Interest Privilege
5	Email	6/17/2014 @ 4:44 PM	Maureen Grady			Joe Olikier	Modification of Procedural Schedule	Common Interest Privilege
5 and 6	Email	6/17/2014 @ 4:35 PM	Joe Olikier			Maureen Grady	Modification of Procedural Schedule	Common Interest Privilege
6	Email	6/17/2014 @ 3:20 PM	Maureen Grady			Joe Olikier	Modification of Procedural Schedule	Common Interest Privilege
7	Email	6/17/2014 @ 10:02 AM	Maureen Grady			Joe Olikier	Modification of Procedural Schedule	Common Interest Privilege
20	Email	6/9/2014 @ 4:01 PM	Maureen Grady		Michael Kurtz	Jody Kyler Cohn	Protective Agreement	Common Interest Privilege
21	Email	6/26/2014 @ 2:10 PM	Maureen Grady			Joe Olikier	Reply to Duke Memo Contra	Common Interest Privilege
21	Email	6/26/2014 @ 2:08 PM	Maureen Grady, Michael Kurtz, Jody Kyler Cohn, Kim Bojko, Joe Olikier			Colleen Mooney	Reply to Duke Memo Contra	Common Interest Privilege
21	Email	6/26/2014 @ 11:18 AM	Michael Kurtz, Jody Kyler Cohn, Colleen Mooney, Kim Bojko, Joe Olikier			Maureen Grady	Reply to Duke Memo Contra	Common Interest Privilege
22	Email	6/26/2014 @ 2:08 PM	Maureen Grady, Michael Kurtz, Jody Kyler Cohn, Kim Bojko, Joe Olikier			Colleen Mooney	Reply to Duke Memo Contra	Common Interest Privilege
22	Email	6/26/2014 @ 11:18 AM	Michael Kurtz, Jody Kyler Cohn, Colleen Mooney, Kim Bojko, Joe Olikier			Maureen Grady	Reply to Duke Memo Contra	Common Interest Privilege
32	Email	6/27/2014 @ 9:00AM	Steve Nourse			Maureen Grady	Discovery Request	Common Interest Privilege
35	Email	7/8/2014 @ 8:59 AM	Kim Bojko, Mallory Mohler, Rebecca hussey, Colleen Mooney, Dave Boehm, Mike Kurtz, Jody kyler		Maureen Grady, Joe Serio	Tad Berger	Motion to Reject	Common Interest Privilege

36	Email	7/8/2014 @9:52 AM	Tad Berger, Kim Bojko, Mallory Mohler, Rebecca Hussey, Dave Boehm, Mike Kurtz, Jody Kyler	Maureen Grady, Joe Serio	Colleen Mooney	Motion to Reject	Common Interest Privilege
37	Email	7/8/2014 @ 9:58 AM	Tad Berger	Maureen Grady, Joe Serio	Colleen Mooney	Motion to Reject	Common Interest privilege
151	Email	7/22/2014 @2:23 PM	Michael Kurtz		Maureen Grady	Motion for Continuance	Common Interest Privilege
Bate #	Docum	Date	To	CC'd	From	Subjet Matter	Privilege Invoked
43	Email	7/8/2014 @ 9:52 AM	Tad Berger, Kim Bojko, Mallory Mohler, Rebecca Hussey, Dave Boehm, Mike Kurtz, Jody Kyler	Maureen Grady, Joe Serio	Colleen Mooney	Motion to Reject	#REF!
45	Email	7/8/2014 @10:07 AM	Tad Berger	#REF!	Mallory Mohler	Motion to Reject	Common Interest Privilege
46	Email	7/8/2014 @ 11:22 AM	Tad Berger	#REF!	Rebecca Hussey	#REF!	Common Interest Privilege
47	Email	7/8/2014 @9:58 AM	Tad Berger	Maureen Grady, Joe Serio	Colleen Mooney	Motion to Reject	Common Interest Privilege
48-49	Email	7/8/2014 @12:19 PM	Tad Berger	#REF!	Mallory Mohler	Motion to Reject	Common Interest Privilege
51-53	Email	7/9/2014 @2:00 PM	Tad Berger	#REF!	Mallory Mohler	Motion to Reject	Common Interest Privilege
56	Email	7/17/2014 @11:49 AM	Tad Berger, Kim Bojko, Mallory Mohler, Colleen Mooney	Maureen Grady, Joe Serio, Debra Bingham, Patti Mallarnee	Kim Bojko	Motion to Reject	Common Interest Privilege
102	Email	7/8/2014 @ 8:59 AM	Kim Bojko, Mallory Mohler, Rebecca Hussey, Colleen Mooney, Dave Boehm, Mike Kurtz, Jody Kyler	Maureen Grady, Joe Seio	Tad Berger	Motion to Reject	Common Interest Privilege
103-10	Email	7/8/2014 @3:13 PM	Kim Bojko, Mallory Mohler, Colleen Mooney, Dave Boehm, Mike Kurtz, Jody Kyler	Maureen Grady, Joe Serio, Debra Bingham, Patti Mallarnee	Tad Berger	Motion to Reject	Common Interest Privilege
105-10	Email	7/8/2014 @ 4:11 PM	Michale Kurtz	#REF!	Tad Berger	Motion to Reject	Common Interest Privilege
108-11	Email	7/9/2014 @ 1:46 PM	Mallory Mohler	#REF!	Tad Berger	Motion to Reject	Common Interest Privilege



**Grady, Maureen**

**From:** Grady, Maureen  
**Sent:** Tuesday, June 10, 2014 3:38 PM  
**To:** 'Jody Kyler Cohn'  
**Subject:** RE: Confidentiality Agreement- 14-841 Duke Energy Ohio ESP

Please send me the correspondence from [REDACTED] where they [REDACTED] I will send you their response to us. Also I will send you a copy of [REDACTED] which might help,

**From:** Jody Kyler Cohn [mailto:jkylcohn@bklawfirm.com]  
**Sent:** Tuesday, June 10, 2014 3:33 PM  
**To:** Grady, Maureen  
**Cc:** Michael Kurtz  
**Subject:** Confidentiality Agreement- 14-841 Duke Energy Ohio ESP

Maureen,

Attached is a draft Motion for Protective Agreement that I've been working on in the Duke ESP Case, and the attached Exhibits. Would love any input.

Thanks,

Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Phone: 513.421.2255  
jkylcohn@bklawfirm.com

**From:** Grady, Maureen [mailto:Maureen.Grady@occ.ohio.gov]  
**Sent:** Tuesday, June 10, 2014 11:30 AM  
**To:** Jody Kyler Cohn  
**Subject:** FW: Confidentiality Agreement- 14-841 Duke Energy Ohio ESP

FYI

**From:** Grady, Maureen  
**Sent:** Tuesday, June 10, 2014 11:29 AM  
**To:** 'Kuhnell, Dianne B'  
**Cc:** Kingery, Jeanne W; Spiller, Amy B; 'berger@occ.state.oh.us'; Serio, Joseph  
**Subject:** RE: Confidentiality Agreement- 14-841 Duke Energy Ohio ESP

Thank you for your response. However, the Confidentiality Agreement you have attached is not acceptable, and cannot serve as a basis for any protective agreement we would sign.

The protective agreement we sent to you on June 2, 2014 is the same protective agreement you signed with OCC for the past two cases over the last year — the capacity case and the MGP case. In both of those cases, we used the protective agreement to protect information that Duke Energy Ohio deemed to be confidential. We believe that protective agreement strikes the correct balance between your needs for protection and our need to have access to data. We have used this very same agreement with numerous other utilities. It has been carefully developed over the



**Grady, Maureen**

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**From:** Grady, Maureen  
**Sent:** Thursday, June 12, 2014 7:47 PM  
**To:** kim bojko; 'mkurtz@BKLawfirm.com'; Jody Kyler Cohn; cmooney2@columbus.rr.com  
**Subject:** Fwd: Jt. Mot. Contin. Public Hrgs - Duke 14-84  
**Attachments:** Jt Mot Cont Public Hrgs - Duke ESP 3 - 14-841 et al - Draft 6.12.14 c.docx; ATT00001.htm

Attached please find a proposed motion for extension. Please look over and let me know if this is something you can sign on to. Would like to file on Monday

Sent from my iPad

Begin forwarded message:

**From:** "Bingham, Debra" <[Debra.Bingham@occ.ohio.gov](mailto:Debra.Bingham@occ.ohio.gov)>  
**Date:** June 12, 2014 at 3:55:49 PM EDT  
**To:** "Grady, Maureen" <[Maureen.Grady@occ.ohio.gov](mailto:Maureen.Grady@occ.ohio.gov)>  
**Subject:** Jt. Mot. Contin. Public Hrgs - Duke 14-841

Formatted and scrubbed.

Thank you.

Deb Bingham  
Administrative Assistant  
Office of the Ohio Consumers' Counsel  
10 West Broad St., 18<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-1311  
[Debra.bingham@occ.ohio.gov](mailto:Debra.bingham@occ.ohio.gov)

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**Grady, Maureen**

---

**From:** Michael Kurtz <MKurtz@bklawfirm.com>  
**Sent:** Monday, June 23, 2014 4:34 PM  
**To:** Bingham, Debra  
**Cc:** Grady, Maureen  
**Subject:** RE: JDA for Duke ESP 3 - 14-841-EL-SSO et al.

Thanks Deb.

Maureen. Why is this [REDACTED] A? Why is it not just [REDACTED]

Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Ph: 513.421.2255 Fax: 513.421.2764  
E-mail: [mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com)

**From:** Bingham, Debra [<mailto:Debra.Bingham@occ.ohio.gov>]  
**Sent:** Monday, June 23, 2014 4:07 PM  
**To:** Michael Kurtz  
**Cc:** Grady, Maureen  
**Subject:** JDA for Duke ESP 3 - 14-841-EL-SSO et al.

Mike,

Per Maureen, have you had a chance to sign the JDA for the above-referenced case? I am attaching another copy of the same for your convenience. If you have any questions or concerns, please contact Maureen.

Thank you.

Deb Bingham  
Administrative Assistant  
Office of the Ohio Consumers' Counsel  
10 West Broad St., 18<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-1311  
[Debra.bingham@occ.ohio.gov](mailto:Debra.bingham@occ.ohio.gov)

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**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Tuesday, June 24, 2014 10:36 AM  
**To:** 'Michael Kurtz'; Bingham, Debra  
**Subject:** RE: JDA for Duke ESP 3 - 14-841-EL-SSO et al.

Because of the joint nature of pleading involving all. If you wish for an agreement just with OCC and OEG we can do. But we also have a JDA with others.

000004

**Grady, Maureen**

---

**From:** Joe Olikar <joliker@igsenergy.com>  
**Sent:** Tuesday, June 17, 2014 5:11 PM  
**To:** Grady, Maureen  
**Subject:** RE: Motion

Indeed!

**From:** Grady, Maureen [mailto:Maureen.Grady@occ.ohio.gov]  
**Sent:** Tuesday, June 17, 2014 5:07 PM  
**To:** Joe Olikar  
**Subject:** RE: Motion

Thanks joe. I addressed a bit. This looks to be the beginning of a beautiful friendship.

**From:** Joe Olikar [mailto:joliker@igsenergy.com]  
**Sent:** Tuesday, June 17, 2014 4:44 PM  
**To:** Grady, Maureen  
**Subject:** RE: Motion

I raise the [REDACTED] because it seems to be Duke's [REDACTED]. My guess is that Duke just wants [REDACTED] and to [REDACTED]. Could there still be [REDACTED] if we go to hearing in November? Maybe February and April (or March and April). Whether you advocate for that or not, we still support the motion. You may sign for me (or insert the below e signature). Thanks for drafting.

/s/ Joseph Olikar  
Joseph Olikar  
Counsel of Record  
Email: [joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
Matthew White (0082859)  
Email: [mswhite@igsenergy.com](mailto:mswhite@igsenergy.com)  
IGS Energy  
6100 Emerald Parkway  
Dublin, Ohio 43016  
Telephone: (614) 659-5000  
Facsimile: (614) 659-5073

**Attorneys for IGS Energy**

**From:** Grady, Maureen [mailto:Maureen.Grady@occ.ohio.gov]  
**Sent:** Tuesday, June 17, 2014 4:35 PM  
**To:** Joe Olikar  
**Subject:** RE: Motion

Yes Frank has seen. I put in a sentence re: [REDACTED], We are filing a memo contra tomorrow on the OEG motion to [REDACTED]. I can look at the [REDACTED] though we generally think [REDACTED].

Please send me your signature block so I have all the right information. Thanks. It can be filed tomorrow. .

**From:** Joe Olliker [mailto:[jolliker@igsenergy.com](mailto:jolliker@igsenergy.com)]  
**Sent:** Tuesday, June 17, 2014 3:20 PM  
**To:** Grady, Maureen  
**Subject:** RE: Motion

Maureen,

We will join the motion. Also, I assume that you sent to Frank?

As I mentioned earlier, I think we should use Duke's [REDACTED]. Duke is rendering an already difficult procedural schedule much harder to manage. Its like the clock has already started but we are all stuck on the blocks until we work out the confidentiality agreement issue.

May also want to address the [REDACTED] Duke provided (which, in all honesty, Duke simply [REDACTED]). If customers and suppliers are not married to Duke's [REDACTED], [REDACTED].

**From:** Grady, Maureen [mailto:[Maureen.Grady@occ.ohio.gov](mailto:Maureen.Grady@occ.ohio.gov)]  
**Sent:** Tuesday, June 17, 2014 9:48 AM  
**To:** Joe Olliker  
**Subject:** RE: Motion

Joe forgot all about sending it to you. I attach. It is awaiting our management approval. Let me know if you can sign on. Would like to file tomorrow? Thanks.

**From:** Joe Olliker [mailto:[jolliker@igsenergy.com](mailto:jolliker@igsenergy.com)]  
**Sent:** Tuesday, June 17, 2014 9:45 AM  
**To:** Grady, Maureen  
**Subject:** Motion

Any update on that motion to modify the procedural schedule?

**Joseph Olliker**

Regulatory Counsel

**Direct** (614) 539-5059

**Mobile** (513) 727-3114

**Email** [jolliker@igsenergy.com](mailto:jolliker@igsenergy.com)

IGS Energy :: 5100 Linde Road Parkway :: Dayton, OH 45424

[www.IGSEnergy.com](http://www.IGSEnergy.com)

**Grady, Maureen**

---

**From:** Joe Olikar <joliker@igsenergy.com>  
**Sent:** Tuesday, June 17, 2014 10:02 AM  
**To:** Grady, Maureen  
**Subject:** RE: Motion

I should be able to get authorization. Need to read the document. If its not already in there, we should mention [REDACTED]

000007

**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Tuesday, June 17, 2014 9:28 AM  
**To:** 'cmooney@ohiopartners.org'; 'bojko@carpenterlipps.com'; 'Michael Kurtz (mkurtz@BKLlawfirm.com)'  
**Cc:** Bingham, Debra  
**Subject:** Joint Defense Agreement - Duke SSO 14-841  
**Attachments:** Joint Defense Agreement - Duke SSO 14-841.doc

Please take the time to review and sign. Thanks.

**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Friday, June 13, 2014 11:34 AM  
**To:** Michael Kurtz  
**Subject:** Re: Jt. Mot. Contin. Public Hrgs - Duke 14-84

Thanks

Sent from my iPad

On Jun 13, 2014, at 8:41 AM, "Michael Kurtz" <[MKurtz@bkilawfirm.com](mailto:MKurtz@bkilawfirm.com)> wrote:

Maureen.

We are on board. Thanks for drafting.

Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Ph: 513.421.2255 Fax: 513.421.2764  
E-mail: [mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)



(614) 466-1311  
[Debra.bingham@occ.ohio.gov](mailto:Debra.bingham@occ.ohio.gov)

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**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Friday, June 13, 2014 11:34 AM  
**To:** Colleen Mooney  
**Subject:** Re: Jt. Mot. Contin. Public Hrgs - Duke 14-84

Thanks

Sent from my iPad

000011

Thank you.

Deb Bingham  
Administrative Assistant  
Office of the Ohio Consumers' Counsel  
10 West Broad St., 18<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-1311  
[Debra.bingham@occ.ohio.gov](mailto:Debra.bingham@occ.ohio.gov)

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**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Friday, June 13, 2014 11:32 AM  
**To:** Kimberly W. Bojko  
**Subject:** Re: Jt. Mot. Contin. Public Hrgs - Duke 14-84

Thanks will change to 11/10 everywhere.

Sent from my iPad

On Jun 13, 2014, at 10:11 AM, "Kimberly W. Bojko" <[bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com)> wrote:

QMA is fine with the motion. Look at page 2—you have the hearing starting on 11/4 there, but 11/10 everywhere else in the pleading. Thanks.

**Kimberly W. Bojko**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4124  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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000013

Thank you.

Deb Bingham  
Administrative Assistant  
Office of the Ohio Consumers' Counsel  
10 West Broad St., 18<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-1311  
[Debra.bingham@occ.ohio.gov](mailto:Debra.bingham@occ.ohio.gov)

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**Grady, Maureen**

---

**From:** Colleen Mooney <cmooney2@columbus.rr.com>  
**Sent:** Friday, June 13, 2014 8:48 AM  
**To:** Michael Kurtz; Grady, Maureen; kim bojko; Jody Kyler Cohn  
**Subject:** Re: Jt. Mot. Contin. Public Hrgs - Duke 14-84

OPAE will sign on too. OPAE intervened this morning. Thanks.

Columbus, Ohio 43215  
(614) 466-1311  
[Debra.bingham@occ.ohio.gov](mailto:Debra.bingham@occ.ohio.gov)

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**Grady, Maureen**

---

**From:** Colleen Mooney <cmooney2@columbus.rr.com>  
**Sent:** Friday, June 13, 2014 8:42 AM  
**To:** Grady, Maureen  
**Subject:** Re: Jt. Mot. Contin. Public Hrgs - Duke 14-84

OPAE intervened this morning. We will sign on to the motion. You are authorized to sign my name. Thanks.



**Grady, Maureen**

---

**From:** Jody Kyler Cohn <jkylercohn@bkilawfirm.com>  
**Sent:** Tuesday, June 10, 2014 3:33 PM  
**To:** Grady, Maureen  
**Cc:** Michael Kurtz  
**Subject:** Confidentiality Agreement- 14-841 Duke Energy Ohio ESP  
**Attachments:** Motion for Protective Agreement.docx; Exhibit A.pdf; Exhibit B.pdf; Exhibit C.pdf; Exhibit D - Proposed Protective Agreement.docx

Maureen,

Attached is a draft Motion for Protective Agreement that I've been working on in the Duke ESP Case, and the attached Exhibits. Would love any input.

Thanks,

Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Phone: 513.421.2255  
[jkylercohn@bkilawfirm.com](mailto:jkylercohn@bkilawfirm.com)

**From:** Grady, Maureen [<mailto:Maureen.Grady@occ.ohio.gov>]  
**Sent:** Tuesday, June 10, 2014 11:30 AM  
**To:** Jody Kyler Cohn  
**Subject:** FW: Confidentiality Agreement- 14-841 Duke Energy Ohio ESP

FYI

**From:** Grady, Maureen  
**Sent:** Tuesday, June 10, 2014 11:29 AM  
**To:** 'Kuhnell, Dianne B'  
**Cc:** Kingery, Jeanne W; Spiller, Amy B; 'berger@occ.state.oh.us'; Serio, Joseph  
**Subject:** RE: Confidentiality Agreement- 14-841 Duke Energy Ohio ESP

Thank you for your response. However, the Confidentiality Agreement you have attached is not acceptable, and cannot serve as a basis for any protective agreement we would sign.

The protective agreement we sent to you on June 2, 2014 is the same protective agreement you signed with OCC for the past two cases over the last year —the capacity case and the MGP case. In both of those cases, we used the protective agreement to protect information that Duke Energy Ohio deemed to be confidential. We believe that protective agreement strikes the correct balance between your needs for protection and our need to have access to data. We have used this very same agreement with numerous other utilities. It has been carefully developed over the years and represents a fair solution to the issues. Given the tight timeframe ordered for this proceeding (at your request), we will need to resolve this issue as soon as possible. I look forward to hearing from you.

**From:** Kuhnell, Dianne B [<mailto:Dianne.Kuhnell@duke-energy.com>]  
**Sent:** Tuesday, June 10, 2014 9:19 AM  
**To:** Grady, Maureen

**Cc:** Kingery, Jeanne W; Spiller, Amy B  
**Subject:** Confidentiality Agreement- 14-841 Duke Energy Ohio ESP

Maureen,  
Please find attached a copy of the Confidentiality Agreement in this case per Amy's e-mail below.

Thank you,  
Dianne

**From:** Spiller, Amy B  
**Sent:** Monday, June 09, 2014 5:41 PM  
**To:** 'Grady, Maureen'  
**Cc:** Kingery, Jeanne W; Kuhnell, Dianne B  
**Subject:** RE: Protective Agreement

Maureen

I apologize for the delay in responding and do appreciate your time in preparing a confidentiality agreement for our ESP proceeding. However, as we will be sharing information that Duke Energy Ohio deems to be confidential, we prefer to use a confidentiality agreement that we have drafted. We will provide you tomorrow with a copy of our confidentiality agreement, via e-mail from our paralegal, Dianne Kuhnell.

Thank you.

**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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**From:** Grady, Maureen [<mailto:Maureen.Grady@occ.ohio.gov>]  
**Sent:** Monday, June 09, 2014 4:10 PM  
**To:** Spiller, Amy B  
**Subject:** Protective Agreement

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

Amy, still waiting to hear from you with respect to the protective agreement I proposed for the Duke ESP case. It was sent to you on June 2. If you could let me know where you are on that, I would appreciate it. Thank you.

**Grady, Maureen**

---

**From:** Jody Kyler Cohn <jkylercohn@bkllawfirm.com>  
**Sent:** Monday, June 09, 2014 4:01 PM  
**To:** Grady, Maureen  
**Cc:** Michael Kurtz  
**Subject:** Duke Protective Agreement  
**Attachments:** OEG\_CA\_-Jody\_Kyler.pdf; 11-3549 - OEG Executed Confidentiality Agreement.pdf; Stipulated Protective Agreement (2).pdf; Executed Protective Agreement Between OEG and FirstEnergy.pdf; 13-2385 Confidentiality Agreement.pdf

Maureen,

Attached is the Confidentiality Agreement that Duke wants us to sign in the new ESP case as well as [REDACTED]  
[REDACTED]

Thanks,

Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Phone: 513.421.2255  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)

**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Thursday, June 26, 2014 2:30 PM  
**To:** 'Joe Olliker'  
**Subject:** RE: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

Got it. Thanks.

**From:** Joe Olliker [mailto:olliker@osenergy.com]  
**Sent:** Thursday, June 26, 2014 2:10 PM  
**To:** Grady, Maureen  
**Subject:** FW: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

Maureen,

After further consideration, can you please take out [REDACTED] Thanks for drafting!

**From:** Colleen Mooney [mailto:cmooney@ohiopartners.org]  
**Sent:** Thursday, June 26, 2014 2:08 PM  
**To:** 'Grady, Maureen'; 'Michael Kurtz'; 'Jody Kyler Cohn'; bojko@carpenterlipps.com; Joe Olliker  
**Subject:** RE: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

OPAE is ok with the pleading including Kim's suggestions not to [REDACTED] You are authorized to sign my name to whatever you file. Thanks.

**From:** Grady, Maureen [mailto:Maureen.Grady@occ.ohio.gov]  
**Sent:** Thursday, June 26, 2014 11:18 AM  
**To:** Michael Kurtz; Jody Kyler Cohn; 'cmooney@ohiopartners.org'; 'bojko@carpenterlipps.com'; Joe Olliker  
**Subject:** Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA  
**Importance:** High

Here is the proposed filing. Joe please note the statements made re: [REDACTED]—and confirm that you are ok with that. Thanks.



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

**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Thursday, June 26, 2014 2:30 PM  
**To:** 'cmooney@ohiopartners.org'  
**Subject:** RE: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

Thanks.

**From:** Colleen Mooney [mailto:cmooney@ohiopartners.org]  
**Sent:** Thursday, June 26, 2014 2:08 PM  
**To:** Grady, Maureen; 'Michael Kurtz'; 'Jody Kyler Cohn'; bojko@carpenterlipps.com; 'Joe Oliker'  
**Subject:** RE: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

OPAE is ok with the pleading including Kim's suggestions not to [REDACTED]. You are authorized to sign my name to whatever you file. Thanks.

**From:** Grady, Maureen [mailto:Maureen.Grady@occ.ohio.gov]  
**Sent:** Thursday, June 26, 2014 11:18 AM  
**To:** Michael Kurtz; Jody Kyler Cohn; 'cmooney@ohiopartners.org'; 'bojko@carpenterlipps.com'; Joe Oliker  
**Subject:** Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA  
**Importance:** High

Here is the proposed filing. Joe please note the statements made re: [REDACTED]—and confirm that you are ok with that. Thanks.



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

**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Thursday, June 26, 2014 3:09 PM  
**To:** 'cmooney@ohiopartners.org'; 'bojko@carpenterlipps.com'; 'Joe Olikier'; 'Michael Kurtz'  
**Subject:** FW: Joint Reply to Duke - 3:00 pm  
**Attachments:** Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14  
bojko ds mrg jo db.docx

Here is the final with management edits and edits from OMA, and IGS. Please let me know if it is ok. Thanks. Maureen

**From:** Bingham, Debra  
**Sent:** Thursday, June 26, 2014 2:59 PM  
**To:** Grady, Maureen  
**Subject:** Joint Reply to Duke - 3:00 pm

Thank you.

Deb Bingham  
Administrative Assistant  
Office of the Ohio Consumers' Counsel  
10 West Broad St., 18<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-1311  
[Debra.bingham@occ.ohio.gov](mailto:Debra.bingham@occ.ohio.gov)

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**Grady, Maureen**

---

**From:** Kimberly W. Bojko <bojko@CarpenterLipps.com>  
**Sent:** Thursday, June 26, 2014 4:37 PM  
**To:** Grady, Maureen; cmooney@ohiopartners.org; Joe Olikar; Michael Kurtz  
**Subject:** RE: Joint Reply to Duke - 3:00 pm  
**Attachments:** Jt Reply to Duke MC Mot Cont (00398728).DOCX

I offer a couple of tweaks and typo corrections. Thanks for your work. You have authority to sign on my behalf.

**Kimberly W. Bojko**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4124  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Thursday, June 26, 2014 4:14 PM  
**To:** 'cmooney@ohiopartners.org'  
**Subject:** RE: Joint Reply to Duke - 3:00 pm

Thanks.



**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Wednesday, June 25, 2014 8:46 AM  
**To:** Frank Darr <fdarr@mwncmh.com>  
**Subject:** filing in Duke ESP

Can you make sure I am on your service list for the case. It appears that I am not receiving your documents. Also can you forward all sets of discovery requests you have served on Duke? Thank you.

## Grady, Maureen

---

**From:** Grady, Maureen  
**Sent:** Wednesday, June 25, 2014 9:21 AM  
**To:** 'Frank Darr'  
**Subject:** RE: IEU-Ohio's First Set of Discovery

Do you have a confidentiality agreement with Duke?

---

**From:** Frank Darr [<mailto:fdarr@mwncmh.com>]  
**Sent:** Wednesday, June 25, 2014 8:49 AM  
**To:** Grady, Maureen  
**Subject:** FW: IEU-Ohio's First Set of Discovery

**From:** Vicki Leach-Payne  
**Sent:** Thursday, June 12, 2014 2:38 PM  
**To:** Beeler, Steven (PUCO); Boehm, David ; Debbie Ryan; Dianne Kuhnell ([Dianne.Kuhnell@duke-energy.com](mailto:Dianne.Kuhnell@duke-energy.com)); Ed Hess; Edmund J. Berger ([Edmund.berger@occ.ohio.gov](mailto:Edmund.berger@occ.ohio.gov)); Frank Darr; Grady, Maureen R. ([maureen.grady@occ.ohio.gov](mailto:maureen.grady@occ.ohio.gov)); Hayden, Mark A. ([haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)); Jacob McDermott ([jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com)); Jody Kyler Cohn ([jkylercohn@BKLLawfirm.com](mailto:jkylercohn@BKLLawfirm.com)); Joe Bowser; Joe Serio ([joseph.serio@occ.ohio.gov](mailto:joseph.serio@occ.ohio.gov)); Joseph E. Oliker ([joliker@igsenergy.com](mailto:joliker@igsenergy.com)); Judi Sobecki ([judi.sobecki@aes.com](mailto:judi.sobecki@aes.com)); Karen Bowman; Kevin Murray; Kevin R. Schmidt ([schmidt@sppgrp.com](mailto:schmidt@sppgrp.com)); Kimberly W. Bojko ([bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)); Kingery, Jeanne W. ([Jeanne.Kingery@duke-energy.com](mailto:Jeanne.Kingery@duke-energy.com)); Matthew Pritchard; Matthew White ([mwhite@igsenergy.com](mailto:mwhite@igsenergy.com)); [mkurtz@bklawfirm.com](mailto:mkurtz@bklawfirm.com); [mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com); Renee Gannon; Rocco D'Ascenzo ([rocco.d'ascenzo@duke-energy.com](mailto:rocco.d'ascenzo@duke-energy.com)); Ryan P. O'Rourke ([ryan.o'rourke@puc.state.oh.us](mailto:ryan.o'rourke@puc.state.oh.us)); Sam Randazzo; Scott Elisar; Scott J. Casto ([scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com)); Spiller, Amy B. ([Amy.Spiller@Duke-Energy.com](mailto:Amy.Spiller@Duke-Energy.com)); Thomas Lindgren ([thomas.lindgren@puc.state.oh.us](mailto:thomas.lindgren@puc.state.oh.us)); Vicki Leach-Payne; Watts, Elizabeth A. ([elizabeth.watts@duke-energy.com](mailto:elizabeth.watts@duke-energy.com))  
**Subject:** IEU-Ohio's First Set of Discovery

Attached please find IEU-Ohio's First Set of Discovery being served upon Duke Energy Ohio in Case Nos. 14-841-EL-SSO and 14-842-EL-ATA.

If you have any questions regarding the attached, please feel free to contact Matt Pritchard ([mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)).

**Vicki Leach-Payne**  
Administrative Assistant  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215-4228  
Direct Telephone: 614.719.2847  
Fax: 614.469.4653  
[vleach-payne@mwncmh.com](mailto:vleach-payne@mwncmh.com)



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**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Thursday, June 26, 2014 11:05 AM  
**To:** 'Michael Kurtz'; 'bojko@carpenterlipps.com'; 'Joe Olier'; Colleen Mooney  
**Subject:** Reply to Duke Energy Ohio's memo contra  
  
**Importance:** High

Will have to you shortly. It is due today. Forgot there was a three day response period instead of seven. If you could quickly look over (after it is sent), and give me authority to sign for you that would be great. Thanks.

**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Thursday, June 26, 2014 4:14 PM  
**To:** 'cmooney@ohiopartners.org'  
**Subject:** RE: Joint Reply to Duke - 3:00 pm

Thanks.

**From:** Colleen Mooney [<mailto:cmooney@ohiopartners.org>]  
**Sent:** Thursday, June 26, 2014 3:52 PM  
**To:** Grady, Maureen  
**Subject:** RE: Joint Reply to Duke - 3:00 pm

OK.

**From:** Grady, Maureen [<mailto:Maureen.Grady@occ.ohio.gov>]  
**Sent:** Thursday, June 26, 2014 3:09 PM  
**To:** [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); 'bojko@carpenterlipps.com'; Joe Olikier; Michael Kurtz  
**Subject:** FW: Joint Reply to Duke - 3:00 pm

Here is the final with management edits and edits from OMA, and IGS. Please let me know if it is ok. Thanks. Maureen

**From:** Bingham, Debra  
**Sent:** Thursday, June 26, 2014 2:59 PM  
**To:** Grady, Maureen  
**Subject:** Joint Reply to Duke - 3:00 pm

Thank you.

Deb Bingham  
Administrative Assistant  
Office of the Ohio Consumers' Counsel  
10 West Broad St., 18<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-1311  
[Debra.bingham@occ.ohio.gov](mailto:Debra.bingham@occ.ohio.gov)

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**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Friday, June 27, 2014 9:00 AM  
**To:** 'Steven T Nourse'  
**Subject:** Discovery Request by Duke

Steve, this is just to formalize what I conveyed to you earlier this week. In Duke's First set of Discovery to OCC, Duke requested from OCC all documents in OCC's possession that related to wholesale capacity and energy forecasts. We believe that [REDACTED] provided to IEU in discovery, [REDACTED]. As you know these documents were provided to OCC pursuant to an executed protective agreement. At this time, we do not intend to [REDACTED] Duke, and will inform Duke (Monday) that the documents requested are considered by you to be confidential and proprietary. We will inform them to contact you to obtain a copy of the documents.

Earlier this week you indicated that you saw no problem with this approach.

Should you have any questions, please feel free to contact me.

**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Friday, June 27, 2014 9:15 AM  
**To:** 'Steven T Nourse'  
**Subject:** RE: Discovery Request by Duke

Sure. Understood.

**From:** Steven T Nourse [<mailto:stnourse@aep.com>]  
**Sent:** Friday, June 27, 2014 9:08 AM  
**To:** Grady, Maureen  
**Subject:** RE: Discovery Request by Duke

OK, thanks. And just to be clear I am not agreeing to produce the information to Duke in response to a discovery request in their case – but you can refer them to us.

Thanks,  
*Steven T. Nourse*  
Senior Counsel  
American Electric Power Service Corporation  
Legal Department, 29th Floor  
1 Riverside Plaza  
Columbus, Ohio 43215-2373  
Phone: (614) 716-1608      Audinet: 8-200-1608  
Fax: (614) 716-2014      Audinet: 8-200-2014  
Email: [stnourse@aep.com](mailto:stnourse@aep.com)



**From:** Grady, Maureen [<mailto:Maureen.Grady@occ.ohio.gov>]  
**Sent:** Friday, June 27, 2014 9:00 AM  
**To:** Steven T Nourse  
**Subject:** Discovery Request by Duke

This is an EXTERNAL email. STOP. THINK before you CLICK links or OPEN attachments.

Steve, this is just to formalize what I conveyed to you earlier this week. In Duke's First set of Discovery to OCC, Duke requested from OCC all documents in OCC's possession that related to wholesale capacity and energy forecasts. We believe that [REDACTED] provided to IEU in discovery, IEU2-001, attachments 1,2,and 3 are responsive to Duke's request. As you know these documents were provided to OCC pursuant to an executed protective agreement. At this time, we do not intend to provide copies of the information to Duke, and will inform Duke (Monday) that the documents requested are considered by you to be confidential and proprietary. We will inform them to contact you to obtain a copy of the documents.

Earlier this week you indicated that you saw no problem with this approach.

Should you have any questions, please feel free to contact me.



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Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

---

**From:** Berger, Edmund  
**Sent:** Tuesday, July 08, 2014 8:59 AM  
**To:** 'Bojko@carpenterlipps.com'; 'mohler@carpenterlipps.com'; 'hussey@carpenterlipps.com'; 'cmooney@ohiopartners.org'; 'dboehm@BKLawfirm.com'; 'mkurtz@BKLawfirm.com'; Jody Kyler Cohn  
**Cc:** Grady, Maureen; Serio, Joseph  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: OCC is contemplating, and has prepared, a Motion to Reject Duke's ESP 3 Filing on the basis that [REDACTED]. First, it does not provide [REDACTED] (It provides [REDACTED], but not [REDACTED] – see [REDACTED]). Second, as a result of its first shortcoming, the public notice [REDACTED]. Third, there are numerous shortcomings in Duke's filing requirements with respect to [REDACTED] that we have identified. We are currently running the draft by our management and, if you are interested in joining in, intend to circulate to you later today. Please advise if your respective clients are interested in joining in this Motion. We view this motion as supportive of the Joint Motion for Continuance filed on June 18<sup>th</sup> that has not yet been acted on. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**Grady, Maureen**

**From:** Colleen Mooney <cmooney@ohiopartners.org>  
**Sent:** Tuesday, July 08, 2014 9:52 AM  
**To:** Berger, Edmund; Bojko@carpenterlipps.com; mohler@carpenterlipps.com; hussey@carpenterlipps.com; dboehm@BKLawfirm.com; mkurtz@BKLawfirm.com; Jody Kyler Cohn  
**Cc:** Grady, Maureen; Serio, Joseph  
**Subject:** Re: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Yes, OPAE would be interested in joining in. Please send it to me when you are ready. Thanks.

----- Original Message -----

**From:** [Berger, Edmund](#)  
**To:** [Bojko@carpenterlipps.com](#) ; [mohler@carpenterlipps.com](#) ; [hussey@carpenterlipps.com](#) ; [cmooney@ohiopartners.org](#) ; [dboehm@BKLawfirm.com](#) ; [mkurtz@BKLawfirm.com](#) ; [Jody Kyler Cohn](#)  
**Cc:** [Grady, Maureen](#) ; [Serio, Joseph](#)  
**Sent:** Tuesday, July 08, 2014 8:58 AM  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: OCC is contemplating, and has prepared, a Motion to Reject Duke's ESP 3 Filing on the basis that [REDACTED]. First, [REDACTED] (it provides [REDACTED], but not [REDACTED] - see [REDACTED]). Second, as a result of its first shortcoming, the public notice [REDACTED]. Third, there are numerous shortcomings in Duke's filing requirements with respect to [REDACTED] we have identified. We are currently running the draft by our management and, if you are interested in joining in, intend to circulate to you later today. Please advise if your respective clients are interested in joining in this Motion. We view this motion as supportive of the Joint Motion for Continuance filed on June 18<sup>th</sup> that has not yet been acted on. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**Grady, Maureen**

---

**From:** Colleen Mooney <cmooney@ohiopartners.org>  
**Sent:** Tuesday, July 08, 2014 9:58 PM  
**To:** Berger, Edmund  
**Cc:** Grady, Maureen; Serio, Joseph  
**Subject:** OPAE changes to Joint Motion  
**Attachments:** Motion to Reject Duke ESP 3 Filing - Draft for Review by Joint Movants.docx

Here are my changes. Do you have [REDACTED] Anyway, OPAE will sign on.  
But I am hoping to file a stipulation at the Supreme Court tomorrow for an extension of time on the MGP brief, so don't file it until after I get that filed. File Thursday or Friday.



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**Grady, Maureen**

---

**From:** Michael Kurtz <MKurtz@bklawfirm.com>  
**Sent:** Tuesday, July 08, 2014 4:10 PM  
**To:** Berger, Edmund; 'Bojko@carpenterlipps.com'; 'mohler@carpenterlipps.com'; 'cmooney@ohiopartners.org'; David Boehm; Michael Kurtz; Jody Kyler Cohn  
**Cc:** Grady, Maureen; Serio, Joseph; Bingham, Debra; Mallarnee, Patricia  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Tad.

Excellent job on the motion, but we don't have client authority to sign on. So we will be watching from the side line on this one.

Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Ph: 513.421.2255 Fax: 513.421.2764  
E-mail: [mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com)

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Tuesday, July 08, 2014 3:13 PM  
**To:** 'Bojko@carpenterlipps.com'; 'mohler@carpenterlipps.com'; 'cmooney@ohiopartners.org'; 'dboehm@BKLlawfirm.com'; 'mkurtz@BKLlawfirm.com'; Jody Kyler Cohn  
**Cc:** Grady, Maureen; Serio, Joseph; Bingham, Debra; Mallarnee, Patricia  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: As per my earlier e-mail to you, and subject to our Joint Defense Agreement, please find a draft a Motion to Reject Duke's ESP Filing. Please advise if you would request any changes and if you are joining in this Motion. There may be some additional edits on our end as well and I will provide a final document once we have any additional changes incorporated. I am waiting to hear from IGS as to whether they are interested in joining in. They are listed in this document, as is Kroger, but we do not have a Joint Defense Agreement with them so I am not circulating the document to them for review. However, they may join us and I will circulate the final document to them if they are interested in joining in. Please advise me as soon as possible of any changes and if you are joining in. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street

**Grady, Maureen**

---

**From:** Colleen Mooney <cmooney@ohiopartners.org>  
**Sent:** Wednesday, July 16, 2014 8:02 PM  
**To:** Berger, Edmund; 'Bojko@carpenterlipps.com'; 'mohler@carpenterlipps.com'; 'cmooney@ohiopartners.org'  
**Cc:** Grady, Maureen; Serio, Joseph; Bingham, Debra; Mallarnee, Patricia  
**Subject:** RE: DUE THURSDAY: Duke ESP 3 - 14-0841-EL-SSO - Reply to Memo Contra Motion to Reject Duke ESP 3 - Privileged & Confidential - Subject to Joint Defense Agreement

OPAE will join the pleading. You are authorized to sign my name when you file tomorrow.

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Wednesday, July 16, 2014 7:04 PM  
**To:** 'Bojko@carpenterlipps.com'; 'mohler@carpenterlipps.com'; 'cmooney@ohiopartners.org'  
**Cc:** Grady, Maureen; Serio, Joseph; Bingham, Debra; Mallarnee, Patricia  
**Subject:** DUE THURSDAY: Duke ESP 3 - 14-0841-EL-SSO - Reply to Memo Contra Motion to Reject Duke ESP 3 - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: Subject to our Joint Defense Agreement, please find a draft Reply to Memo Contra Motion to Reject Duke's ESP Filing. Please advise me as soon as possible of any changes and if you are joining in. I note that there are some cites to fill in and some formatting changes to be made. These will be done tomorrow. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292



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**Grady, Maureen**

---

**From:** Grady, Maureen  
**Sent:** Thursday, June 26, 2014 2:30 PM  
**To:** 'Joe Olliker'  
**Subject:** RE: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

Got it. Thanks.

**From:** Joe Olliker [<mailto:joliker@igsenergy.com>]  
**Sent:** Thursday, June 26, 2014 2:10 PM  
**To:** Grady, Maureen  
**Subject:** FW: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

Maureen,

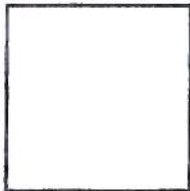
After further consideration, can you please take out [REDACTED] Thanks for drafting!

**From:** Colleen Mooney [<mailto:cmooney@ohiopartners.org>]  
**Sent:** Thursday, June 26, 2014 2:08 PM  
**To:** 'Grady, Maureen'; 'Michael Kurtz'; 'Jody Kyler Cohn'; [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com); Joe Olliker  
**Subject:** RE: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

OPAE is ok with the pleading including Kim's suggestions not to [REDACTED] You are authorized to sign my name to whatever you file. Thanks.

**From:** Grady, Maureen [<mailto:Maureen.Grady@occ.ohio.gov>]  
**Sent:** Thursday, June 26, 2014 11:18 AM  
**To:** Michael Kurtz; Jody Kyler Cohn; [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com); Joe Olliker  
**Subject:** Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA  
**Importance:** High

Here is the proposed filing. Joe please note the statements made re: [REDACTED]—and confirm that you are ok with that. Thanks.



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## Grady, Maureen

---

**From:** Grady, Maureen  
**Sent:** Thursday, June 26, 2014 2:30 PM  
**To:** 'cmooney@ohiopartners.org'  
**Subject:** RE: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

Thanks.

---

**From:** Colleen Mooney [<mailto:cmooney@ohiopartners.org>]  
**Sent:** Thursday, June 26, 2014 2:08 PM  
**To:** Grady, Maureen; 'Michael Kurtz'; 'Jody Kyler Cohn'; [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com); 'Joe Olikar'  
**Subject:** RE: Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA

OPAE is ok with the pleading including Kim's suggestions not to [REDACTED]. You are authorized to sign my name to whatever you file. Thanks.

**From:** Grady, Maureen [<mailto:Maureen.Grady@occ.ohio.gov>]  
**Sent:** Thursday, June 26, 2014 11:18 AM  
**To:** Michael Kurtz; Jody Kyler Cohn; 'cmooney@ohiopartners.org'; 'bojko@carpenterlipps.com'; Joe Olikar  
**Subject:** Jt Reply to Duke MC Mot Cont - Duke Rate - 14-841-EL-SSO et al - Draft 6 26 14 c- Privileged and confidential, subject to JDA  
**Importance:** High

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**Berger, Edmund**

**From:** Colleen Mooney <cmooney@ohiopartners.org>  
**Sent:** Tuesday, July 08, 2014 9:52 AM  
**To:** Berger, Edmund; Bojko@carpenterlipps.com; mohler@carpenterlipps.com; hussey@carpenterlipps.com; dboehm@BKLawfirm.com; mkurtz@BKLawfirm.com; Jody Kyler Cohn  
**Cc:** Grady, Maureen; Serio, Joseph  
**Subject:** Re: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Yes, OPAE would be interested in joining in. Please send it to me when you are ready. Thanks.

----- Original Message -----

**From:** [Berger, Edmund](#)

**To:** [Bojko@carpenterlipps.com](#) ; [mohler@carpenterlipps.com](#) ; [hussey@carpenterlipps.com](#) ; [cmooney@ohiopartners.org](#) ; [dboehm@BKLawfirm.com](#) ; [mkurtz@BKLawfirm.com](#) ; [Jody Kyler Cohn](#)

**Cc:** [Grady, Maureen](#) ; [Serio, Joseph](#)

**Sent:** Tuesday, July 08, 2014 8:58 AM

**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: OCC is contemplating, and has prepared, a Motion to Reject Duke's ESP 3 Filing on the basis that [REDACTED]. First, it does not provide [REDACTED] (It provides [REDACTED], but not [REDACTED] - see [REDACTED]). Second, as a result of its first shortcoming, the public notice [REDACTED]. Third, there are numerous shortcomings in Duke's filing requirements with respect to [REDACTED] that we have identified. We are currently running the draft by our management and, if you are interested in joining in, intend to circulate to you later today. Please advise if your respective clients are interested in joining in this Motion. We view this motion as supportive of the Joint Motion for Continuance filed on June 18<sup>th</sup> that has not yet been acted on. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292



**Berger, Edmund**

---

**From:** Mallory M. Mohler <mohler@CarpenterLipps.com>  
**Sent:** Tuesday, July 08, 2014 10:07 AM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

OMA would be interested in joining as well. We look forward to seeing a draft.

**Mallory M. Mohler**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4130  
[mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com)

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Tuesday, July 08, 2014 8:59 AM  
**To:** Kimberly W. Bojko; Mallory M. Mohler; Rebecca L. Hussey; cmooney@ohiopartners.org; dboehm@BKLlawfirm.com; mkurtz@BKLlawfirm.com; Jody Kyler Cohn  
**Cc:** Grady, Maureen; Serio, Joseph  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: OCC is contemplating, and has prepared, a Motion to Reject Duke's ESP 3 Filing on the basis that [REDACTED]. First, it does not provide [REDACTED] (it provides [REDACTED], but not [REDACTED] – see [REDACTED]). Second, as a result of its first shortcoming, the public notice [REDACTED]. Third, there are numerous shortcomings in Duke's filing requirements with respect to [REDACTED] that we have identified. We are currently running the draft by our management and, if you are interested in joining in, intend to circulate to you later today. Please advise if your respective clients are interested in joining in this Motion. We view this motion as supportive of the Joint Motion for Continuance filed on June 18<sup>th</sup> that has not yet been acted on. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**Berger, Edmund**

---

**From:** Rebecca L. Hussey <hussey@CarpenterLipps.com>  
**Sent:** Tuesday, July 08, 2014 11:22 AM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Tad, Kroger is interested in joining. Please forward the draft to me this afternoon.

Thank you.

Becky

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Tuesday, July 08, 2014 8:59 AM  
**To:** Kimberly W. Bojko; Mallory M. Mohler; Rebecca L. Hussey; cmooney@ohiopartners.org; dboehm@BKLlawfirm.com; mkurtz@BKLlawfirm.com; Jody Kyler Cohn  
**Cc:** Grady, Maureen; Serio, Joseph  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: OCC is contemplating, and has prepared, a Motion to Reject Duke's ESP 3 Filing on the basis that [REDACTED]. First, it does not provide [REDACTED] (it provides [REDACTED], but not [REDACTED] – see [REDACTED]). Second, as a result of its first shortcoming, the public notice [REDACTED]. Third, there are numerous shortcomings in Duke's filing requirements with respect to [REDACTED] that we have identified. We are currently running the draft by our management and, if you are interested in joining in, intend to circulate to you later today. Please advise if your respective clients are interested in joining in this Motion. We view this motion as supportive of the Joint Motion for Continuance filed on June 18<sup>th</sup> that has not yet been acted on. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

## Berger, Edmund

---

**From:** Colleen Mooney <cmooney@ohiopartners.org>  
**Sent:** Tuesday, July 08, 2014 9:58 PM  
**To:** Berger, Edmund  
**Cc:** Grady, Maureen; Serio, Joseph  
**Subject:** OPAE changes to Joint Motion  
**Attachments:** Motion to Reject Duke ESP 3 Filing - Draft for Review by Joint Movants.docx

Here are my changes. Do you [REDACTED]? Anyway, OPAE will sign on. But I am hoping to file a stipulation at the Supreme Court tomorrow for an extension of time on the MGP brief, so don't file it until after I get that filed. File Thursday or Friday.



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**Berger, Edmund**

---

**From:** Mallory M. Mohler <mohler@CarpenterLipps.com>  
**Sent:** Wednesday, July 09, 2014 12:19 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Tad,

We are in the process of reviewing. When do you intend to file?

**Mallory M. Mohler**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4130  
[mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com)

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Wednesday, July 09, 2014 11:42 AM  
**To:** Mallory M. Mohler  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Mallory – Does OMA have any edits to the document that was sent? Are you joining in? Thanks, Tad.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**From:** Mallory M. Mohler [mailto:mohler@CarpenterLipps.com]  
**Sent:** Tuesday, July 08, 2014 10:07 AM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

OMA would be interested in joining as well. We look forward to seeing a draft.

**Mallory M. Mohler**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4130  
[mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com)

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Tuesday, July 08, 2014 8:59 AM  
**To:** Kimberly W. Bojko; Mallory M. Mohler; Rebecca L. Hussey; [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); [dboehm@BKLlawfirm.com](mailto:dboehm@BKLlawfirm.com); [mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com); Jody Kyler Cohn  
**Cc:** Grady, Maureen; Serio, Joseph  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: OCC is contemplating, and has prepared, a Motion to Reject Duke's ESP 3 Filing on the basis that [REDACTED]. First, it does not provide [REDACTED] (It provides [REDACTED], but not [REDACTED] – see [REDACTED]). Second, as a result of its first shortcoming, the public notice [REDACTED]. Third, there are numerous shortcomings in Duke's filing requirements with respect to [REDACTED] that we have identified. We are currently running the draft by our management and, if you are interested in joining in, intend to circulate to you later today. Please advise if your respective clients are interested in joining in this Motion. We view this motion as supportive of the Joint Motion for Continuance filed on June 18<sup>th</sup> that has not yet been acted on. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292



**Berger, Edmund**

---

**From:** Rebecca L. Hussey <hussey@CarpenterLipps.com>  
**Sent:** Wednesday, July 09, 2014 1:52 PM  
**To:** Berger, Edmund  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Filing - Privileged & Confidential

Hi Tad,

I just saw your recalled message. That email was the first communication I have received from you since replying yesterday that Kroger would be interested in joining the motion. I'm not sure if I was left off of another email, or my email address was not spelled properly.

Please send me the version of the motion to which you would like me to direct my attention and I will do so. Thank you.

Becky

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Wednesday, July 09, 2014 1:45 PM  
**To:** Rebecca L. Hussey  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Filing - Privileged & Confidential

Rebecca – Please advise whether Kroger can sign on to the attached. This is the final document but awaiting your signature. Please call me if you have any questions. Thanks, Tad.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

## Berger, Edmund

---

**From:** Mallory M. Mohler <mohler@CarpenterLipps.com>  
**Sent:** Wednesday, July 09, 2014 2:00 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement  
**Attachments:** Motion to Reject Duke ESP 3 Filing - Draft for Review by Joint Movants.d....docx

Here are OMA's proposed changes. Thanks!

**Mallory M. Mohler**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4130  
[mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com)

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Wednesday, July 09, 2014 1:46 PM  
**To:** Mallory M. Mohler  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

We intend to file today. Do you have any edits?

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**From:** Mallory M. Mohler [<mailto:mohler@CarpenterLipps.com>]  
**Sent:** Wednesday, July 09, 2014 12:19 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Tad,

We are in the process of reviewing. When do you intend to file?

**Mallory M. Mohler**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4130  
[mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com)

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Wednesday, July 09, 2014 11:42 AM  
**To:** Mallory M. Mohler  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Mallory – Does OMA have any edits to the document that was sent? Are you joining in? Thanks, Tad.

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Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**From:** Mallory M. Mohler [<mailto:mohler@CarpenterLipps.com>]  
**Sent:** Tuesday, July 08, 2014 10:07 AM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

OMA would be interested in joining as well. We look forward to seeing a draft.

**Mallory M. Mohler**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4130  
[mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com)

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Tuesday, July 08, 2014 8:59 AM  
**To:** Kimberly W. Bojko; Mallory M. Mohler; Rebecca L. Hussey; [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); [dboehm@BKLlawfirm.com](mailto:dboehm@BKLlawfirm.com); [mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com); Jody Kyler Cohn

**Cc:** Grady, Maureen; Serio, Joseph

**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion to Reject Duke ESP 3 Filing for Failure to Comply with Filing Requirements - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: OCC is contemplating, and has prepared, a Motion to Reject Duke's ESP 3 Filing on the basis that [REDACTED]. First, it does not provide [REDACTED] (it provides [REDACTED], but not [REDACTED] – see [REDACTED]). Second, as a result of its first shortcoming, the public notice [REDACTED]. Third, there are numerous shortcomings in Duke's filing requirements with respect to [REDACTED] that we have identified. We are currently running the draft by our management and, if you are interested in joining in, intend to circulate to you later today. Please advise if your respective clients are interested in joining in this Motion. We view this motion as supportive of the Joint Motion for Continuance filed on June 18<sup>th</sup> that has not yet been acted on. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**Berger, Edmund**

---

**From:** Rebecca L. Hussey <hussey@CarpenterLipps.com>  
**Sent:** Wednesday, July 09, 2014 3:23 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - Motion to Reject Filing - Privileged & Confidential  
**Attachments:** Kroger Redline (00400046).DOCX

Hi Tad,  
Attached please find Kroger's redline, which makes only non-substantive changes to the document. With these changes, Kroger will be joining the pleading.

Thanks,  
Becky

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Wednesday, July 09, 2014 2:50 PM  
**To:** Rebecca L. Hussey  
**Subject:** Duke ESP 3 - Motion to Reject Filing - Privileged & Confidential

Rebecca – Per our earlier discussion, here is the final version for sign-off – some formatting still needs to be done and Kroger's signature line will need to be added. Please let me know as soon as possible if Kroger is signing on as we would like to file today. Thanks, Tad.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

## Berger, Edmund

---

**From:** Colleen Mooney <cmooney@ohiopartners.org>  
**Sent:** Wednesday, July 16, 2014 8:02 PM  
**To:** Berger, Edmund; 'Bojko@carpenterlipps.com'; 'mohler@carpenterlipps.com'; 'cmooney@ohiopartners.org'  
**Cc:** Grady, Maureen; Serio, Joseph; Bingham, Debra; Mallarnee, Patricia  
**Subject:** RE: DUE THURSDAY: Duke ESP 3 - 14-0841-EL-SSO - Reply to Memo Contra Motion to Reject Duke ESP 3 - Privileged & Confidential - Subject to Joint Defense Agreement

OPAE will join the pleading. You are authorized to sign my name when you file tomorrow.

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Wednesday, July 16, 2014 7:04 PM  
**To:** 'Bojko@carpenterlipps.com'; 'mohler@carpenterlipps.com'; 'cmooney@ohiopartners.org'  
**Cc:** Grady, Maureen; Serio, Joseph; Bingham, Debra; Mallarnee, Patricia  
**Subject:** DUE THURSDAY: Duke ESP 3 - 14-0841-EL-SSO - Reply to Memo Contra Motion to Reject Duke ESP 3 - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: Subject to our Joint Defense Agreement, please find a draft Reply to Memo Contra Motion to Reject Duke's ESP Filing. Please advise me as soon as possible of any changes and if you are joining in. I note that there are some cites to fill in and some formatting changes to be made. These will be done tomorrow. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292



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## Berger, Edmund

---

**From:** Kimberly W. Bojko <bojko@CarpenterLipps.com>  
**Sent:** Thursday, July 17, 2014 11:49 AM  
**To:** Berger, Edmund; 'Bojko@carpenterlipps.com'; 'mohler@carpenterlipps.com'; 'cmooney@ohiopartners.org'  
**Cc:** Grady, Maureen; Serio, Joseph; Bingham, Debra; Mallarnee, Patricia  
**Subject:** RE: DUE THURSDAY: Duke ESP 3 - 14-0841-EL-SSO - Reply to Memo Contra Motion to Reject Duke ESP 3 - Privileged & Confidential - Subject to Joint Defense Agreement  
**Attachments:** Memo Contra Jt Mot to Reject Duke ESP (kwb redline) (00401329).DOCX

Thanks for drafting. I have provided some suggested changes. The revisions on [REDACTED] are particularly important to reflect the activities of all of the Movants re: [REDACTED].

**Kimberly W. Bojko**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4124  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Wednesday, July 16, 2014 7:04 PM  
**To:** 'Bojko@carpenterlipps.com'; 'mohler@carpenterlipps.com'; 'cmooney@ohiopartners.org'  
**Cc:** Grady, Maureen; Serio, Joseph; Bingham, Debra; Mallarnee, Patricia  
**Subject:** DUE THURSDAY: Duke ESP 3 - 14-0841-EL-SSO - Reply to Memo Contra Motion to Reject Duke ESP 3 - Privileged & Confidential - Subject to Joint Defense Agreement

Counsel: Subject to our Joint Defense Agreement, please find a draft Reply to Memo Contra Motion to Reject Duke's ESP Filing. Please advise me as soon as possible of any changes and if you are joining in. I note that there are some cites to fill in and some formatting changes to be made. These will be done tomorrow. Thanks, Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800

Columbus, Ohio 43215-3485  
(614) 466-1292



**Berger, Edmund**

---

**From:** Kimberly W. Bojko <bojko@CarpenterLipps.com>  
**Sent:** Thursday, July 17, 2014 4:06 PM  
**To:** Berger, Edmund; cmooney@ohiopartners.org  
**Cc:** Grady, Maureen  
**Subject:** RE: Joint Reply MC Mot. Reject - Duke 14-841 - Privileged & Confidential

Yes, you have my authority. Thanks.

**Kimberly W. Bojko**  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4124  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Thursday, July 17, 2014 2:51 PM  
**To:** Kimberly W. Bojko; cmooney@ohiopartners.org  
**Cc:** Grady, Maureen  
**Subject:** FW: Joint Reply MC Mot. Reject - Duke 14-841 - Privileged & Confidential

Kim and Colleen – Here is a final draft of the Reply to Memo Contra Motion to Reject with Kim’s proposed revisions, citations filled in, and final edits. Please let me know if you have any additional changes or corrections. Colleen has already indicated her approval. Kim – please confirm we can sign for you as well by 4pm. Thank you. Tad.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**Berger, Edmund**

---

**From:** Rebecca L. Hussey <hussey@CarpenterLipps.com>  
**Sent:** Friday, July 25, 2014 2:05 PM  
**To:** Berger, Edmund  
**Subject:** Duke ESP

Hi Tad,  
Yes, Kroger would be willing to join the motion. Thank you.

Becky

## Berger, Edmund

---

**From:** Clark, Joseph <Joseph.Clark@directenergy.com>  
**Sent:** Friday, July 25, 2014 5:10 PM  
**To:** Berger, Edmund  
**Cc:** Ringenbach, Teresa; 'ghull@eckertseamans.com'; 'DClearfield@eckertseamans.com'  
**Subject:** Duke ESP and Motion for Status/procedural conference

Tad,

Thanks for the voicemail and apologies for the delay in getting back to you. I'm on vacation this week. I've got to check in with Teresa on whether we would be interested in joining. If you have already filed let me know; otherwise I can ask Teresa first thing next week and get back to you on whether we are interested in joining.

Thanks, Joe

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## **Berger, Edmund**

---

**From:** Clark, Joseph <Joseph.Clark@directenergy.com>  
**Sent:** Friday, July 25, 2014 5:11 PM  
**To:** Berger, Edmund  
**Subject:** Automatic reply: Duke ESP and Motion for Status/procedural conference

I am currently out of the office on vacation the week of July 21-25. I will also be out of the office for business purposes on July 28 but will be checking e-mail.

In my absence, if your need is immediate, please contact the colleagues below. Otherwise I will return your e-mail upon my return to the office.

- \* Chris Kallaher for RESA and other regulatory litigation matters
- \* Teresa Ringenbach for all Ohio matters (regulatory litigation or otherwise)
- \* Christina Crable for compliance matters
- \* Bill Evans for any other legal matters

Thank you, Joe

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## Berger, Edmund

---

**From:** Clark, Joseph <Joseph.Clark@directenergy.com>  
**Sent:** Monday, July 28, 2014 7:40 AM  
**To:** Berger, Edmund  
**Cc:** Ringenbach, Teresa; 'ghull@eckertseamans.com'; 'DClearfield@eckertseamans.com'  
**Subject:** Re: Duke ESP and Motion for Status/procedural conference

Tad,  
Wanted to follow-up. We're going to pass on joining the motion but do appreciate the offer.  
Joe

----- Original Message -----

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Friday, July 25, 2014 05:10 PM Eastern Standard Time  
**To:** Clark, Joseph  
**Cc:** Ringenbach, Teresa; 'ghull@eckertseamans.com' <ghull@eckertseamans.com>; 'DClearfield@eckertseamans.com' <DClearfield@eckertseamans.com>  
**Subject:** RE: Duke ESP and Motion for Status/procedural conference

Joe - We will circulate a draft Motion first thing Monday a.m. Let me know then. Thanks, Tad.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

-----Original Message-----

**From:** Clark, Joseph [mailto:Joseph.Clark@directenergy.com]  
**Sent:** Friday, July 25, 2014 5:10 PM  
**To:** Berger, Edmund  
**Cc:** Ringenbach, Teresa; 'ghull@eckertseamans.com'; 'DClearfield@eckertseamans.com'  
**Subject:** Duke ESP and Motion for Status/procedural conference

Tad,

Thanks for the voicemail and apologies for the delay in getting back to you. I'm on vacation this week. I've got to check in with Teresa on whether we would be interested in joining. If you have already filed let me know; otherwise I can ask Teresa first thing next week and get back to you on whether we are interested in joining.

Thanks, Joe

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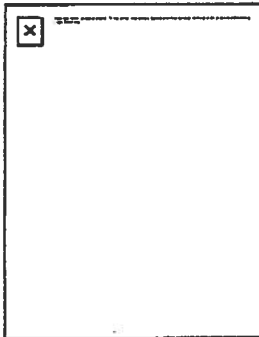
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## Berger, Edmund

---

**From:** Sonderman, Andrew <ASonderman@keglerbrown.com>  
**Sent:** Monday, July 28, 2014 10:20 AM  
**To:** Berger, Edmund  
**Subject:** Case no. 14-841-EL-SSO et al/Motion for scheduling of procedural conference

Good morning Tad. Following up on our telephone conversation on Friday, I look forward to receiving the draft motion. While I understand you are not accepting edits from non-signatories to the joint defense agreement, I've discussed with my client and we are hopeful that we can join the motion as drafted. Thanks.



**Andrew J. Sonderman**  
Director

65 East State Street Suite 1800 Columbus, OH 43215  
direct (614) 462-5496 mobile (614) 519-4858 [asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com)  
[my bio](#) [vCard](#) [email](#)

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## Berger, Edmund

---

**From:** dhart@douglasshart.com  
**Sent:** Monday, July 28, 2014 1:06 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

As I told you last week, I do not wish to join in the motion, but do not oppose it and do not oppose an expedited ruling.

Douglas E. Hart  
Attorney at Law  
441 Vine Street  
Suite 4192  
Cincinnati, Ohio 45202  
(513) 621-6709  
(513) 621-6981 fax  
(513) 703-9036 wireless  
dhart@douglasshart.com

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Monday, July 28, 2014 12:52 PM  
**To:** rchamberlain@okenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; Rebecca L. Hussey; tdougherty@theOEC.org; asonderman@keglerbrown.com; dboehm@BKLawfirm.com; Jody Kyler Cohn; Howard Petricoff; cmooney@ohiopartners.org; tobrien@bricker.com; joliker@igsenergy.com; Mark Hayden; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasshart.com; jvickers@elpc.org; callwein@wamenergylaw.com  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively by 3:30pm today if you are joining or not, as we are planning to file today. I apologize for the short turnaround. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292





**Berger, Edmund**

---

**From:** Jody Kyler Cohn <jkylercohn@bkllawfirm.com>  
**Sent:** Monday, July 28, 2014 1:11 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad,

Will you add Mike Kurtz to your e-mail list for this case? His e-mail is [mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com).

Thanks,

Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Phone: 513.421.2255  
[Jkylercohn@bkllawfirm.com](mailto:Jkylercohn@bkllawfirm.com)

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Monday, July 28, 2014 12:52 PM  
**To:** [rchamberlain@okenergylaw.com](mailto:rchamberlain@okenergylaw.com); Frank Darr; [mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com); [Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com); Rebecca L. Hussey; [tdougherty@theOEC.org](mailto:tdougherty@theOEC.org); [asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com); David Boehm; Jody Kyler Cohn; Howard Petricoff; [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); [tobrien@bricker.com](mailto:tobrien@bricker.com); [joliker@igsenergy.com](mailto:joliker@igsenergy.com); Mark Hayden; [jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com); [scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com); [schmidt@sppgrp.com](mailto:schmidt@sppgrp.com); Williams, Samantha; [gpoulos@enernoc.com](mailto:gpoulos@enernoc.com); [dhart@douglasehart.com](mailto:dhart@douglasehart.com); [jvickers@elpc.org](mailto:jvickers@elpc.org); [callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise **definitively by 3:30pm today** if you are joining or not, as we are planning to file today. I apologize for the short turn-around. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

## Berger, Edmund

---

**From:** Jody Kyler Cohn <jkylercohn@bklawfirm.com>  
**Sent:** Monday, July 28, 2014 1:14 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

No problem!

Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Phone: 513.421.2255  
Jkylercohn@bklawfirm.com

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Monday, July 28, 2014 1:14 PM  
**To:** Jody Kyler Cohn  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Jody -- Sure. I will make sure he's included on my email list. Sorry about that. Tad.

**From:** Jody Kyler Cohn [mailto:jkylercohn@bklawfirm.com]  
**Sent:** Monday, July 28, 2014 1:11 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad,

Will you add Mike Kurtz to your e-mail list for this case? His e-mail is [mkurtz@bklawfirm.com](mailto:mkurtz@bklawfirm.com).

Thanks,

Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Phone: 513.421.2255  
[Jkylercohn@bklawfirm.com](mailto:Jkylercohn@bklawfirm.com)

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Monday, July 28, 2014 12:52 PM  
**To:** [rchamberlain@okenergylaw.com](mailto:rchamberlain@okenergylaw.com); Frank Darr; [mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com); [Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com); Rebecca L. Hussey; [tdougherty@theOEC.org](mailto:tdougherty@theOEC.org); [asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com); David Boehm; Jody Kyler Cohn; Howard Petricoff; [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); [tobrien@bricker.com](mailto:tobrien@bricker.com); [joliker@lgsenergy.com](mailto:joliker@lgsenergy.com); Mark Hayden; [jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com); [scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com); [schmidt@sppgrp.com](mailto:schmidt@sppgrp.com); Williams, Samantha; [gpoulos@enernoc.com](mailto:gpoulos@enernoc.com); [dhart@douglasshart.com](mailto:dhart@douglasshart.com); [jvickers@elpc.org](mailto:jvickers@elpc.org); [callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively **by 3:30pm today** if you are joining or not, as we are planning to file today. I apologize for the short turn-around. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

## Berger, Edmund

---

**From:** Williams, Samantha <swilliams@nrdc.org>  
**Sent:** Monday, July 28, 2014 1:32 PM  
**To:** Berger, Edmund  
**Subject:** Re: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad - thanks for sending over. Please include NRDC on the signatory list. Much appreciated!

Sent from my rotary phone

On Jul 28, 2014, at 11:51 AM, "Berger, Edmund"  
<Edmund.Berger@occ.ohio.gov<mailto:Edmund.Berger@occ.ohio.gov>> wrote:

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively by 3:30pm today if you are joining or not, as we are planning to file today. I apologize for the short turn-around. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

<Motion for Prehearing Conference - Duke - 14-841-EL-SSOL et al - Draft - 7.28.14 c.doc>

## Berger, Edmund

---

**From:** Casto, Scott J <scasto@firstenergycorp.com>  
**Sent:** Monday, July 28, 2014 2:09 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Hi Tad

Thank you for passing along the draft. FES won't join the filing, but obviously will not oppose it-no need to characterize that in the filing.

Scott

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Monday, July 28, 2014 12:52 PM  
**To:** rchamberlain@okenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; Rebecca L. Hussey; tdougherty@theOEC.org; asonderman@keglerbrown.com; dboehm@BKLlawfirm.com; Jody Kyler Cohn; Howard Petricoff; cmooney@ohiopartners.org; tobrien@bricker.com; joliker@igsenergy.com; Hayden, Mark A.; McDermott, Jacob; Casto, Scott J; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasehart.com; jvickers@elpc.org; callwein@wamenergylaw.com  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively **by 3:30pm today** if you are joining or not, as we are planning to file today. I apologize for the short turnaround. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
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**Berger, Edmund**

---

**From:** Colleen Mooney <cmooney@ohiopartners.org>  
**Sent:** Monday, July 28, 2014 2:16 PM  
**To:** Berger, Edmund; rchamberlain@okenergylaw.com; 'Frank Darr'; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; 'Rebecca L. Hussey'; tdougherty@theOEC.org; asonderman@keglerbrown.com; dboehm@BKLawfirm.com; 'Jody Kyler Cohn'; 'Howard Petricoff'; tobrien@bricker.com; joliker@igsenergy.com; 'Mark Hayden'; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; 'Williams, Samantha'; gpoulos@enernoc.com; dhart@douglasshart.com; jvickers@elpc.org; callwein@wamenergylaw.com  
**Cc:** Grady, Maureen; Bingham, Debra; drinebolt@ohiopartners.org  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

OPAE will join the motion. You are authorized to sign my name when you file today. Thanks for drafting.

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Monday, July 28, 2014 12:52 PM  
**To:** rchamberlain@okenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; Rebecca L. Hussey; tdougherty@theOEC.org; asonderman@keglerbrown.com; dboehm@BKLawfirm.com; Jody Kyler Cohn; Howard Petricoff; cmooney@ohiopartners.org; tobrien@bricker.com; joliker@igsenergy.com; Mark Hayden; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasshart.com; jvickers@elpc.org; callwein@wamenergylaw.com  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively **by 3:30pm today** if you are joining or not, as we are planning to file today. I apologize for the short turnaround. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292



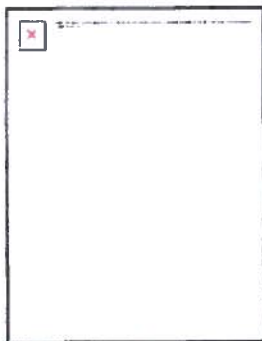


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## Berger, Edmund

**From:** Sonderman, Andrew <ASonderman@keglerbrown.com>  
**Sent:** Monday, July 28, 2014 2:28 PM  
**To:** Berger, Edmund; rchamberlain@okenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; Rebecca L. Hussey; tdougherty@theOEC.org; dboehm@BKLawfirm.com; Jody Kyler Cohn; Howard Petricoff; cmooney@ohiopartners.org; tobrien@bricker.com; joliker@igsenergy.com; Mark Hayden; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasehart.com; jvickers@elpc.org; callwein@wamenergylaw.com  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad, confirming our telephone conversation, you are authorized to sign my name to the Joint Motion to be filed this afternoon. Thank you.



**Andrew J. Sonderman**  
Director

65 East State Street Suite 1800 Columbus, OH 43215  
direct (614) 462-5496 mobile (614) 519-4858 asonderman@keglerbrown.com

[my bio](#) [vCard](#) [email](#)

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**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Monday, July 28, 2014 12:52 PM  
**To:** rchamberlain@okenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; Rebecca L. Hussey; tdougherty@theOEC.org; Sonderman, Andrew; dboehm@BKLawfirm.com; Jody Kyler Cohn; Howard Petricoff; cmooney@ohiopartners.org; tobrien@bricker.com; joliker@igsenergy.com; Mark Hayden; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasehart.com; jvickers@elpc.org; callwein@wamenergylaw.com  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively **by 3:30pm today** if you are joining or not, as we are planning to file today. I apologize for the short turnaround. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

**Berger, Edmund**

---

**From:** C Allwein <callwein@wamenergylaw.com>  
**Sent:** Monday, July 28, 2014 2:44 PM  
**To:** Berger, Edmund  
**Cc:** rchamberlain@okenenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; Rebecca L. Hussey; tdougherty@theOEC.org; asonderman@keglerbrown.com; dboehm@BKLawfirm.com; Jody Kyler Cohn; Howard Petricoff; cmooney@ohiopartners.org; tobrien@bricker.com; joliker@igsenergy.com; Mark Hayden; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasehart.com; jvickers@elpc.org; Grady, Maureen; Bingham, Debra; Todd M  
**Subject:** Re: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Good afternoon,

Please add Sierra Club as a signatory to this Motion.

Thank you for your work on this.

Chris

On Mon, Jul 28, 2014 at 12:51 PM, Berger, Edmund <[Edmund.Berger@occ.ohio.gov](mailto:Edmund.Berger@occ.ohio.gov)> wrote:

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively **by 3:30pm today** if you are joining or not, as we are planning to file today. I apologize for the short turn-around. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street

Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

--

Christopher J. Allwein  
Attorney & Counselor at Law  
Office: (614) 429-3092  
Cell #: (614) 352-5959

Williams Allwein & Moser, LLC  
1500 West Third Ave, Suite 330  
Columbus, Ohio 43212

[callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)

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**Berger, Edmund**

---

**From:** Trent Dougherty <TDougherty@theoec.org>  
**Sent:** Monday, July 28, 2014 2:47 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Thanks, Tad. Ohio Environmental Council will join the motion, and please sign for me on OEC's behalf.

**Trent A. Dougherty, Esq.**  
**Managing Director of Legal Affairs**  
Ohio Environmental Council  
1207 Grandview Ave. Suite 201  
Columbus, OH 43212  
614.487.7506 (OEC)  
614.487.5823 (DIRECT)  
[www.theOEC.org](http://www.theOEC.org)

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**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively **by 3:30pm today** if you are joining or not, as we are planning to file today. I apologize for the short turnaround. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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**Subject:** Re: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

You can add ELPC as well. Thanks.

Justin Vickers  
Staff Attorney  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, IL 60601  
312.795.3736

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"mpritchard@mwncmh.com<mailto:mpritchard@mwncmh.com>"  
<mpritchard@mwncmh.com<mailto:mpritchard@mwncmh.com>>,  
"Bojko@carpenterlipps.com<mailto:Bojko@carpenterlipps.com>"  
<Bojko@carpenterlipps.com<mailto:Bojko@carpenterlipps.com>>, "Rebecca L. Hussey"  
<hussey@carpenterlipps.com<mailto:hussey@carpenterlipps.com>>, Trent Dougherty  
<TDougherty@theoec.org<mailto:TDougherty@theoec.org>>,  
"asonderman@keglerbrown.com<mailto:asonderman@keglerbrown.com>"  
<asonderman@keglerbrown.com<mailto:asonderman@keglerbrown.com>>,  
"dboehm@BKLawfirm.com<mailto:dboehm@BKLawfirm.com>"  
<dboehm@BKLawfirm.com<mailto:dboehm@BKLawfirm.com>>, Jody Kyler Cohn  
<jkylercohn@bkllawfirm.com<mailto:jkylercohn@bkllawfirm.com>>,  
"mhpeticoff@vorys.com<mailto:mhpeticoff@vorys.com>"  
<mhpeticoff@vorys.com<mailto:mhpeticoff@vorys.com>>,  
"cmooney@ohiopartners.org<mailto:cmooney@ohiopartners.org>"  
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"tobrien@bricker.com<mailto:tobrien@bricker.com>" <tobrien@bricker.com<mailto:tobrien@bricker.com>>,  
"joliker@igsenergy.com<mailto:joliker@igsenergy.com>" <joliker@igsenergy.com<mailto:joliker@igsenergy.com>>,  
Mark Hayden <haydenm@firstenergycorp.com<mailto:haydenm@firstenergycorp.com>>,  
"jmcdermott@firstenergycorp.com<mailto:jmcdermott@firstenergycorp.com>"

<jmcdermott@firstenergycorp.com<mailto:jmcdermott@firstenergycorp.com>>,  
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<jvickers@elpc.org<mailto:jvickers@elpc.org>>, "Grady, Maureen"  
<Maureen.Grady@occ.ohio.gov<mailto:Maureen.Grady@occ.ohio.gov>>, "Bingham, Debra"  
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Thank you for your work on this.

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Christopher J. Allwein  
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## Berger, Edmund

---

**From:** Petricoff, M. Howard <MHPetricoff@vorys.com>  
**Sent:** Monday, July 28, 2014 2:52 PM  
**To:** Justin Vickers; C Allwein; Berger, Edmund  
**Cc:** rchamberlain@okenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; Rebecca L. Hussey; tdougherty@theOEC.org; asonderman@keglerbrown.com; dboehm@BKLlawfirm.com; Jody Kyler Cohn; cmoooney@ohiopartners.org; tobrien@bricker.com; joliker@igsenergy.com; Mark Hayden; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasshart.com; Grady, Maureen; Bingham, Debra; Todd M  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad,

This will confirm our earlier conversation that you may sign my name for RESA and Constellation \ Exelon to the motion for a pre trial conference.

The Universities take no position.

Howard

M. Howard Petricoff  
Partner

Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.5414  
Fax: 614.719-4904  
Email: mhpetricoff@vorys.com  
www.vorys.com

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"mpritchard@mwncmh.com<mailto:mpritchard@mwncmh.com>"  
<mpritchard@mwncmh.com<mailto:mpritchard@mwncmh.com>>,  
"Bojko@carpenterlipps.com<mailto:Bojko@carpenterlipps.com>"  
<Bojko@carpenterlipps.com<mailto:Bojko@carpenterlipps.com>>, "Rebecca L. Hussey"  
<hussey@carpenterlipps.com<mailto:hussey@carpenterlipps.com>>, Trent Dougherty  
<TDougherty@theoec.org<mailto:TDougherty@theoec.org>>,  
"asonderman@keglerbrown.com<mailto:asonderman@keglerbrown.com>"  
<asonderman@keglerbrown.com<mailto:asonderman@keglerbrown.com>>,  
"dboehm@BKLawfirm.com<mailto:dboehm@BKLawfirm.com>"  
<dboehm@BKLawfirm.com<mailto:dboehm@BKLawfirm.com>>, Jody Kyler Cohn  
<jkylercohn@bkllawfirm.com<mailto:jkylercohn@bkllawfirm.com>>,  
"mhpetricoff@vorys.com<mailto:mhpetricoff@vorys.com>"  
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"jmcdermott@firstenergycorp.com<mailto:jmcdermott@firstenergycorp.com>"  
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<scasto@firstenergycorp.com<mailto:scasto@firstenergycorp.com>>,  
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"Williams, Samantha" <swilliams@nrdc.org<mailto:swilliams@nrdc.org>>, Greg Poulos  
<gpoulos@enernoc.com<mailto:gpoulos@enernoc.com>>,  
"dhart@douglasehart.com<mailto:dhart@douglasehart.com>"  
<dhart@douglasehart.com<mailto:dhart@douglasehart.com>>, Justin Vickers

<jvickers@elpc.org<mailto:jvickers@elpc.org>>, "Grady, Maureen"  
<Maureen.Grady@occ.ohio.gov<mailto:Maureen.Grady@occ.ohio.gov>>, "Bingham, Debra"  
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Subject: Re: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

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Christopher J. Allwein  
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Office: (614) 429-3092  
Cell #: (614) 352-5959

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callwein@wamenergylaw.com<mailto:callwein@wamenergylaw.com>

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From the law offices of Vorys, Sater, Seymour and Pease LLP.

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## Berger, Edmund

---

**From:** Joe Olikier <joliker@igsenergy.com>  
**Sent:** Monday, July 28, 2014 2:57 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad,

Can I have until 4:00? I am still trying to vet internally.

**From:** Berger, Edmund [mailto:Edmund.Berger@occ.ohio.gov]  
**Sent:** Monday, July 28, 2014 12:52 PM  
**To:** rchamberlain@okenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; Rebecca L. Hussey; tdougherty@theOEC.org; asonderman@keglerbrown.com; dboehm@BKLawfirm.com; Jody Kyler Cohn; Howard Petricoff; cmooney@ohiopartners.org; tobrien@bricker.com; Joe Olikier; Mark Hayden; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasshart.com; jvickers@elpc.org; callwein@wamenergylaw.com  
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[admin@igsenergy.com](mailto:admin@igsenergy.com)

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**Sent:** Monday, July 28, 2014 2:58 PM  
**To:** Berger, Edmund  
**Subject:** Re: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Thanks, Tad, apologies that I did not ask how your summer was going.

I hope you get an extension that allows for some vacation!

Chris

On Mon, Jul 28, 2014 at 2:49 PM, Berger, Edmund <[Edmund.Berger@occ.ohio.gov](mailto:Edmund.Berger@occ.ohio.gov)> wrote:

Thanks Chris. I'll have to hear more about your family camping outing some time. Tad.

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**Sent:** Monday, July 28, 2014 2:44 PM  
**To:** Berger, Edmund  
**Cc:** [rchamberlain@okenergylaw.com](mailto:rchamberlain@okenergylaw.com); Frank Darr; [mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com); [Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com); Rebecca L. Hussey; [tdougherty@theOEC.org](mailto:tdougherty@theOEC.org); [asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com); [dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com); Jody Kyler Cohn; Howard Petricoff; [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); [tobrien@bricker.com](mailto:tobrien@bricker.com); [joliker@igsenergy.com](mailto:joliker@igsenergy.com); Mark Hayden; [jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com); [scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com); [schmidt@sppgrp.com](mailto:schmidt@sppgrp.com); Williams, Samantha; [gpoulos@enernoc.com](mailto:gpoulos@enernoc.com); [dhart@douglasshart.com](mailto:dhart@douglasshart.com); [jvickers@elpc.org](mailto:jvickers@elpc.org); Grady, Maureen; Bingham, Debra; Todd M  
**Subject:** Re: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference



Good afternoon,

Please add Sierra Club as a signatory to this Motion.

Thank you for your work on this.

Chris

On Mon, Jul 28, 2014 at 12:51 PM, Berger, Edmund <[Edmund.Berger@occ.ohio.gov](mailto:Edmund.Berger@occ.ohio.gov)> wrote:

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively **by 3:30pm today** if you are joining or not, as we are planning to file today. I apologize for the short turn-around. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

--

Christopher J. Allwein  
Attorney & Counselor at Law  
Office: (614) 429-3092  
Cell #: (614) 352-5959

Williams Allwein & Moser, LLC  
1500 West Third Ave, Suite 330  
Columbus, Ohio 43212

[callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)

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--

Christopher J. Allwein  
Attorney & Counselor at Law  
Office: (614) 429-3092  
Cell #: (614) 352-5959

Williams Allwein & Moser, LLC  
1500 West Third Ave, Suite 330  
Columbus, Ohio 43212

[callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)

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## Berger, Edmund

---

**From:** Frank Darr <fdarr@mwncmh.com>  
**Sent:** Monday, July 28, 2014 3:02 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

You have authorization to sign for IEU-Ohio. Thanks.

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Monday, July 28, 2014 12:52 PM  
**To:** [rchamberlain@okenergylaw.com](mailto:rchamberlain@okenergylaw.com); Frank Darr; Matthew Pritchard; [Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com); Rebecca L. Hussey; [tdougherty@theOEC.org](mailto:tdougherty@theOEC.org); [asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com); [dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com); Jody Kyler Cohn; Howard Petricoff; [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); [tobrien@bricker.com](mailto:tobrien@bricker.com); [joliker@igsenergy.com](mailto:joliker@igsenergy.com); Mark Hayden; [jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com); [scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com); [schmidt@sppgrp.com](mailto:schmidt@sppgrp.com); Williams, Samantha; [gpoulos@enernoc.com](mailto:gpoulos@enernoc.com); [dhart@douglasshart.com](mailto:dhart@douglasshart.com); [jvickers@elpc.org](mailto:jvickers@elpc.org); [callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

\*\* This message has been scanned by a BARRACUDA SPAM & VIRUS FIREWALL and verified virus free  
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## Berger, Edmund

---

**From:** O'Brien, Thomas <TOBrien@Bricker.com>  
**Sent:** Monday, July 28, 2014 3:15 PM  
**To:** Berger, Edmund; rchamberlain@okenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Bojko@carpenterlipps.com; Rebecca L. Hussey; tdougherty@theOEC.org; asonderman@keglerbrown.com; dboehm@BKLlawfirm.com; Jody Kyler Cohn; Howard Petricoff; cmooney@ohiopartners.org; joliker@igsenergy.com; Mark Hayden; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasehart.com; jvickers@elpc.org; callwein@wamenergylaw.com  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad, you may sign my name on behalf of the City of Cincinnati – thanks to all who lent a hand in the drafting.

Tom



**Thomas J. O'Brien**  
Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215  
Direct Dial 614.227.2335 | [tobrien@bricker.com](mailto:tobrien@bricker.com) | v-card | [www.bricker.com](http://www.bricker.com)

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**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

## Berger, Edmund

---

**From:** Rebecca L. Hussey <hussey@CarpenterLipps.com>  
**Sent:** Monday, July 28, 2014 3:18 PM  
**To:** 'O'Brien, Thomas'; Berger, Edmund; rchamberlain@okenergylaw.com; Frank Darr; mpritchard@mwncmh.com; Kimberly W. Bojko; tdougherty@theOEC.org; asonderman@keglerbrown.com; dboehm@BKLawfirm.com; Jody Kyler Cohn; Howard Petricoff; cmooney@ohiopartners.org; joliker@igsenergy.com; Mark Hayden; jmcdermott@firstenergycorp.com; scasto@firstenergycorp.com; schmidt@sppgrp.com; Williams, Samantha; gpoulos@enernoc.com; dhart@douglasehart.com; jvickers@elpc.org; callwein@wamenergylaw.com  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad, please sign my name on behalf of Kroger. Thank you for taking the lead on this.

**Rebecca L. Hussey**  
**CARPENTER LIPPS & LELAND LLP**  
Attorneys at Law  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4110  
Fax: (614) 365-9145  
Email: [hussey@carpenterlipps.com](mailto:hussey@carpenterlipps.com)

**From:** O'Brien, Thomas [<mailto:TOBrien@Bricker.com>]  
**Sent:** Monday, July 28, 2014 3:15 PM  
**To:** Berger, Edmund; [rchamberlain@okenergylaw.com](mailto:rchamberlain@okenergylaw.com); Frank Darr; [mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com); Kimberly W. Bojko; Rebecca L. Hussey; [tdougherty@theOEC.org](mailto:tdougherty@theOEC.org); [asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com); [dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com); Jody Kyler Cohn; Howard Petricoff; [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); [joliker@igsenergy.com](mailto:joliker@igsenergy.com); Mark Hayden; [jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com); [scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com); [schmidt@sppgrp.com](mailto:schmidt@sppgrp.com); Williams, Samantha; [gpoulos@enernoc.com](mailto:gpoulos@enernoc.com); [dhart@douglasehart.com](mailto:dhart@douglasehart.com); [jvickers@elpc.org](mailto:jvickers@elpc.org); [callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad, you may sign my name on behalf of the City of Cincinnati – thanks to all who lent a hand in the drafting.

Tom



**Thomas J. O'Brien**  
Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215  
Direct Dial 614.227.2335 | [tobrien@bricker.com](mailto:tobrien@bricker.com) | v-card | [www.bricker.com](http://www.bricker.com)

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**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Counsel: OCC is planning to file the attached Motion for Prehearing Conference today. Please advise if you are interested in joining in, or if you would take a non-opposition status. I have included those parties that I had received an indication that they may join in. If I haven't listed your client, I will need to know if you are joining. Please advise definitively **by 3:30pm today** if you are joining or not, as we are planning to file today. I apologize for the short turnaround. If you have any questions or concerns, please feel free to give me a call. Thank you. Tad Berger.

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292



## Berger, Edmund

---

**From:** Jody Kyler Cohn <jkylercohn@bkllawfirm.com>  
**Sent:** Monday, July 28, 2014 3:25 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad,

OEG will not oppose the motion, but will not be signing on.

Thanks,

Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Phone: 513.421.2255  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Monday, July 28, 2014 1:14 PM  
**To:** Jody Kyler Cohn  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Jody -- Sure. I will make sure he's included on my email list. Sorry about that. Tad.

**From:** Jody Kyler Cohn [<mailto:jkylercohn@bkllawfirm.com>]  
**Sent:** Monday, July 28, 2014 1:11 PM  
**To:** Berger, Edmund  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad,

Will you add Mike Kurtz to your e-mail list for this case? His e-mail is [mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com).

Thanks,

Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Phone: 513.421.2255  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)

**From:** Berger, Edmund [<mailto:Edmund.Berger@occ.ohio.gov>]  
**Sent:** Monday, July 28, 2014 12:52 PM  
**To:** [rchamberlain@okenergy.com](mailto:rchamberlain@okenergy.com); Frank Darr; [mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com); [Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com); Rebecca L. Hussey; [tdougherty@theOEC.org](mailto:tdougherty@theOEC.org); [asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com); David Boehm; Jody Kyler Cohn; Howard Petricoff; [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org); [tobrien@bricker.com](mailto:tobrien@bricker.com); [joliker@igsenergy.com](mailto:joliker@igsenergy.com); Mark Hayden;

[jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com); [scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com); [schmidt@sppgrp.com](mailto:schmidt@sppgrp.com); Williams, Samantha;  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com); [dhart@douglasshart.com](mailto:dhart@douglasshart.com); [jvickers@elnc.org](mailto:jvickers@elnc.org); [callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)

**Cc:** Grady, Maureen; Bingham, Debra

**Subject:** Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

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Edmund "Tad" Berger  
Assistant Consumers' Counsel  
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Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

## Berger, Edmund

---

**From:** Joe Olikier <joliker@igsenergy.com>  
**Sent:** Monday, July 28, 2014 4:10 PM  
**To:** Berger, Edmund  
**Cc:** Grady, Maureen; Bingham, Debra  
**Subject:** RE: Duke ESP 3 - 14-0841-EL-SSO - Motion for Prehearing Conference

Tad,

You may sign on my behalf.

---

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10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-1292

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Summary: Application Interlocutory Appeal and Application for Review by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Grady, Maureen