

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 14-1297-EL-SSO
Illuminating Company and The Toledo)
Edison Company for Authority to Provide)
a Standard Service Offer Pursuant to R.C.)
§ 4928.143 in the Form of an Electric)
Security Plan.

**JOINT MOTION OF THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL AND
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL TO COMPEL DISCOVERY
FROM FIRST ENERGY AND MEMORANDUM IN SUPPORT
AND
REQUEST FOR AN EXPEDITED RULING**

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In their fourth electric security plan (“ESP”) proceeding, Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy”) seek to increase electric rates to standard offer customers in their services territories. A troubling part of FirstEnergy’s electric security plan is that FirstEnergy proposes that its monopoly customers guarantee and pay a profit for the deregulated power plants held by FirstEnergy’s competitive affiliate, FirstEnergy Solutions. This proposal comes in the form a Retail Rate Stability (“RRS”) rider.

The Northeast Ohio Public Energy Counsel (“NOPEC”) and the Office of the Ohio Consumers’ Counsel (“OCC”) (collectively, “Joint Movants”), each have made numerous attempts, over a period of two months, to obtain an acceptable protective agreement to enable them to obtain full and complete responses to discovery related to the ESP application and, particularly, Rider RRS. However, despite these efforts, FirstEnergy has withheld certain

discovery¹ because it has been unwilling to agree to the terms of a reasonable protective agreement recently reviewed and sanctioned by the Public Utilities Commission of Ohio (“PUCO” or “Commission”).²

Under these circumstances, NOPEC, on behalf of the nearly 500,000 customers in the FirstEnergy services territories that participate in its governmental aggregation program, and OCC, on behalf of the residential utility consumers of FirstEnergy, move the Commission, the legal director, the deputy legal director, or an attorney examiner, pursuant to OAC 4901-1-12 and 4901-1-23, for an order compelling FirstEnergy to enter into the protective agreement attached hereto as Exhibit 1 (“Duke ESP Agreement”). Joint Movants’ proposed protective agreement contains the same terms that the Commission recently approved in the Duke ESP Proceeding as reasonable and consistent with the Commission’s past cases and precedent.³

As explained in the attached Memorandum in Support, NOPEC and OCC have exhausted all other reasonable means of resolving differences with FirstEnergy on this matter. Each has individually and on separate occasions presented FirstEnergy with the Duke ESP Agreement.⁴ However, FirstEnergy has been unwilling to accept it or agree to remove the objectionable provisions in its proposed protective agreement, which would prevent Joint Movants from fully participating in this proceeding.

Under these circumstances, Joint Movants file this Motion to Compel, the grounds for which are detailed in the attached Memorandum in Support. Joint Movants request the Commission to grant their Motion to Compel and require FirstEnergy to execute the Duke ESP

¹ FirstEnergy withheld responses to NOPEC’s Request for Production of Documents, First Set, RPD-001 and RPD-002. See Exhibit 2, Att. A. The discovery withheld from OCC includes the following: OCC Interrogatories 1-12, 2-37, 2-41, 3-65; and OCC Requests for Production of Documents 2-18, 2-22 and 3-25. See Exhibit 4.

² See *In Re Duke Energy Ohio*, Case No. 14-841-EL-SSO (Entry, August 27, 2014) (“*Duke ESP Proceeding*”).

³ *Id.*, at 5-6.

⁴ See, Ex. 2, Att. B; Ex. 3, Att. B.

Agreement attached to this pleading, enabling Joint Movants to have access to relevant information requested in discovery.

Additionally, Joint Movants request an expedited ruling on this Motion pursuant to Ohio Adm. Code 4901-1-12(C).⁵ The reasons the PUCO should grant Joint Movants' Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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⁵ Joint Movants cannot certify that no party objects to an expedited ruling.

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Pursuant to R.C. § 4928.143 in the Form of an)	
Electric Security Plan.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

For more than a decade Ohio’s public policy has favored market-based pricing for electric generation service. To that end, within the past decade, Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy”) spun off their generating plants into a separate, competitive retail affiliate, FirstEnergy Solutions (“FES”). FES independently markets and sells the plants’ power. Through the electric security plan proposed in this proceeding (“ESP IV”), FirstEnergy proposes to radically depart from this market structure. FirstEnergy is asking the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to approve a purchased power agreement (“PPA”) between FirstEnergy and FES, under which its monopoly customers guarantee and pay a profit for the deregulated power plants held by FES.

Under the terms of the PPA, FirstEnergy would purchase the power from three FES plants, representing approximately 3500MW of generation: Davis-Besse Nuclear Power Station, W.H. Sammis Plant, and FES’s entitlement to a portion of the output of the Ohio Valley Electric Corporation (“OVEC”). The cost of FES’s power to FirstEnergy would be based upon traditional, regulatory cost-of-service principles that would guarantee FES a return of, and on, its investment in

the plants. FE would sell the power at market prices into the PJM Interconnection LLC (“PJM”), with the promise that if the cost of power from these generation units is below market, FirstEnergy’s distribution customers would receive a credit for the difference through the proposed Retail Rate Stability Rider (“Rider RRS”). On the other hand, if the cost is above market, distribution customers would pay the difference as a surcharge through Rider RRS, regardless of who supplies their generation. *See, generally*, Pre-filed Direct Testimony of FirstEnergy Witness Steven H. Strah.

The Northeast Ohio Public Energy Council (“NOPEC”) and the Office of the Ohio Consumers’ Counsel (“OCC”) (collectively, “Joint Movants”), each represents customers who will be required to guarantee FES’s profitability on the three generating facilities at issue if FirstEnergy’s ESP IV application is approved. NOPEC, the largest governmental retail energy aggregator in the State of Ohio, provides electric aggregation service to nearly 500,000 retail residential and small commercial electric customers located in FirstEnergy’s service territory. OCC represents approximately 1.9 million FirstEnergy residential retail electric customers. Accordingly, Joint Movants have an overriding interest in determining the nature and reasonableness of the costs the customers they represent will be required to pay to support FES’s uneconomic generating facilities – costs that would have been publicly available under the traditional, regulatory cost-of-service principles⁶ FirstEnergy seeks to emulate in this ESP IV.

Ohio Revised Code Section (“R.C.”) 4903.082 provides that “all parties and intervenors shall be granted ample rights of discovery.” As parties to this proceeding,⁷ Joint Movants are entitled to timely and complete discovery of the terms of the PPA, the costs

⁶ *See* R.C. Chapter 4909.

⁷ *See* Ohio Adm. Code 4901-1-16(H). NOPEC filed its motion to intervene in this proceeding on September 30, 2014 and OCC filed a motion to intervene on August 14, 2014.

customers will pay under the RRS, and other costs and proposals contained in the ESP IV application. To the extent, the information sought is confidential, Joint Movants still are entitled to discover it under the terms of a reasonable protective agreement. However, FirstEnergy unreasonably conditions release of the requested information on Joint Movants' execution of FirstEnergy's proposed protective agreement, which will prevent Joint Movants from meaningful participation in this proceeding. By filing this Motion to Compel, Joint Movants seek an order (1) adopting the protective agreement that the Commission reviewed and approved as reasonable in the recent Duke ESP Proceeding, and (2) compelling FirstEnergy to produce (subject to Joint Movants' proposed protective agreement) the alleged confidential information currently being withheld.

II. FACTS

Joint Movants detail in the attached affidavits, consistent with OAC Rule 4901-1-23(C)(3), the exhaustive efforts they have undertaken to obtain the requested discovery responses from FirstEnergy.⁸ However, FirstEnergy is steadfast in refusing to release requested information that it believes to be "Competitively Sensitive Confidential," without Joint Movants' executing FirstEnergy's protective agreement, which contains onerous restrictions on the information's accessibility and use.

FirstEnergy proposes a 2-tiered protective agreement for "Confidential" and "Competitively Sensitive Confidential" information, the latter of which it defines as "highly proprietary or competitively-sensitive information that, if disclosed to suppliers, competitors, or customers, may damage the producing party's competitive position"⁹ Under FirstEnergy's

⁸ See Exhibit 2, Affidavit of Dane Stinson, counsel for NOPEC; Exhibit 3, Affidavit of Larry S. Sauer, counsel for OCC.

⁹ See, Exhibit 2, at Att. C, paragraph 2(B).

proposed protective agreement, only a “Fully Authorized Representative” can access information FirstEnergy deems to be “Competitively Sensitive Confidential.”¹⁰ A “Fully Authorized Representative” is limited to the following persons under paragraph 4(A) - (C) of the proposed agreement:

- A. Receiving Party’s outside legal counsel and in-house legal counsel who are actively engaged in the conduct of this proceeding;
- B. Paralegals and other employees who are associated for purposes of this case with the attorneys described in [Paragraph A, above]; and
- C. An outside expert or employee of an outside expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding and *who is not involved in (or providing advice regarding) decision-making by or on behalf of any entity concerning any aspect of competitive retail electric service or of competitive wholesale electric procurements.*¹¹

FirstEnergy unilaterally determines what information falls into which tier of protection, and there is no process within FirstEnergy’s proposed protective agreement to challenge the categorization of information. FirstEnergy can then use this categorization to thwart the ability for Joint Movants’ consultants to see the protected information. The restrictions on what persons may qualify as a “Fully Authorized Representative” are overly restrictive and would impede the Joint Movants’ ability to participate effectively and protect their interests in this proceeding. Furthermore, FirstEnergy is interfering with Joint Movants’ ability to retain consultants for work on this case because the proposed protective agreement could unreasonably restrict their ability to review information that FirstEnergy deems competitively sensitive.

On the other hand, the Duke ESP Agreement proposed by Joint Movants makes no distinction between alleged Confidential Information and Competitively Sensitive Confidential

¹⁰ *Id.*, at paragraph 4.

¹¹ *Id.* (emphasis added).

Information, nor between Limited Authorized Parties and Fully Authorized Parties. Rather, the Duke ESP Agreement reasonably and in a straightforward manner is designed to protect all of a utility's alleged confidential information. Specifically, the superior Duke ESP Agreement permits the parties, their counsel and all consultants (all "Authorized Representatives") access to all alleged confidential information upon execution of a non-disclosure agreement;¹² provides safeguards for keeping the information;¹³ provides for the return of alleged confidential information if an Authorized Representative ceases to be engaged in this proceeding, and at the conclusion of this proceeding;¹⁴ and provides protections when filing or using the alleged confidential information in this proceeding, or when disclosure is sought through a public records request.¹⁵ Moreover, in the unlikely event the protective agreement is breached, FirstEnergy has all rights available to it at law or equity for breach of contract—the most significant deterrent against inappropriate use of the alleged confidential information.

The form of the Duke ESP Agreement is not new to Ohio's utilities, including FirstEnergy, who have agreed to operate under forms substantially similar to the Duke ESP agreement for years. Indeed, NOPEC and FirstEnergy executed such a substantially similar agreement in FirstEnergy's previous ESP III proceeding.¹⁶ Nonetheless, FirstEnergy insists on a new form of a protective agreement, and currently is withholding all discovery it deems to be "Competitively Sensitive Confidential" information unless NOPEC and OCC sign the protective

¹² Ex. 1, at paragraphs 4-6.

¹³ *Id.* 1, at paragraph 6.

¹⁴ *Id.*, at paragraphs 7 and 16.

¹⁵ *Id.*, at paragraphs 9-13. OCC and NOPEC (as a regional council of governments) are subject to Ohio's public records laws.

¹⁶ *See* Exhibit 5.

agreement it proposes. But this new FirstEnergy protective agreement is unreasonable and harmful to the Joint Movants.

For the reasons explained more fully below, the PUCO should find that the protective agreement attached as Exhibit 1 is appropriate and adopt it for purposes of allowing Joint Movants access to information FirstEnergy alleges is protected, including responses to NOPEC discovery that includes NOPEC's Request for Production of Documents, First Set, RPD-001 and RPD-002,¹⁷ as well as OCC discovery that includes OCC Interrogatories 1-12, 2-37, 2-41, 3-65, and OCC Requests for Production of Documents 2-18, 2-22 and 3-25.¹⁸

III. SCOPE OF STATUTORY RIGHT TO DISCOVERY

R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.” Therefore, Joint Movants, parties in this proceeding,¹⁹ are entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the PUCO to ensure that parties are allowed “full and reasonable discovery” under its rules. Under the PUCO's rules, “discovery may begin immediately after a proceeding is commenced.”²⁰

The PUCO has adopted rules that specifically define the scope of discovery. OAC Rule 4901-1-16(B) provides:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

¹⁷ See Exhibit 2, Att. A.

¹⁸ See Exhibit 4.

¹⁹ See OAC Rule 4901-1-16(H). OCC filed a motion to intervene on February 3, 2014.

²⁰ OAC Rule 4901-1-17(A). Accord Ohio Civ. R. 33(A) (interrogatories may be served by any party without leave on the plaintiff “after commencement of the action.”).

The PUCO's rule is similar to Ohio Civ. R.26 (B)(1), which governs the scope of discovery in civil cases. Ohio Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.²¹

This scope of discovery is applicable to written interrogatories. Written interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the discovery is served, under OAC Rule 4901-1-19. Each interrogatory must be answered "separately and fully, in writing and under oath, unless objected to, in which case the reasons for the objection shall be stated in lieu of an answer. The answer shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them."

Joint Movants' right to discovery is assured by law, rule, and Supreme Court precedent.²² Joint Movants are entitled to timely and complete responses to its discovery inquiries. Joint Movants seek a PUCO order requiring FirstEnergy to execute the attached protective agreement so that Joint Movants can obtain the responses to Interrogatories and requests to produce identified above that have been withheld by FirstEnergy for lack of a protective agreement.

IV. ARGUMENT

A. FirstEnergy's Proposed Protective Agreement Would Preclude Joint Movant's Meaningful Participation In This Proceeding.

In response to Joint Movants' attempt to negotiate a reasonable protective agreement, FirstEnergy admits that almost all of the confidential information Joint Movants seek in discovery is "Competitively Sensitive Confidential" related to FES' cost and pricing

²¹ *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St. 3d 1479.

²² *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789.

information.²³ This information is essential for Joint Movants to assess the costs attributable to the PPA, which serves as the basis for calculating the cost customers will pay under Rider RRS. Moreover, the information is essential for Joint Movants' decision-makers and consultants to assess what issues, if any, must be pursued in this proceeding and the recommendations to appropriately resolve those issues.

1. FirstEnergy's proposed protective agreement requires joint movants' counsel to withhold relevant information from their clients and prevents their clients from making informed decisions for participation in this proceeding.

Paragraphs 4(A) and (B) of FirstEnergy's proposed protective agreement limit disclosure of the FES cost and pricing information at the heart of this proceeding to Joint Movants' counsel and counsel's employees. Incredibly, counsel would be unable share this information with their clients – NOPEC's Executive Director, Executive Senior Associate, and Board of Directors; and OCC's Governing Board. This would prevent counsel from receiving guidance and instruction in the course of representing their clients, and preventing counsel from providing effective representation. This restriction presents serious implications under the Ohio Rules of Professional Conduct, including rules that require counsel to "abide by a client's decisions concerning the objective of representation...and to consult with the client as to the means by which they are to be pursued,"²⁴ as well as the duty to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."²⁵

As reflected in the attachments to NOPEC's affidavit,²⁶ NOPEC apprised FirstEnergy of its concerns when presenting the Duke ESP Agreement for signature. However, FirstEnergy

²³ See, Ex. 2, Att. C; Ex. 3, at Att. A (e-mail of August 8, 2014).

²⁴ See, Ohio Rules of Professional Conduct, Rule 1.2(a).

²⁵ See, Ohio Rules of Professional Conduct, Rule 1.4(b).

²⁶ See, Ex. 2, Atts. B and E.

maintains that the release of the information to NOPEC's decision makers would place FE's affiliate, FES (who has not intervened in this matter), at a competitive disadvantage to NOPEC, because NOPEC competes against FES and also is FES' customer.²⁷

FirstEnergy argues that NOPEC would have an unfair advantage when competing with FES, because much of the information categorized by FirstEnergy as "Competitively Sensitive Confidential" is FES' cost and pricing information.²⁸ However, as explained to FirstEnergy, while NOPEC is a CRES, it is not FES' competitor. NOPEC is certified by the Commission solely to provide services as a governmental aggregator.²⁹ It is not certified, nor has it requested certification from this Commission, as a retail generation provider, power marketer, or power broker and, thus, does not compete with FES to supply electricity to retail or wholesale customers. Rather, NOPEC's function is to solicit electric supply from generation suppliers and/or power marketers, such as FES, to serve its aggregation program. FES was selected to provide NOPEC aggregation customers with their electric supply and, as such, NOPEC only can be considered to be FES' customer.

Moreover, although NOPEC is FES' customer, its price of electricity supply to aggregation customers is set through May 2019,³⁰ well after FirstEnergy's own restrictions on the release of the confidential information will have expired.³¹ Thus, NOPEC's decision makers will have access to the alleged Competitively Sensitive Confidential information when the next

²⁷ *Id.*, Atts. C & F.

²⁸ Joint Movants' observe that FES has not intervened in this proceeding to protect its interest in information that it may deem to be competitively sensitive. Joint Movants object to the FirstEnergy operating companies from litigating this issue on behalf of their separate affiliate, without a showing of standing.

²⁹ *See In Re NOPEC Certification*, Case No. 00-2317-EL-GAG, Certificate No. 01-044E(7), re-issued December 31, 2012.

³⁰ FES' website highlights NOPEC as a customer, through 2019:
<https://www.fes.com/content/fes/home/community/ohio/nopec.html>.

³¹ Ex. 2, Att. D, paragraph 20.

aggregation supply agreement is negotiated. Thus, NOPEC's decision makers will obtain no competitive advantage if they are given access to this information in this proceeding.

FirstEnergy's justification for applying Paragraphs 4(A) and (B) to OCC are even more remote. It is undisputed that OCC does not provide electric power supply to consumers in this state and, thus, does not compete with FES. Moreover, OCC is neither a customer of FES nor does it have authority to negotiate with CRES providers on the price they charge residential customers for electric supply. It is patently unreasonable for FirstEnergy to insist that this objectionable language be applied to OCC.³²

Regardless, FirstEnergy consistently responds that it does not believe its proposal places an "undue restriction" on Joint Movants' participation in this case, because they are free to show Competitively Sensitive Confidential information to counsel and outside experts.³³ As discussed below, that "freedom" also is severely restricted.

Regardless, even if Joint Movants were considered a competitor or customer (for purposes of the next aggregation term), the protective agreement Joint Movants propose adequately protects FirstEnergy's interests.

2. FirstEnergy's proposed protective agreement unreasonably restricts joint movants' right to contract with consultants of their choosing.

As stated above, FirstEnergy reasons that its proposed prohibition on sharing Competitively Sensitive Confidential information with a client is not "unduly" restrictive, because counsel is "free" to share such information with consultants. Yet, Paragraph 4(C) to FirstEnergy's proposed protective agreement also unreasonably restricts that freedom to consultants who do not advise on "any aspect" of competitive wholesale or retail electric

³² See Ex. 3, Att. A (e-mail of August 22, 2014) and Att. C.

³³ See Ex. 2, Att. F; Ex. 3, Att. A (e-mail of September 3, 2014).

procurements. FirstEnergy's restrictions unreasonably limit the pool of professional, reputable consultants available to Joint Movants, and unreasonably interferes with Joint Movants' ability to contract with the consultants of their choosing.

Although Joint Movants have individually informed FirstEnergy that Paragraph 4(C) is unacceptable, FirstEnergy has made no efforts to revise or eliminate it, firmly maintaining that it is not unduly restrictive.³⁴ It becomes apparent that FirstEnergy merely is attempting to limit the professional consultants available to Joint Movants for purposes of this proceeding. For example, Joint Movants could retain a consultant who currently does not provide electric supply procurement advice. The consultant would receive the Competitively Sensitive Confidential information upon executing the Non-Disclosure Certificate and, at the conclusion of this case, could commence providing advice to a supplier on "some aspect" of energy procurement. That consultant would stand in the same shoes as the consultant excluded by FirstEnergy's unreasonable restriction, yet FirstEnergy is willing to accept that the conventional terms and remedies of the protective agreement are sufficient to protect its interests. No sound basis exists to make this distinction between consultants currently providing advice on "any aspect" of electric supply procurement and other consultants who are retained and may provide such advice in the near future.

B. Joint Movants' Proposed Protective Agreement Is Reasonable, Has Been Adopted By The PUCO In The Past, And Has Been Used With Numerous Utilities, Including FirstEnergy In Past Cases.

Exhibit 1, Joint Movants' proposed protective agreement, is designed to address the legal requirements placed on the OCC as a public agency and designed to address a rational, fair basis for document protection. Nonetheless, FirstEnergy is provided protection from disclosure of its

³⁴ See, e.g., Ex. 2, at Att. F; Ex. 3, Att. A (e-mail of August 22, 2014) and Att. C.

alleged proprietary information under Joint Movants’ proposed protective agreement.

The protective agreement offered by Joint Movants’ had its beginnings in 2003 after extensive research and consultation with the Ohio Attorney General’s Office. Versions of the Duke ESP Agreement have been used in various cases before the Commission. Parties executing similar agreements include FirstEnergy, Duke, AEP Ohio, SBC Ohio, Dayton Power & Light, and Columbia Gas. Joint Movants appreciates the administrative efficiency and fairness of the various and similar protective agreements that OCC and NOPEC have achieved with others.

CG&E, Duke Energy Ohio’s predecessor, was compelled by the PUCO to execute a protective agreement proposed by the OCC not once, not twice but three times. First in a post-market development service case, and second in a 2007 system reliability tracker case. See *In re CG&E Post-MDP Service*, Case No. 03-93-EL-UNC et al., Entry at 4, ¶(9) (May 13, 2004); *In the Matter of the Commission’s Review and Adjustment of the Fuel and Purchased Power and System Reliability Tracker Components of Duke Energy Ohio, Inc.*, Case No. 07-723-EL-UNC et al., Entry at 3, ¶7 (October 29, 2007). In the 2004 case, Attorney Examiner Kingery found OCC’s proposed protective agreement to be a “reasonable and appropriate method for protecting the CG&E information.” In the 2007 case, Attorney Examiner Farkas found that OCC’s protective agreement “should adequately protect the confidentiality of Duke’s information.” Most recently in the Duke Energy ESP Case (Case No. 14-841-EL-SSO), the Utility was compelled to enter the same protective agreement Joint Movants are proposing herein.³⁵

AEP Ohio was also compelled by the PUCO to execute a substantially similar protective agreement proposed by OCC. *In re: Columbus Southern Power Company*, Case No. 05-376-EL-UNC, Entry at ¶7 (July 21, 2005); see also *In re: Embarq*, Case No. 07-760-TP-BLS, Entry at ¶7

³⁵ *In re Duke ESP Case*, Case No. 14-841-EL-SSO (August 27, 2014).

(August 10, 2007). AEP was required to accept protective agreement provisions related to OCC's responsibilities re: public records matters.

Moreover, FirstEnergy has executed protective agreements on many occasions. The agreements contain the substantially similar protections offered by the Joint Movants in the attached Duke ESP Agreement.³⁶ In fact in First Energy's second ESP Case, First Energy Solutions entered the protective agreement Joint Movants propose using in this case.³⁷ There is nothing in the present case that is more compelling or distinctive that warrants treatment different than that which has satisfied numerous other Ohio utilities.

C. FirstEnergy Should Be Ordered To Produce Discovery Using Joint Movants' Proposed Protective Agreement.

The Commission's very recent precedent supports the adoption of the protective agreement that Joint Movants propose. In the current Duke ESP Proceeding, Duke and OCC reached an impasse in negotiating a mutually acceptable protective agreement. Duke proposed an agreement that deviated significantly from agreements used in past proceedings, and OCC eventually filed a motion to compel its continued use, which the Commission granted.³⁸ The Commission found that the agreement was "more reasonable, consistent with our past cases and precedent, and contains the language needed to sufficiently protect Duke's interests"³⁹ The Commission noted that this agreement's provisions:

. . . ensure that recipients do not disclose confidential information and are bound by the confidential agreement, even if they are no longer engaged in the proceeding; require recipients to provide notice to Duke if they

³⁶ See, e.g., *In re In the Matter of the Determination of the Existence of Significant Excessive Earnings for 2013 Under the Electric Security Plans*, Case No. 14-828-EL-UNC (July 21, 2014); *In re FirstEnergy Energy Efficiency and Peak Demand Reduction Portfolio Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, et al (September 13, 2012); *In re FirstEnergy ESP III*, Case No. 12-1230-EL-SSO (May 1, 2012).

³⁷ *In re FirstEnergy ESP II*, Case No. 10-388-EL-SSO (March 26, 2010).

³⁸ *Duke ESP Proceeding*, at paragraph 5.

³⁹ *Id.*

desire to use the protected material other than in a manner provided for in confidential agreement;***Moreover, in the event of a breach of the agreement, Duke may pursue all remedies available by law.⁴⁰

The protective agreement Joint Movants' propose in the present case, with minor revisions relating only to the different parties involved, is exactly the same as the protective agreement the Commission ordered the parties to adopt in the Duke ESP case. The Duke ESP Agreement that Joint Movants propose strikes the right balance between enabling reasonable discovery and protecting FirstEnergy's legitimate interests. Thus, the Commission should instruct the FirstEnergy and Joint Movants to adopt it. Joint Movants Undertook Reasonable Efforts To Resolve This Discovery Dispute.

As detailed in the attached affidavits, Joint Movants' counsel made reasonable efforts to resolve this discovery dispute.⁴¹ Joint Movants repeatedly made clear to FirstEnergy that they objected to the restrictions placed on the release and use of Competitively Sensitive Confidential information; however, FirstEnergy steadfastly refuses to budge from its position that those provisions were not unduly restrictive. After notice to FirstEnergy that this impasse would require the Commission's involvement to resolve in this discovery dispute, and without further movement on FirstEnergy's behalf, it became clear that efforts to resolve the dispute over the protective agreement had failed, necessitating this Motion to Compel.

IV. REQUEST FOR EXPEDITED RULING

Joint Movants also respectfully request that the Commission issue an expedited ruling on this Motion to Compel, pursuant to OAC Rule 4901-1-12(C). Under the procedural schedule set by the attorney examiner's entry of October 6, 2014, discovery

⁴⁰ *Id.*

⁴¹ *See* Exs. 2 and 3.

requests are due by December 1, 2014 and intervenor testimony must be filed by December 22, 2014. Time is of the essence to resolve this on-going discovery dispute so that Joint Movants have assurance that the consultants they are considering to retain are not prevented from reviewing the confidential information that FirstEnergy ultimately must produce. Moreover, Joint Movants require expedited ruling to provide them and their consultants sufficient time to review the confidential information that FirstEnergy is withholding in order to request additional discovery, due by December 1, 2014, and to prepare their pre-filed direct testimony due December 22, 2014.

Because of the time constraints imposed by the procedural schedule in this proceeding, the fact that FirstEnergy has executed substantially similar protective agreements in the past as proposed by Joint Movants, and because the Commission recently has reviewed and sanctioned such protective agreement the *Duke ESP Proceeding*, Joint Movants request, pursuant to OAC Rule 4901-1-12(C), that memorandum contra this motion be filed no later than November 5, 2014.

V. CONCLUSION

For the reasons set forth above, Joint Movants respectfully request that the Commission grant their request for expedited ruling with memoranda contra due no later than November 5, 2014; grant this Motion to Compel and order FirstEnergy and Joint Movants to enter the Duke ESP Agreement, and order FirstEnergy to produce thereunder all confidential information it is withholding.

Respectfully submitted,

/s/ *Larry S. Sauer*

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

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(0039223)

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Respectfully submitted

/s/ *Glenn S. Krassen*

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dborchers@bricker.com

Attorneys for Northeast Ohio Public
Energy Council

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Motion to Compel was served on the persons stated below *via* electronic transmission, this 31st day of October 2014.

/s/ Dane Stinson

Dane Stinson

SERVICE LIST

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)	
Company, The Cleveland Electric Illuminating)	
Company and The Toledo Edison Company For)	
Authority to Provide a Standard Service Offer	)	Case No. 14-1297-EL-SSO
Pursuant to R.C. § 4928.143 in the Form of an)	
Electric Security Plan.)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("Utility" or "Company") and _____ (collectively, "the Parties"). This Agreement is designed to facilitate and expedite the exchange with _____ of all information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Company and _____ as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document means the above-captioned case(s), including any appeals, remands and other cases related thereto.

3. "Protected Materials" means documents and information furnished subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential. Protected Materials do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain.

4. Protected Materials provided in the context of this Proceeding will be provided to _____ for use by _____ in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain. Nothing in this Agreement precludes _____ from filing Protected Materials under seal or otherwise using Protected Material in ways, such as *in camera* proceedings, that do not disclose Protected Materials.

5. As used in this Agreement, the term "Authorized Representative" includes _____'s counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by _____ and engaged in this Proceeding.

6. Access to Protected Materials is permitted to _____'s Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access.

_____ must treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made

therefrom so as to prevent voluntary disclosure to any persons other than _____'s Authorized Representatives.

7. If any _____ Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to another Authorized Representative of _____ and if there is no such Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed the foregoing Non-Disclosure Certificate will continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this proceeding, _____ may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials. _____ may also disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. _____ may file Protected Materials under seal in this Proceeding whether or not _____ seeks a ruling that the Protected Materials should be in the public domain. If _____ desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then _____ must first give notice (as provided in Paragraph 15) to the Company, specifically identifying each of the Protected Materials that

could be disclosed in the public domain. The Company will have five (5) business days after service of _____'s notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Company does not file such a motion within five (5) business days of _____'s service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

10. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel, other _____ Authorized Representatives, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

11. Any portion of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

12. It is expressly understood that upon a filing made in accordance with Paragraph 9 or Paragraph 13 of this Agreement, the burden will be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

13. _____ will give the Company notice (as provided in Paragraph 15) if _____ receives a public records request for Protected Materials. The Company will have five (5) business days after service of _____'s notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. If the Company files such a pleading, _____ will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) *business* days of service of _____'s notice, then such Protected Materials can be deemed by _____ to be non-confidential, not a trade secret and not subject to this Agreement. Alternatively, the Company may provide notice to _____ that the Protected Materials may be disclosed in response to a public records request.

14. If, under Ohio's public records law, a court awards a relator or person or party attorney's fees or statutory damages or court costs in connection with _____'s non-disclosure or delayed disclosure of Protected Materials, then the Company will pay such awarded fees, statutory damages, and/or court costs to the relator or person or party so that the State of Ohio, _____ and _____'s employees and officials are held harmless.

15. All notices referenced in Paragraphs 9 and 13 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of

record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once _____ has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and _____ determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, _____ must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. _____ may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, _____ does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to _____ before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes _____ from filing a motion to compel.

18. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

19. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by _____.

20. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio,

Northeast Ohio Public Energy Counsel

The Cleveland Electric Illuminating
Company, Ohio Edison Company, and
The Toledo Edison Company

BY:

BY:

Counsel

Counsel

Date

Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)	
Company, The Cleveland Electric Illuminating)	
Company and The Toledo Edison Company For	)	Case No. 14-1297-EL-SSO
Authority to Provide a Standard Service Offer)	
Pursuant to R.C. § 4928.143 in the Form of an)	
Electric Security Plan.)	

NON-DISCLOSURE CERTIFICATE

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____, 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be voluntarily disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in paragraph two of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)	
Company, The Cleveland Electric Illuminating)	
Company and The Toledo Edison Company For)	
Authority to Provide a Standard Service Offer	)	Case No. 14-1297-EL-SSO
Pursuant to R.C. § 4928.143 in the Form of an)	
Electric Security Plan.)	

AFFIDAVIT

I, Dane Stinson, attorney for the Northeast Ohio Public Energy Council (“NOPEC”) in the above-captioned proceeding, being first duly sworn, depose and state that the following efforts have been made to resolve NOPEC’s differences with Ohio Edison, The Cleveland Electric Illuminating Company and The Toledo Edison Company (“FirstEnergy”) in regard to FirstEnergy’s production of discovery that it alleges to contain “Confidential” or “Competitively Sensitive Confidential” information.

1. NOPEC propounded its Request for Production of Documents, First Set, upon First Energy, via e-mail, on October 14, 2014 (Attachment A). The request asked FirstEnergy to produce all responses to interrogatories, data requests, and requests for production of documents that FirstEnergy has provided or produced to any party prior to NOPEC’s September 30, 2014, intervention in this proceeding.

2. Counsel for FirstEnergy in another proceeding had provided counsel for NOPEC with a draft of the protective agreement FirstEnergy intended to use in the above referenced proceeding. In anticipation that the information to be produced under NOPEC’s Request for Production of Documents, First Set, would contain confidential information, NOPEC informed FirstEnergy, via email of October 14, 2014, that its attached proposed protective order was

unacceptable because it would prevent counsel from sharing Competitively Sensitive Confidential information with NOPEC decision makers (Attachment B).

3. NOPEC also served upon FirstEnergy via its October 14, 2014, e-mail (Attachment B), a proposed protective agreement to facilitate safeguarding of the confidential information requested. The proposed protective agreement (Attachment B) contains the same provisions as those approved by the Public Utilities Commission of Ohio ("Commission") in Duke Energy Ohio's electric security plan proceeding, Case No. 14-841-EL-SSO (Entry, August 27, 2014), except for replacing the names of the parties thereto ("Duke ESP Agreement").

4. By e-mail of October 20, 2014 (Attachment C), FirstEnergy rejected the use of the Duke ESP Agreement, stating that most (if not all) of the information considered to be "Competitively Sensitive Confidential" information contained FirstEnergy Solutions' ("FES") cost and pricing information. FirstEnergy based its rejection upon its assertion that NOPEC was a competitor and customer of FES, and that release of Competitively Sensitive Confidential information to NOPEC's decision-makers would place FES at a competitive disadvantage in competing or dealing with NOPEC. FirstEnergy further stated that its proposed protective agreement would not prevent NOPEC's meaningful participation in this proceeding, because NOPEC's counsel and consultants [as long as they are not otherwise involved in the competitive retail or wholesale markets] would be permitted to review and use the Competitively Sensitive Confidential information.

5. By e-mail of October 21, 2014 (Attachment D), FirstEnergy submitted to NOPEC a draft of FirstEnergy's proposed protective agreement, which contained the same objectionable provisions as the agreement already in NOPEC's possession, and which NOPEC had forwarded to FirstEnergy via its email of October 14, 2014.

6. By e-mail of October 24, 2014 (Attachment E), NOPEC re-iterated that FirstEnergy's proposed protective agreement was unacceptable because of the undue restrictions it placed upon access to information by NOPEC decision-makers and prospective consultants. In an attempt to break the impasse in negotiations, NOPEC explained that it was not FES' competitor and, that its status as a customer would not provide NOPEC with a competitive advantage, because FES's electric supply agreement with NOPEC runs to June 2019. NOPEC further asked FirstEnergy to accept the Duke ESP Agreement, or to remove the objectionable language to the FirstEnergy proposed agreement involving the restrictions on "Competitively Sensitive Confidential" information and "Fully Authorized Representatives;" otherwise, NOPEC would, reluctantly, seek the Commission's intervention to resolve this dispute.

7. By e-mail of October 27, 2014 (Attachment F), FirstEnergy again re-iterated its position that its proposed agreement does not place an undue restriction on NOPEC's participation in this proceeding, because NOPEC's counsel and outside experts [as long as they do not provide advice to decision makers on electric supply procurement] could review the Competitively Sensitive Confidential information. FirstEnergy also reiterated its understanding that NOPEC, as a competitive retail electric service ("CRES") provider, competed with FES.

8 By e-mail of October 31, 2014, (Attachment G) NOPEC explained further why it was not competitor to FES and that, considering negotiations to have failed, would commence with its plans to file a motion to compel.

STATE OF OHIO)

) SS:

COUNTY OF FRANKLIN)

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and states the following:

I have caused to be prepared the attached written affidavit for NOPEC in the above referenced proceeding. The affidavit is true and correct to the best of my knowledge, information and belief.

Further, affiant sayeth naught.


Dane Stinson

Subscribed and sworn to before me this 31st day of October 2014.


NOTARY PUBLIC



MARLEY RAYMOND
Notary Public, State of Ohio
My Commission Expires November 20, 2018

Stinson, Dane

From: Stinson, Dane
Sent: Tuesday, October 14, 2014 11:59 AM
To: 'burkj@firstenergy.com'; 'cdunn@firstenergy.com'; 'dakutik@jonesday.com';
jlang@calfee.com; talexander@calfee.com
Cc: 'schmidt@sppgrp.com'; mkurtz@BKLawfirm.com; 'kboehm@BKLawfirm.com';
jkylercohn@BKLawfirm.com; bojko@carpenterlipps.com; allison@carpenterlipps.com;
hussey@carpenterlipps.com; Joseph E. Olikier; 'mswhite@igsenergy.com';
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'fdarr@mwncmh.com'; 'mpritchard@mwncmh.com'; 'cmooney@ohiopartners.org';
'callwein@wamenergylaw.com'; 'stnourse@aep.com'; 'mjsatterwhite@aep.com';
'yalami@aep.com'; 'Larry.sauer@occ.ohio.gov'; 'Kevin.moore@occ.ohio.gov'; O'Brien,
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'dborchers@bricker.com'; 'drinebolt@ohiopartners.org'; 'Mitch.dutton@fpl.com';
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'meissnerjoseph@yahoo.com'; 'mfleisher@elpc.org'; 'lesliekovacik@toledo.oh.gov';
'Kuhnell, Dianne B'; 'myurick@taftlaw.com'
Subject: NOPEC's Request for Production of Documents to FE (First Set)
Attachments: NOPEC RPD First Set.pdf

Please find attached the Northeast Ohio Public Energy Council's Requests for Production of Documents (First Set) to Cleveland Illuminating Company and Toledo Edison and Ohio Edison.



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Think green — please print only if necessary.

IRS Circular 230 Disclosure. To ensure compliance with requirements imposed by the IRS, please be informed that: To the extent that this communication and any attachments contain any federal tax advice, such advice is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or promoting, marketing, or recommending to another person any transaction, arrangement

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of
Ohio Edison Company, The Cleveland
Illuminating Company, and the Toledo
Edison Company for Authority to
Provide for a Standard Service Offer
Pursuant to R.C. 4928.143 in the Form
of an Electric Security Plan

Case No. 14-1297-EL-SSO

**NORTHEAST OHIO PUBLIC ENERGY COUNCILS' FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS TO
OHIO EDISON COMPANY, THE CLEVELAND ILLUMINATING COMPANY
AND THE TOLEDO EDISON COMPANY**

The Northeast Ohio Public Energy Council ("NOPEC") submits the following Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy") within the time periods for discovery or a shortened period provided by the Public Utilities Commission of Ohio ("PUCO") or its attorney examiners. An electronic, non-pdf response should be provided to NOPEC at the following address:

Glenn S. Krassen
BRICKER & ECKLER LLP
1001 Lakeside Avenue, Suite 1350
Cleveland, OH 44114
E-mail: gkrassen@bricker.com

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

Additionally, FirstEnergy must follow the instructions provided herein in responding to the inquiries. Definitions are provided below of terms that are used in this request.

DEFINITIONS

As used herein the following definitions apply:

1. “Document” or “Documentation” when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin.

The term specifically includes, without limiting the generality of the following:

punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets,

articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. “Communication” shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or

discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.

3. The “substance” of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. “You,” and “Your,” or “Yourself” refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.
8. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. The terms “PUCO” and “Commission” refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General’s Office), and offices.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
3. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
4. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;
 - B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files; and
 - D. such other magnetic media files as your organization(s) may use.
5. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.

6. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

I. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Provide copies of all responses to interrogatories, data requests, and requests for production of documents that FirstEnergy has provided or produced to any other party in the above-captioned proceeding prior to NOPEC's intervention of September 30, 2014.

RESPONSE:

2. Please provide copies of all responses to data requests and documents that FirstEnergy has provided or produced to PUCO Commission Staff in the above-captioned proceeding.

RESPONSE:

Respectfully submitted,



Glenn S. Krassen (Reg. No. 0007610)
BRICKER & ECKLER LLP
1001 Lakeside Avenue, Suite 1350
Cleveland, OH 44114
Telephone: (216) 523-5405
Facsimile: (216) 523-7071
E-mail: gkrassen@bricker.com

Dane Stinson (Reg. No. 0019101)
Dylan F. Borchers (Reg. No. 0090690)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
Telephone: (614) 227-4854
Facsimile: (614) 227-2390
Email: dstinson@bricker.com
dborchers@bricker.com

Attorneys for Northeast Ohio Public Energy Council

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record by electronic mail this 14th day of October 2014.



Dane Stinson

burkj@firstenergycorp.com
cdunn@firstenergycorp.com
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkylercohn@bkllawfirm.com
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
dakutik@jonesday.com
cmooney@ohiopartners.org
dwilliamson@spilmanlaw.com
larry.sauer@occ.ohio.gov
kevin.moore@occ.ohio.gov
christopher.miller@icemiller.com
gregory.dunn@icemiller.com
jeremy.grayem@icemiller.com
tobrien@bricker.com
joseph.clark@directenergy.com
joliker@igsenergy.com
mswhite@igsenergy.com
myurick@taftlaw.com
zkravitz@taftlaw.com
ricks@ohanet.org
barthroyer@aol.com
schmidt@sppgrp.com
callwein@wamenergylaw.com
nmoser@wamenergylaw.com
ghull@eckertseamans.com
wtpmlce@aol.com
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us

ilang@calfee.com
talexander@calfee.com
bojko@carpenterlipps.com
allison@carpenterlipps.com
hussey@carpenterlipps.com
mkl@bbrslaw.com
owen.kopon@bbrslaw.com
gas@bbrslaw.com
kpkreider@kmlaw.com
jscheaf@mcdonaldhopkins.com
meissnerjoseph@yahoo.com
tdougherty@theOEC.org
jfinnigan@edf.org
trhayslaw@gmail.com
LeslieKovacik@toledo.oh.gov
athompson@taftlaw.com
matt@matthewcoxlaw.com
todonnell@dickinsonwright.com
gkrassen@bricker.com
dstinson@bricker.com
dborchers@bricker.com
mitch.dutton@fpl.com
mfleisher@elpc.org
selisar@mwncmh.com
ccunningham@akronohio.gov
thomas.lindgren@puc.state.oh.us
thomas.mcnamee@puc.state.oh.us
ryan.o'rouke@puc.state.oh.us
amy.spiller@duke-energy.com
jeanne.kingery@duke-energy.com
todd@wamenergylaw.com
jeffery.mayes@monitoringanalytics.com
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com

Stinson, Dane

From: Stinson, Dane
Sent: Tuesday, October 14, 2014 12:29 PM
To: 'burkj@firstenergy.com'; 'cdunn@firstenergy.com'; 'dakutik@jonesday.com'; jlang@calfee.com; talexander@calfee.com
Cc: Stinson, Dane; Krassen, Glenn
Subject: NOPEC Proposed Protective Order, Case No. 14-1297-EL-SSO
Attachments: Protective Agreement (NTA draft 9.10.14) (02677033).docx; NOPEC Proposed Protective Agreement.docx

Today, NOPEC served upon the First Energy EDUs a Request for the Production of Documents (First Set). NOPEC expects that some of the documents to be produced contain confidential or proprietary information, which are subject to production pursuant to a protective agreement.

In a separate proceeding (Case No. 14-1182-EL-CSS), Trevor Alexander provided this office with a draft protective agreement (attached), which was represented to be nearly identical to the protective agreement to be used in FirstEnergy's ESP case (Case No. 14-1207-EL-SSO). NOPEC has concerns with FirstEnergy's draft protective agreement including, without limitation, the restrictions placed on "Competitively Sensitive Information." The restrictions are so severe that NOPEC would be unable to share relevant information with its client, including its Executive Director, by which to guide NOPEC's representation.

For this reason, NOPEC offers an alternative protective agreement (attached), which the PUCO recently approved in the Duke Energy ESP proceeding (Case No. 14-841-EL-SSO). We ask that you review NOPEC's proposed protective agreement and advise if it is acceptable by Friday, October 17.

Thank you.



Dane Stinson
Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215
Direct Dial 614.227.4854 | dstinson@bricker.com | **v-card** | www.bricker.com

Think green — please print only if necessary.

IRS Circular 230 Disclosure. To ensure compliance with requirements imposed by the IRS, please be informed that: To the extent that this communication and any attachments contain any federal tax advice, such advice is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or promoting, marketing, or recommending to another person any transaction, arrangement or matter addressed herein.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)	
Company, The Cleveland Electric Illuminating)	
Company and The Toledo Edison Company For	)	Case No. 14-1297-EL-SSO
Authority to Provide a Standard Service Offer)	
Pursuant to R.C. § 4928.143 in the Form of an)	
Electric Security Plan.)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("Utility" or "Company") and the Northeast Ohio Public Energy Counsel ("NOPEC") (collectively, "the Parties"). This Agreement is designed to facilitate and expedite the exchange with NOPEC of all information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Company and NOPEC as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document means the above-captioned case(s), including any appeals, remands and other cases related thereto.

3. "Protected Materials" means documents and information furnished subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential. Protected Materials do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain.

4. Protected Materials provided in the context of this Proceeding will be provided to NOPEC for use by NOPEC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain. Nothing in this Agreement precludes NOPEC from filing Protected Materials under seal or otherwise using Protected Material in ways, such as *in camera* proceedings, that do not disclose Protected Materials.

5. As used in this Agreement, the term "Authorized Representative" includes NOPEC's counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by NOPEC and engaged in this Proceeding.

6. Access to Protected Materials is permitted to NOPEC's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. NOPEC must treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to

prevent voluntary disclosure to any persons other than NOPEC's Authorized Representatives.

7. If any NOPEC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to another Authorized Representative of NOPEC and if there is no such Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed the foregoing Non-Disclosure Certificate will continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this proceeding, NOPEC may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials. NOPEC may also disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. NOPEC may file Protected Materials under seal in this Proceeding whether or not NOPEC seeks a ruling that the Protected Materials should be in the public domain. If NOPEC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then NOPEC must first give notice (as provided in Paragraph 15) to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Company will have five (5) business days after service of NOPEC's notice to file, with an

administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Company does not file such a motion within five (5) business days of NOPEC's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

10. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel, other NOPEC Authorized Representatives, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

11. Any portion of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

12. It is expressly understood that upon a filing made in accordance with Paragraph 9 or Paragraph 13 of this Agreement, the burden will be upon the Company to

show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

13. NOPEC will give the Company notice (as provided in Paragraph 15) if NOPEC receives a public records request for Protected Materials. The Company will have five (5) business days after service of NOPEC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question, If the Company files such a pleading, NOPEC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) *business* days of service of NOPEC's notice, then such Protected Materials can be deemed by NOPEC to be non-confidential, not a trade secret and not subject to this Agreement. Alternatively, the Company may provide notice to NOPEC that the Protected Materials may be disclosed in response to a public records request.

14. If, under Ohio's public records law, a court awards a relator or person or party attorney's fees or statutory damages or court costs in connection with NOPEC's non-disclosure or delayed disclosure of Protected Materials, then the Company will pay such awarded fees, statutory damages, and/or court costs to the relator or person or party so that the State of Ohio, NOPEC and NOPEC's employees and officials are held harmless.

15. All notices referenced in Paragraphs 9 and 13 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once NOPEC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and NOPEC determines that it has no further legal

obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, NOPEC must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. NOPEC may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, NOPEC does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to NOPEC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes NOPEC from filing a motion to compel.

18. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

19. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by NOPEC.

20. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio,

Northeast Ohio Public Energy Counsel

The Cleveland Electric Illuminating
Company, Ohio Edison Company, and
The Toledo Edison Company

BY:

BY:

Counsel

Counsel

Date

Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)	
Company, The Cleveland Electric Illuminating)	
Company and The Toledo Edison Company For)	
Authority to Provide a Standard Service Offer	)	Case No. 14-1297-EL-SSO
Pursuant to R.C. § 4928.143 in the Form of an)	
Electric Security Plan.)	

NON-DISCLOSURE CERTIFICATE

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____, 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be voluntarily disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in paragraph two of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Stinson, Dane

From: Martin T Harvey <mtharvey@JonesDay.com>
Sent: Monday, October 20, 2014 10:47 AM
To: Stinson, Dane
Cc: David A. Kutik
Subject: Case No. 14-1297-EL-SSO NOPEC Protective Agreement

Dane,

This responds to your email to Jim Burk and other counsel, dated October 14, 2014. I will address only the protective agreement in this case.

We cannot agree to your proposal. As you know, NOPEC is both a competitor and a customer of FirstEnergy Solutions (FES). The large bulk (if not almost all) of the information that has been marked so far as "Competitively Sensitive Confidential" comprises FES cost and pricing information. Having individuals at NOPEC, who are involved in the business that competes with or purchases services from FES, have unlimited access to this information would put FES at a competitive disadvantage in competing or dealing with NOPEC. The Commission has long recognized and protected competitively sensitive information. Similar information has been precluded from disclosure to competitors in other cases involving the FirstEnergy Ohio Utilities and AEP Ohio.

Our proposal would not preclude NOPEC's meaningful participation in this case. NOPEC's counsel in this matter, as well as its outside experts (who are not otherwise involved in the CRES and competitive wholesale markets), would be able to review and use the information marked "Competitively Sensitive Confidential."

Other parties in this case have signed protective agreements similar to the draft that we provided to you. Those agreements envision two tiers of Protected Material: Confidential and Competitively Sensitive Confidential. Having the same information designated "Competitively Sensitive Confidential" for others and then simply "Confidential" for NOPEC would be unworkable.

Thanks you,

Marty

Martin Harvey
Jones Day
Phone: (216) 586-7026
Email: mtharvey@jonesday.com

=====

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

=====

Stinson, Dane

From: Martin T Harvey <mtharvey@JonesDay.com>
Sent: Tuesday, October 21, 2014 3:10 PM
To: Stinson, Dane
Cc: David A. Kutik
Subject: Case No. 14-1297-EL-SSO: Protective Agreement for NOPEC
Attachments: NOPEC Protective Agreement .pdf; CLI_202265315_1_14-1297-EL-SSO NOPEC Protective Agreement.DOCX

Dane:

Attached please a PDF and Word version of the Protective Agreement which we have been offering to other intervenors in this proceeding.

Thank you,

Marty

Martin Harvey
Jones Day
Phone: (216) 586-7026
Email: mtharvey@jonesday.com

=====
This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
=====

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo	)	Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)	
for a Standard Service Offer Pursuant to)	
R.C. § 4928.143 in the Form of an Electric)	
Security Plan)	

PROTECTIVE AGREEMENT

This Protective Agreement (“Agreement”) is entered into by and between Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (“the Companies”) and Northeast Ohio Public Energy Counsel (“Receiving Party”) (collectively, “the Parties”). This Agreement is designed to facilitate and expedite the exchange with Receiving Party of information in the discovery process in this proceeding, as this “Proceeding” is defined herein. It reflects agreement between the Companies and Receiving Party as to the manner in which “Protected Materials,” as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Companies’ obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. “Proceeding” as used throughout this document means the above-captioned case(s), including any appeals, remands and other cases related thereto.

3.A. “Protected Materials” means documents and information designated under this Agreement as “CONFIDENTIAL” that customarily are treated by the Companies or third parties as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject the Companies or third parties to risk of competitive disadvantage or other business injury, and may include materials meeting the definition of “trade secret” under Ohio law.

B. “Protected Materials” also includes documents and information designated under this Agreement as “COMPETITIVELY SENSITIVE CONFIDENTIAL” that contain highly proprietary or competitively-sensitive information, that, if disclosed to suppliers, competitors or customers, may damage the producing party’s competitive position or the competitive position of the third party which created the documents or information. COMPETITIVELY SENSITIVE CONFIDENTIAL DOCUMENTS can include documents or information prepared by the Companies or provided to the Companies by a third-party pursuant to a nondisclosure agreement.

C. “Protected Materials” do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Companies and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

D. “Protected Materials” that are in writing shall be conspicuously marked with the appropriate designation, or counsel for the Companies may orally state on the deposition record that a response to a question posed at a deposition is considered Protected Materials.

E. "Protected Materials" includes documents or information that are stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, discs, networks or tapes) ("Computerized Material"). The Companies at their discretion may produce Computerized Material in such form. To the extent that Receiving Party reduces Computerized Material to hard copy, Receiving Party shall conspicuously mark such hard copy as confidential.

4. "Fully Authorized Representative" must execute a Non-Disclosure Certificate in the form of Exhibit B (applicable to COMPETITIVELY SENSITIVE CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Receiving Party's outside legal counsel and in-house legal counsel who are actively engaged in the conduct of this Proceeding;

B. Paralegals and other employees who are associated for purposes of this case with the attorneys described in Paragraph 4(A); and

C. An outside expert or employee of an outside expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding and who is not involved in (or providing advice regarding) decision-making by or on behalf of any entity concerning any aspect of competitive retail electric service or of competitive wholesale electric procurements.

5. "Limited Authorized Representative" must execute the Non-Disclosure Certificate in the form of Exhibit A (applicable to CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Legal counsel who have made an appearance in this proceeding or are actively engaged in this Proceeding for Receiving Party;

B. Paralegals and other employees who are associated for purposes of this case with an attorney described in Paragraph 5(A);

C. An employee of Receiving Party who is involved in the Proceedings on behalf of Receiving Party;

D. An expert or employee of an expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding.

6. Copies of all executed Non-Disclosure Certificates signed by Fully Authorized Representatives and Limited Authorized Representatives in this proceeding shall be provided to counsel for the Companies as soon as possible after the Certificates are executed.

7. Access to Protected Materials designated as "CONFIDENTIAL" is permitted to Fully Authorized Representatives and Limited Authorized Representatives who have executed the appropriate Non-Disclosure Certificate. Notwithstanding other provisions of this Agreement to the contrary, Protected Materials designated as "COMPETITIVELY SENSITIVE CONFIDENTIAL" or with words of similar import will be **strictly** limited to Fully Authorized Representatives. Counsel for Receiving Party will ensure that individuals who are not Fully Authorized Representatives are not permitted to access COMPETITIVELY SENSITIVE CONFIDENTIAL materials. Receiving Party, its Counsel, Fully Authorized Representatives and Limited Authorized Representatives must treat all Protected Materials (no matter how designated), copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than Receiving Party's counsel and those persons authorized to have access to the Protected Materials as set forth in this Agreement.

8. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any

disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Companies and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain. Nothing in this Agreement precludes Receiving Party from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

9. If any Receiving Party counsel, Fully Authorized Representative or Limited Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to a counsel of Receiving Party who is a Fully Authorized Representative, and if there is no such counsel of Receiving Party who is a Fully Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed either form of the foregoing Non-Disclosure Certificates will continue to be bound by the provisions of this Agreement even if no longer so engaged.

10. Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives are prohibited from disclosing Protected Materials to another party or that party's authorized representatives, provided however, (i) Receiving Party's counsel may disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding, (ii) for Protected Materials identified as CONFIDENTIAL, Receiving Party's counsel may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials and has signed a Non-Disclosure Certificate applicable to

materials designated as CONFIDENTIAL, and (iii) for Protected Materials identified as COMPETITIVELY SENSITIVE CONFIDENTIAL, Receiving Party's counsel may disclose such materials to another party's counsel as long as Receiving Party's Counsel has executed the **appropriate** Non-Disclosure Certificate and the Receiving Party's counsel (a) represents a party that has signed a protective agreement with the Companies and (b) has signed a Non-Disclosure Certificate applicable to materials designated as COMPETITIVELY SENSITIVE CONFIDENTIAL. Protected Materials, designated as "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL" and provided to Receiving Party by another party or its counsel shall be treated by Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives as being provided by the Companies and all terms of this Protective Agreement shall apply to the treatment of such materials.

11. Receiving Party may file Protected Materials under seal in this Proceeding whether or not Receiving Party seeks a ruling that the Protected Materials should be in the public domain. If Receiving Party desires to include, utilize, refer to, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then Receiving Party must first give notice (as provided in Paragraph 15) to the Companies, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Companies will have five (5) business days after service of Receiving Party's notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of

such information. If the Companies do not file such a motion within five (5) business days of Receiving Party's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

12. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel who are either a signatory to this Agreement or who have executed a Non-Disclosure Certification prior to any access, any other person who would otherwise be permitted to have access to the Protected Materials under the terms of Paragraph 7, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

13. Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

14. It is expressly understood that upon a filing made in accordance with Paragraph 11 of this Agreement, the burden will be upon the Companies to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

15. All notices referenced in Paragraph 11 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once Receiving Party has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and Receiving Party determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, Receiving Party must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. Receiving Party may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, Receiving Party does not waive any right that it may have to dispute the Companies' determination regarding any material identified as confidential by the Companies and to pursue those remedies that may be available to Receiving Party before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes Receiving Party from filing a motion to compel.

18. By entering into this Protective Agreement, the Companies do not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Companies before the administrative agency of competent jurisdiction or court of competent jurisdiction.

19. Inadvertent production of any document or information during discovery without a designation of "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL" will not be deemed to waive the Companies' claim to its confidential nature or estop the Companies from designating the document or information at a later date. Disclosure of the document or information by Receiving Party prior to such later designation shall not be deemed a violation of this Agreement and Receiving Party bears no responsibility or liability for any

such disclosure. Receiving Party does not waive its right to challenge the Companies' delayed claim or designation of the inadvertent production of any document or information as "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL."

20. This Protective Agreement shall become effective upon the date first above written, and shall remain in effect until terminated in writing by either party or three (3) years from the date first set forth above, whichever occurs earlier. Notwithstanding any such termination, the rights and obligations with respect to the disclosure of Protected Materials as defined hereinabove shall survive the termination of this Protective Agreement for a period of three (3) years following the later of the Commission's final Order or Entry on Rehearing in this proceeding.

21. To the extent of any conflicts between this Agreement and any previously signed confidentiality or nondisclosure agreement related to the disclosure of information associated with the Companies' fourth electric security plan, this Agreement prevails.

22. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties.

23. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Ohio Edison Company, The Cleveland
Electric Illuminating Company and The
Toledo Edison Company

BY:

Counsel

Date

Northeast Ohio Public Energy Counsel

BY:

Counsel

Date

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant to)
R.C. § 4928.143 in the Form of an Electric)
Security Plan.)

NON-DISCLOSURE CERTIFICATE FOR
CONFIDENTIAL PROTECTED MATERIALS

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____ 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant to)
R.C. § 4928.143 in the Form of an Electric
Security Plan.

NON-DISCLOSURE CERTIFICATE FOR
COMPETITIVELY SENSITIVE CONFIDENTIAL PROTECTED MATERIALS

I certify my understanding that access to COMPETITIVELY SENSITIVE
CONFIDENTIAL Protected Materials may be provided to me pursuant to the terms and
restrictions of the Protective Agreement, last executed _____ 2014, and
certify that I have been given a copy of and have read the Protective Agreement, and that
I agree to be bound by it. I understand that the contents of Protected Materials, and any
writings, memoranda, or any other form of information regarding or derived from
protected materials will not be disclosed to anyone other than in accordance with the
Protective Agreement and will be used only for the purposes of this Proceeding as
defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

Stinson, Dane

From: Raymond, Marley on behalf of Stinson, Dane
Sent: Friday, October 24, 2014 4:09 PM
To: mtharvey@JonesDay.com
Cc: Krassen, Glenn; Borchers, Dylan; Stinson, Dane
Subject: Case No. 14-1297-EL-SSO NOPEC Protective Agreement
Attachments: NOPEC Proposed Protective Agreement.docx

Marty,

NOPEC has received your reply of October 20, and FirstEnergy's proposed protective agreement of October 21, which continues to obtain the objectionable restrictions that limit disclosure of "Competitively Sensitive Confidential" information to "Fully Authorized Representatives." As I've explained, this restriction would prevent NOPEC's counsel from sharing information in this case with their client, including its Executive Director, Executive Senior Associate, and Board, and would prevent sharing the information with consultants/prospective witnesses that NOPEC may retain for purposes of this proceeding. These excessive restrictions will prevent our effective representation of our client, and NOPEC's effective participation in this proceeding.

In hopes that you will recognize that the severely restricted access to Competitively Sensitive Confidential Information is not warranted, I wish to correct your misunderstanding that NOPEC is somehow a "competitor" of FirstEnergy Solutions ("FES"). NOPEC is only FES' customer; NOPEC is not a provider of electricity commodity supply, wholesale or resale, which is FES' business. Moreover, its electricity service contract with FES extends until June 2019. Finally, NOPEC and FES have an existing confidentiality agreement in place. Each of these circumstances eliminates the need for the excessive restrictions on current information you deem to be "Competitively Sensitive Confidential."

I restate NOPEC's request that FirstEnergy consent to use the protective agreement proposed by NOPEC on October 14, 2014, which the Commission recently approved (Entry dated August 27, 2014 in Case No. 14-841-EL-SSO) for use in the Duke Energy Ohio electric security plan proceeding. Absent agreement to use this agreement, or to remove the objectionable language limiting "Confidential Sensitive Confidential" information to "Fully Authorized Representatives," NOPEC will, reluctantly, have to ask for the Commission's intervention to resolve this dispute. We would certainly prefer to resolve this matter between counsel if that is something your client wishes to do.

I ask that you respond by the close of business, October 27, 2014.

Thank you,



Dane Stinson
Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215
Direct Dial 614.227.4854 | **dstinson@bricker.com** | **v-card** | **www.bricker.com**

Think green — please print only if necessary.

Stinson, Dane

From: Martin T Harvey <mtharvey@JonesDay.com>
Sent: Monday, October 27, 2014 5:18 PM
To: Stinson, Dane
Cc: David A. Kutik
Subject: Re: Case No. 14-1297-EL-SSO NOPEC Protective Agreement

Dane:

We do not believe that our proposal places an undue restriction on NOPEC's participation in this case. NOPEC is free to show the competitively sensitive confidential material to counsel and outside experts. Similar two-tiered protective agreements have been used in other Commission cases. The Commission has repeatedly upheld and protected having competitively valuable information disclosed to a competitor.

We understand that NOPEC is a CRES provider. If that is true, then NOPEC is a competitor of FES.

Your reference to a confidentiality agreement between FES and NOPEC is unavailing. As far as we know, that agreement has nothing to do with this case or the information that may be provided in preparation for the hearing here. Be advised, however, that FES has not provided that agreement to us. If you believe that this confidentiality agreement may be the vehicle for providing discovery in this case, then please provide it for our review and we will respond accordingly.

Thank you,

Marty

Martin Harvey
Jones Day
Phone: (216) 586-7026
Email: mtharvey@jonesday.com

From: "Stinson, Dane" <DStinson@bricker.com>
To: "mtharvey@JonesDay.com" <mtharvey@JonesDay.com>,
Cc: "Krassen, Glenn" <GKrassen@bricker.com>, "Borchers, Dylan" <DBorchers@bricker.com>, "Stinson, Dane" <DStinson@bricker.com>
Date: 10/24/2014 04:10 PM
Subject: Case No. 14-1297-EL-SSO NOPEC Protective Agreement
Sent by: "Raymond, Marley" <MRaymond@bricker.com>

Marty,

NOPEC has received your reply of October 20, and FirstEnergy's proposed protective agreement of October 21, which continues to obtain the objectionable restrictions that limit disclosure of "Competitively Sensitive Confidential" information to "Fully Authorized Representatives." As I've explained, this restriction would prevent NOPEC's counsel from sharing information in this case with their client, including its Executive Director, Executive Senior Associate, and Board, and would prevent sharing the information with consultants/prospective witnesses that NOPEC may retain for purposes of this proceeding. These excessive restrictions will prevent our effective representation of our client, and NOPEC's effective participation in this proceeding.

In hopes that you will recognize that the severely restricted access to Competitively Sensitive Confidential Information is not warranted, I wish to correct your misunderstanding that NOPEC is somehow a "competitor" of FirstEnergy Solutions ("FES"). NOPEC is only FES' customer; NOPEC is not a provider of electricity commodity supply, wholesale or resale, which is FES' business. Moreover, its electricity service contract with FES extends until June 2019. Finally, NOPEC and FES have an existing

Stinson, Dane

From: Stinson, Dane
Sent: Friday, October 31, 2014 10:04 AM
To: 'Martin T Harvey'
Cc: David A. Kutik; Krassen, Glenn; Stinson, Dane
Subject: RE: Case No. 14-1297-EL-SSO NOPEC Protective Agreement

Marty:

While NOPEC is a "CRES," it is certified by the Commission only to provide governmental aggregation services, which includes selecting a CRES to supply electricity to its aggregation members. As you know, FES currently provides NOPEC's electric supply. NOPEC is not certificated as a generation provider, a power marketer or a power broker; therefore, it does not "compete" with FES, but is a customer. As stated previously, because FirstEnergy's draft protective agreement would expire in three years, the Competitively Sensitive Confidential information at issue would no longer be subject to protection at the time the current NOPEC/FES supply agreement terminates and potentially is re-negotiated. Thus, FirstEnergy's position that NOPEC's access to, and use of, the Competitively Sensitive Confidential information is required by NOPEC's status as a customer is untenable.

Clearly, we are at an impasse. The restrictions placed on NOPEC's accessibility and use of Competitively Sensitive Confidential information prevents NOPEC's meaningful participation in FirstEnergy's ESP IV proceeding. Regrettably, NOPEC is left with no other recourse but to ask the Commission to resolve this issue.



Dane Stinson
Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215
Direct Dial 614.227.4854 | dstinson@bricker.com | **v-card** | www.bricker.com

Think green — please print only if necessary.

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From: Martin T Harvey [<mailto:mtharvey@JonesDay.com>]
Sent: Monday, October 27, 2014 5:18 PM
To: Stinson, Dane

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)	
Company, The Cleveland Electric Illuminating)	
Company and The Toledo Edison Company For)	
Authority to Provide a Standard Service Offer	)	Case No. 14-1297-EL-SSO
Pursuant to R.C. § 4928.143 in the Form of an)	
Electric Security Plan.)	

AFFIDAVIT

I, Larry Sauer, attorney for the Office of the Ohio Consumers' Counsel ("OCC") in the above-captioned proceeding, being first duly sworn, depose and state that the following efforts have been made to resolve OCC's differences with Ohio Edison, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("FirstEnergy") in regard to FirstEnergy's production of discovery that it alleges to contain "Confidential" or "Competitively Sensitive Confidential" information.

1. By e-mail of August 15, 2014 (Attachment A), FirstEnergy provided OCC with a draft protective agreement to facilitate the sharing of confidential information in the above-captioned proceeding.

2. By e-mail of August 21, 2014 (Attachment A), OCC responded that, in prior conversations, FirstEnergy had indicated that it would be willing to enter into a protective agreement with OCC that the parties had used in a specific prior proceeding, and that counsel for OCC was authorized to execute that agreement on OCC's behalf.

3. By e-mail of August 22, 2014 (Attachment A), FirstEnergy responded that the above captioned proceeding involved different issues and different types of confidential information, requiring that restrictions be placed on competitors' and customers' access to

“Competitively Sensitive Confidential” information. FirstEnergy explained certain cost and operational material belonging to FirstEnergy Solutions (“FES”) was “Competitively Sensitive Confidential” information, which competitors could use to their advantage.

4. By e-mail of September 2, 2014 (Attachment A), OCC explained that it was not a competitor of FES and that the restrictions on receipt of “Competitively Sensitive Confidential” information did not apply to OCC. OCC further explained that the Public Utilities Commission of Ohio (“Commission”) recently had approved an agreement acceptable to OCC in Duke Energy Ohio’s electric service plan (“ESP”) proceeding, and provided FirstEnergy with a copy of the agreement (“Duke ESP Agreement”) (Attachment B).

5. By e-mail of September 3, 2014 (Attachment A), FirstEnergy responded by rejecting OCC’s proposed Duke ESP Agreement. It reiterated that, under its proposed protective agreement, OCC’s counsel and staff could review the “Competitively Sensitive Confidential” information, as could consultants who did not provide advice to participants in the retail and wholesale competitive electric markets.

6. By e-mail of September 9, 2014 (Attachment A), OCC provided FirstEnergy with its proposed edits to FirstEnergy’s proposed protective agreement, which edits included, *inter alia*, the an objection to the language restricting access to “Competitively Sensitive Confidential” information (Attachment C).

7. By e-mail of September 11, 2014 (Attachment A), FirstEnergy provided OCC with a further revised version of FirstEnergy’s proposed protective agreement, which attempted to define the competitive entities that consultants could not advise on “any aspect” of the retail or wholesale competitive markets if they were to be given access to “Competitively Sensitive

Confidential” information. The definition included “suppliers, marketers, brokers, aggregators, and governmental aggregators” (Attachment ⁷ C).

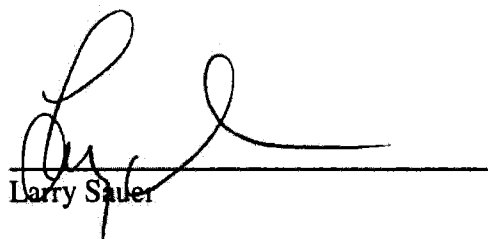
8. By e-mail of October 17, 2014 (Attachment A), OCC rejected, as unworkable, the above revision as overly broad, because it insulates consultants that OCC might wish to engage in this proceeding from reviewing information that could be vital to OCC’s advocacy for consumers. OCC explained that it was left with no other option but to pursue an motion to compel before the Commission.

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and states the following:

I have caused to be prepared the attached written affidavit for OCC in the above referenced proceeding. The affidavit is true and correct to the best of my knowledge, information and belief.

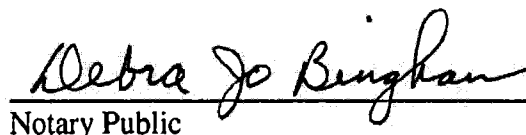
Further, affiant sayeth naught.


Larry Sauer

Subscribed and sworn to before me this 31st day of October 2014.



Debra Jo Bingham Notary Public
Union County, State of Ohio
My Commission Expires June 13, 2015


Notary Public

Sauer, Larry

From: Sauer, Larry
Sent: Friday, October 17, 2014 5:08 PM
To: 'Martin T Harvey'
Cc: David A. Kutik; burkj@firstenergycorp.com
Subject: RE: Case No. 14-1297-EL-SSO Protective Agreement for OCC

Martin,

I am in receipt of your latest draft of the Protective Agreement that was sent on September 11, 2014. While progress has been made on some aspects of this agreement, there are still significant concerns with regards to Provision 4 (C). That provision states:

"Fully Authorized Representative" must execute a Non-Disclosure Certificate in the form of Exhibit B (applicable to COMPETITIVELY SENSITIVE CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

• **

C. An outside expert or employee of an outside expert retained by Receiving Party or by Receiving Party's outside legal counsel for the purpose of advising, preparing for or testifying in this Proceeding and who is not involved in (or providing advice regarding) decision-making by or on behalf of any supplier, marketer, broker, aggregator, or governmental aggregator concerning any aspect of competitive retail electric service or of any supplier, marketer, or broker concerning any aspect of competitive wholesale electric procurements. (emphasis added).

This provision is over-broad. It potentially insulates consultants, OCC might wish to engage in this proceeding, from seeing information that could be vital to OCC's advocacy for consumers. To the extent this provision could conceivably prevent an OCC consultant from viewing information FE determines is "competitively sensitive confidential", it is unworkable. Any thoughts that you might have would be appreciated, otherwise I think we are left with no other option but to ask the PUCO to decide a Motion to Compel.

Thank you.

Larry

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Larry S. Sauer
Deputy Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215-3485
(614) 466-1312

From: Martin T Harvey [mailto:mtharvey@JonesDay.com]
Sent: Thursday, September 11, 2014 1:54 PM
To: Sauer, Larry
Cc: David A. Kutik
Subject: RE: Case No. 14-1297-EL-SSO Protective Agreement for OCC

Larry,

Attached please find a revised protective agreement which is a redline of the proposed changes made by OCC which we can accept. If this is acceptable to you please let me know and I will incorporate these changes and send a clean copy to you for execution.

Thanks,

Marty

Martin Harvey
Jones Day
Phone: (216) 586-7026
Email: mtharvey@jonesday.com

From: "Sauer, Larry" <Larry.Sauer@occ.ohio.gov>
To: Martin T Harvey <mtharvey@JonesDay.com>,
Cc: "David A. Kutik" <dakutik@JonesDay.com>
Date: 09/08/2014 03:08 PM
Subject: RE: Case No. 14-1297-EL-SSO Protective Agreement for OCC

Martin,

I have provided red-lined edits to the word version you sent me on August 26, 2014. There are three provisions that were removed from the FE AER Protective Agreement (P/A) that I have put back into the P/A FE is proposing for this case. These are three

substantive changes to the P/A that were agreed upon in the FE AER, and included in many P/A before that case as well. 1) the provision addressing the protocol in the event OCC receives a public records request (Para. 13 of the FE AER P/A) was deleted. 2) The indemnification provision (Para 14 of the FE AER P/A) was deleted. 3) The sovereign immunity provision (Para 16 of the FE AER P/A) was deleted. These are three important provisions to OCC and should not be deleted from a P/A. I have made a few other edits to the attached P/A for your consideration. Finally, the limitations included in Paragraph 4 (C) are too broad and impractical, and therefore, that provision needs to be modified. Please let me know if you will propose some less limiting language or if we need to have a discussion regarding that provision to try and reach a mutual understanding.

Thank you.

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Larry S. Sauer
Assistant Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215-3485
(614) 466-1312

From: Martin T Harvey [<mailto:mtharvey@JonesDay.com>]
Sent: Wednesday, September 03, 2014 9:40 AM
To: Sauer, Larry
Cc: David A. Kutik
Subject: RE: Case No. 14-1297-EL-SSO Protective Agreement for OCC

Larry,

We are having difficulty understanding your position and the basis for it.

Our proposed protective agreement is, in fact, based on our prior agreements -- specifically, the most recent agreement that the Companies used in the AER Audit case, which OCC signed. To the extent that there are minor differences, we have pointed those out and explained the bases for those differences.

In contrast, you have not explained why OCC would have any problems under the agreement that we have proposed. If, as we understand, OCC is not a competitor in the retail and wholesale markets, then OCC's counsel and staff would be able to review all of the materials being produced, as long as each individual signed the nondisclosure certifications to be a "Fully Authorized Representative." The same would be true for any outside experts that OCC retains who were not providing advice to participants in such markets.

Lastly, we do not read the recent orders in the Duke ESP case as broadly as you claim them to be. The orders in that case did not address the two tiered system of protections that Duke requested. Nor do we believe that our proposed agreement would conflict with those orders.

We look forward to you providing us with specific objections, if any, to our proposed protective agreement.

Thank you,

Martin Harvey
Jones Day

Phone: (216) 586-7026

Email: mtharvey@jonesday.com

From: "Sauer, Larry" <Larry.Sauer@occ.ohio.gov>

To: Martin T Harvey <mtharvey@jonesday.com>.

Cc: "David A. Kulik" <dakulik@jonesday.com>, "burk@firstenergycorp.com" <burk@firstenergycorp.com>

Date: 08/02/2014 02:46 PM

Subject: RE: Case No. 14-1297-EL-SSO Protective Agreement for OCC

Martin,

I do not have authority to sign the Protective Agreement that you have supplied. OCC is not a competitor and the effort to create different classes to be treated differently is excessive for the circumstance in this case. OCC needs to have its counsel analytical staff and outside consultants reviewing these documents. That is the same as any other litigated proceeding. It does not matter if documents are stamped confidential or competitively sensitive as you are proposing.

As you may be aware, Duke (in its current ESP Case) made an effort to significantly rework the OCC Protective Agreement that they had agreed to on many past occasions. They too sought to establish, among other things, different levels of protection for documents. The PUCO this week ruled against Duke and ordered they sign the OCC Protective Agreement that OCC developed and used over the past decade. (See Entry attached). That protective agreement (which is attached) is reasonable and provides appropriate protection for a utility. Given the PUCO's recent decision adopting the OCC protective agreement, we urge you to reconsider your approach.

We look forward to you executing the attached Protective Agreement we are providing in lieu of the modified protective agreement you are proposing.

Thank you.

CONFIDENTIAL NOTICE:

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Larry S. Sauer
Assistant Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215-3485
(614) 466-1312

From: Martin T Harvey [<mailto:mtharvey@jonesday.com>]
Sent: Friday, August 22, 2014 4:18 PM

To: Sauer, Larry
Cc: David A. Kutik
Subject: RE: Case No. 14-1297-EL-SSO Protective Agreement for OCC

Larry,

Responding to your request to use the identical protective agreement that was used in the AER case, while that agreement both in structure and content is very similar to the one we are proposing for use in ESP IV, there are a handful of differences that have to be included because the two cases deal with different issues and different types of confidential information produced. Upon your review of our ESP IV agreement, you will see that the substantive differences between the two agreements arise from these differences.

The few substantive differences between the agreements are as follows:

1. The ESP IV agreement creates two classes of confidential documents -- "confidential" and "competitively sensitive confidential." Unlike the AER agreement, the ESP IV agreement calls for the different classes to be treated differently. Specifically, under the ESP IV agreement, "competitively sensitive confidential" documents can only be seen by a certain class of individuals designated as "Fully Authorized Representatives." Other "confidential" documents can be seen by "Limited Authorized Representatives." The reason for this difference between the two agreements is that almost all of the confidential or competitively sensitive information in the AER case related to REC bids and bidders, while in this case, we anticipate that the protective agreement will need to cover a greater variety of materials and subjects. We already have designated certain cost and operational information belonging to FES as "competitively sensitive confidential." In this case, there are likely to be parties that could use the some of the confidential information at issue (e.g., FES cost information) to their competitive advantage. Thus, the proposed protective agreement here is designed to assure that information used in this case doesn't benefit or disadvantage any competitor in the retail or wholesale markets.
2. Given the different classes of documents in the ESP IV agreement, the ESP IV agreement contains definitions for what would constitute "confidential" information and what would constitute "competitively sensitive confidential information."
3. For the same reason, the proposed agreement includes definitions for the individuals that may see each class of document. These definitions differ from the definitions used in the AER agreement because, as noted, the competitively sensitive information is different. In the AER case, we were concerned to make sure that persons involved in the REC market would not see the competitive sensitive information there. In this case, we are concerned that individuals involved in providing CRES service or participating in competitive SSO processes are screened from the competitively sensitive information in this case.
4. The ESP IV agreement also includes a provision that specifically recognizes that the obligations of the receiving party survive three years after the final order in the case.

Finally, while Jim Burk recalls the brief exchange last Friday about the nature of the confidentiality agreement, he recalls that when you and he discussed a protective agreement, you asked whether the Companies intended to use the ESP III case protective agreement. He responded that the agreement that the Companies were going to use in ESP IV was "more like the agreement" used in the AER case, in the sense that there were two levels of confidential information identified in the agreement. He did not intend to indicate that the exact same agreement from the AER case would be used in the ESP IV case.

I hope this explanation helps clear up any confusion or concerns. I would ask that you review the ESP IV agreement and let me know if you have any concerns with any of the terms and conditions.

Thanks,

Marty

Martin Harvey
Jones Day
Phone: (216) 586-7026
Email: mtharvey@jonesday.com

From: "Sauer, Larry" <Larry.Sauer@occ.ohio.gov>
To: Martin T Harvey <mtharvey@JonesDay.com>
Cc: David Kutik <dakutik@jonesday.com>, "burk@firstenergycorp.com" <burk@firstenergycorp.com>

Date: 08/21/2014 01:43 PM
Subject: RE: Case No. 14-1297-EL-SSO Protective Agreement for OCC

Martin,

When FE representatives met with OCC on August 15, 2014, Jim Burk represented to me that FE would be providing OCC the same protective agreement that was used in the FE AER Case (11-5201-EL-RDR). That is the protective agreement I have authority to sign. I have attached that protective agreement for your review. Please provide that protective agreement for OCC signature.

Thank you.

CONFIDENTIAL NOTICE:

THIS COMMUNICATION IS INTENDED ONLY FOR THE PERSON OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN CONFIDENTIAL AND/OR PRIVILEGED LEGAL, GOVERNMENTAL MATERIAL. ANY UNAUTHORIZED REVIEW, USE, DISCLOSURE OR DISTRIBUTION IS PROHIBITED. IF YOU ARE NOT, OR BELIEVE YOU ARE NOT, THE INTENDED RECIPIENT OF THIS COMMUNICATION, DO NOT READ IT. PLEASE REPLY TO THE SENDER ONLY, AND STATE THAT YOU HAVE RECEIVED THIS MESSAGE. THEN IMMEDIATELY DELETE THIS COMMUNICATION AND ALL COPIES OF THIS COMMUNICATION. THANK YOU.

Larry S. Sauer
Assistant Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215-3485
(614) 466-1312

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

From: Martin T Harvey [<mailto:mtharvey@JonesDay.com>]
Sent: Friday, August 15, 2014 4:32 PM
To: Sauer, Larry
Cc: David Kutik
Subject: FW: Case No. 14-1297-EL-SSO Protective Agreement for OCC

Larry,

Please see the attached and the email below.

Thank you,

Marty

***This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege.

If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.***

----- Forwarded by Martin T Harvey/JonesDay on 08/15/2014 04:31:37 PM-----

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

From : Martin T Harvey/JonesDay
To : Martin T Harvey/JonesDay@JonesDay
Cc :
Sent on : 08/08 09:10:04 AM EDT
Subject : Case No. 14-1297-EL-SSO Protective Agreement for OCC

On behalf of Jim Burk, attached please a draft protective agreement for your review. If this agreement is acceptable please sign it and return it to me. Please note that, as with past agreements, others working on this case on behalf of OCC will have to sign the applicable certifications and return those to me as well. Please call me at the number below with any questions.

Thank you,

Marty

Martin Harvey
Jones Day
Phone: (216) 586-7026
Email: mtharvey@jonesday.com
(See attached file: 14-1297 Protective Agreement for OCC.pdf)
[attachment "11-5201 FR AER Rider.pdf" deleted by Martin T Harvey/JonesDay]

=====
This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
=====

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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
===== [attachment "CLI_2244230_1_14-1297-EL-SSO Protective Agreement for OCC OCC edits 9-8-14 (2).docx" deleted by Martin T Harvey/JonesDay]

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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
=====

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric	)	Case No. 14-1297-EL-SSO
Illuminating Company and The Toledo)	
Edison Company for Authority to Provide)	
a Standard Service Offer Pursuant to R.C.)	
§ 4928.143 in the Form of an Electric)	
Security Plan.)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("the Companies") and Office of the Ohio Consumers' Counsel ("Receiving Party") (collectively, "the Parties"). This Agreement is designed to facilitate and expedite the exchange with OCC of all information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Company and OCC as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2.

3. "Proceeding" as used throughout this document means the above-captioned case(s), including any appeals, remands and other cases related thereto.

4. "Protected Materials" means documents and information furnished subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential. Protected Materials do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain.

5. Protected Materials provided in the context of this Proceeding will be provided to OCC for use by OCC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain. Nothing in this Agreement precludes OCC from filing Protected Materials under seal or otherwise using Protected Material in ways, such as *in camera* proceedings, that do not disclose Protected Materials.

6. As used in this Agreement, the term "Authorized Representative" includes OCC's counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by OCC and engaged in this Proceeding.

7. Access to Protected Materials is permitted to OCC's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC must treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom as proprietary and confidential, and will safeguard such Protected Materials, copies thereof,

information contained therein, and writings made therefrom so as to prevent voluntary disclosure to any persons other than OCC's Authorized Representatives.

8. If any OCC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to another Authorized Representative of OCC and if there is no such Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed the foregoing Non-Disclosure Certificate will continue to be bound by the provisions of this Agreement even if no longer so engaged.

9. In this proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials. OCC may also disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

10. OCC may file Protected Materials under seal in this Proceeding whether or not OCC seeks a ruling that the Protected Materials should be in the public domain. If OCC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then OCC must first give notice (as provided in Paragraph 15) to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Company will have five (5) business days after service of OCC's notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to

each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Company does not file such a motion within five (5) business days of OCC's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

11. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel, other OCC Authorized Representatives, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

12. Any portion of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

13. It is expressly understood that upon a filing made in accordance with Paragraph 9 or Paragraph 13 of this Agreement, the burden will be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

13. OCC will give the Company notice (as provided in Paragraph 15) if OCC receives a public records request for Protected Materials. The Company will have five (5) business days after service of OCC's notice to file a pleading before a court of competent

jurisdiction to prevent disclosure of the Protected Materials in question. If the Company files such a pleading, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret and not subject to this Agreement. Alternatively, the Company may provide notice to OCC that the Protected Materials may be disclosed in response to a public records request.

14. If, under Ohio's public records law, a court awards a relator or person or party attorney's fees or statutory damages or court costs in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Company will pay such awarded fees, statutory damages, and/or court costs to the relator or person or party so that the State of Ohio, OCC and OCC's employees and officials are held harmless.

15. All notices referenced in Paragraphs 9 and 13 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. OCC may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-

examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to OCC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes OCC from filing a motion to compel.

18. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

19. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

20. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Ohio Edison Company, The Cleveland
Electric Illuminating Company and The
Toledo Edison Company

By: _____

Date: _____

Office of the Ohio Consumers' Counsel

By: _____

Date: _____

Exhibit A

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric	)	Case No. 14-1297-EL-SSO
Illuminating Company and The Toledo)	
Edison Company for Authority to Provide)	
a Standard Service Offer Pursuant to R.C.)	
§ 4928.143 in the Form of an Electric)	
Security Plan.)	

NON-DISCLOSURE CERTIFICATE

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed ____ 200_, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be voluntarily disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in paragraph two of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo	)	Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)	
for a Standard Service Offer Pursuant to)	
R.C. § 4928.143 in the Form of an Electric)	
Security Plan)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("the Companies") and Office of the Ohio Consumers' Counsel ("Receiving Party") (collectively, "the Parties"). This Agreement is designed to facilitate and expedite the exchange with Receiving Party of information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Companies and Receiving Party as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Companies' obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document means the above-captioned case(s), including any appeals, remands and other cases related thereto.

3.A. "Protected Materials" means documents and information designated under this Agreement as "CONFIDENTIAL" that ~~customarily are treated by the Companies or third parties~~ as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, ~~would~~may subject the Companies or third parties to risk of competitive disadvantage or other business injury, and ~~may include materials that may meeting~~ the definition of "trade secret" under Ohio law.

B. "Protected Materials" also includes documents and information designated under this Agreement as "COMPETITIVELY SENSITIVE CONFIDENTIAL" that contain highly proprietary or competitively-sensitive information, that, if disclosed to suppliers, competitors or customers, may damage the producing party's competitive position ~~or the competitive position of the third party~~ which created the documents or information. COMPETITIVELY SENSITIVE CONFIDENTIAL DOCUMENTS can include documents or information prepared by the Companies ~~or provided to the Companies by a third party pursuant to a nondisclosure agreement.~~

C. "Protected Materials" do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order ~~or a similar protective agreement made between the Companies and other persons or entities~~ shall not be deemed to have caused such Protected Materials to have entered the public domain.

D. "Protected Materials" that are in writing shall be conspicuously marked with the appropriate designation, or counsel for the Companies may orally state on the deposition record ~~that~~prior to a response to a question posed at a deposition is considered Protected Materials.

E. "Protected Materials" includes documents or information that are stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, discs, networks or tapes) ("Computerized Material"). The Companies at their discretion may produce Computerized Material in such form. To the extent that Receiving Party reduces Computerized Material to hard copy, Receiving Party shall conspicuously mark such hard copy as confidential.

4. "Fully Authorized Representative" must execute a Non-Disclosure Certificate in the form of Exhibit B (applicable to COMPETITIVELY SENSITIVE CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Receiving Party's outside legal counsel and in-house legal counsel who are actively engaged in the conduct of this Proceeding;

B. Paralegals and other employees who are associated for purposes of this case with the attorneys described in Paragraph 4(A); and

C. An outside expert or employee of an outside expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding and who is not involved in (or providing advice regarding) decision-making by or on behalf of any entity concerning any aspect of competitive retail electric service or of competitive wholesale electric procurements.

Comment [A1]: This provision is too broad and would potentially preclude anyone from seeing this information.

5. "Limited Authorized Representative" must execute the Non-Disclosure Certificate in the form of Exhibit A (applicable to CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Legal counsel who have made an appearance in this proceeding or are actively engaged in this Proceeding for Receiving Party;

B. Paralegals and other employees who are associated for purposes of this case with an attorney described in Paragraph 5(A);

C. An employee of Receiving Party who is involved in the Proceedings on behalf of Receiving Party;

D. An expert or employee of an expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding.

6. Copies of all executed Non-Disclosure Certificates signed by Fully Authorized Representatives and Limited Authorized Representatives in this proceeding shall be provided to counsel for the Companies as soon as possible after the Certificates are executed.

7. Access to Protected Materials designated as "CONFIDENTIAL" is permitted to Fully Authorized Representatives and Limited Authorized Representatives who have executed the appropriate Non-Disclosure Certificate. Notwithstanding other provisions of this Agreement to the contrary, Protected Materials designated as "COMPETITIVELY SENSITIVE CONFIDENTIAL" or with words of similar import will be **strictly** limited to Fully Authorized Representatives. Counsel for Receiving Party will ensure that individuals who are not Fully Authorized Representatives are not permitted to access COMPETITIVELY SENSITIVE CONFIDENTIAL materials. Receiving Party, its Counsel, Fully Authorized Representatives and Limited Authorized Representatives must treat all Protected Materials (no matter how designated), copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than Receiving Party's counsel and those persons authorized to have access to the Protected Materials as set forth in this Agreement.

8. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any

disclosure of Protected Materials contrary to the terms of this Agreement or protective order ~~or a similar protective agreement made between the Companies and other persons or entities~~ shall not be deemed to have caused such Protected Materials to have entered the public domain. Nothing in this Agreement precludes Receiving Party from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

9. If any Receiving Party counsel, Fully Authorized Representative or Limited Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to a counsel of Receiving Party who is a Fully Authorized Representative, and if there is no such counsel of Receiving Party who is a Fully Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed either form of the foregoing Non-Disclosure Certificates will continue to be bound by the provisions of this Agreement even if no longer so engaged.

10. Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives are prohibited from disclosing Protected Materials to another party or that party's authorized representatives, provided however, (i) Receiving Party's counsel may disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding, (ii) for Protected Materials identified as CONFIDENTIAL, Receiving Party's counsel may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials and has signed a Non-Disclosure Certificate applicable to

materials designated as CONFIDENTIAL, and (iii) for Protected Materials identified as COMPETITIVELY SENSITIVE CONFIDENTIAL, Receiving Party's counsel may disclose such materials to another party's counsel as long as Receiving Party's Counsel has executed the **appropriate** Non-Disclosure Certificate and the Receiving Party's counsel (a) represents a party that has signed a protective agreement with the Companies and (b) has signed a Non-Disclosure Certificate applicable to materials designated as COMPETITIVELY SENSITIVE CONFIDENTIAL. Protected Materials, designated as "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL" and provided to Receiving Party by another party or its counsel shall be treated by Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives as being provided by the Companies and all terms of this Protective Agreement shall apply to the treatment of such materials.

11. Receiving Party may file Protected Materials under seal in this Proceeding whether or not Receiving Party seeks a ruling that the Protected Materials should be in the public domain. If Receiving Party desires to include, utilize, refer to, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then Receiving Party must first give notice (as provided in Paragraph 15) to the Companies, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Companies will have five (5) business days after service of Receiving Party's notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of

such information. If the Companies do not file such a motion within five (5) business days of Receiving Party's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

12. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel who are either a signatory to this Agreement or who have executed a Non-Disclosure Certification prior to any access, any other person who would otherwise be permitted to have access to the Protected Materials under the terms of Paragraph 7, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

13. Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

14. It is expressly understood that upon a filing made in accordance with Paragraph 11 of this Agreement, the burden will be upon the Companies to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

15. OCC will give the Companies notice (as provided in Paragraph 15) if OCC receives a public records request for Protected Materials. The Companies will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. If the Companies file

such a pleading, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Companies do not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret and not subject to this Agreement. Alternatively, the Companies may provide notice to OCC that the Protected Materials may be disclosed in response to a public records request.

16. If, under Ohio's public records law, a court awards a relator or person or party attorney's fees or statutory damages or court costs in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Companies will pay such awarded fees, statutory damages, and/or court costs to the relator or person or party so that the State of Ohio, OCC and OCC's employees and officials are held harmless.

175. All notices referenced in Paragraph 11 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

186. Once Receiving Party has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and Receiving Party determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, Receiving Party must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. Receiving Party may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

Formatted: Indent: First line: 0", No widow/orphan control, Tab stops: 0.5", Left + 1", Left + 1.17", Left + 1.56", Left + 1.94", Left + 2.33", Left + 2.72", Left + 3.11", Left + 3.5", Left + 3.89", Left + 4.28", Left + 4.67", Left

197. By entering into this Protective Agreement, Receiving Party does not waive any right that it may have to dispute the Companies' determination regarding any material identified as confidential by the Companies and to pursue those remedies that may be available to Receiving Party before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes Receiving Party from filing a motion to compel.

2018. By entering into this Protective Agreement, the Companies do not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Companies before the administrative agency of competent jurisdiction or court of competent jurisdiction.

2149. Inadvertent production of any document or information during discovery without a designation of "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL" will not be deemed to waive the Companies' claim to its confidential nature or estop the Companies from designating the document or information at a later date. Disclosure of the document or information by Receiving Party prior to such later designation shall not be deemed a violation of this Agreement and Receiving Party bears no responsibility or liability for any such disclosure. Receiving Party does not waive its right to challenge the Companies' delayed claim or designation of the inadvertent production of any document or information as "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL."

220. ~~This Protective Agreement shall become effective upon the date first above written, and shall remain in effect until terminated in writing by either party or three (3) years from the date first set forth above, whichever occurs earlier. Notwithstanding any such termination, the rights and obligations with respect to the disclosure of Protected Materials as defined hereinabove shall survive the termination of this Protective Agreement for a period of~~

~~three (3) years following the later of the Commission's final Order or Entry on Rehearing in this proceeding.~~

243. To the extent of any conflicts between this Agreement and any previously signed confidentiality or nondisclosure agreement related to the disclosure of information associated with the Companies' fourth electric security plan, this Agreement prevails.

22. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

234. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Ohio Edison Company, The Cleveland
Electric Illuminating Company and The
Toledo Edison Company

BY:

Counsel

Date

Office of the Ohio Consumers' Counsel

BY:

Counsel

Date

Exhibit A

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant to)
R.C. § 4928.143 in the Form of an Electric)
Security Plan.)

NON-DISCLOSURE CERTIFICATE FOR
CONFIDENTIAL PROTECTED MATERIALS

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____ 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

Exhibit B

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant to)
R.C. § 4928.143 in the Form of an Electric)
Security Plan.

NON-DISCLOSURE CERTIFICATE FOR
COMPETITIVELY SENSITIVE CONFIDENTIAL PROTECTED MATERIALS

I certify my understanding that access to COMPETITIVELY SENSITIVE CONFIDENTIAL Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____ 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo	)	Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)	
for a Standard Service Offer Pursuant to)	
R.C. § 4928.143 in the Form of an Electric)	
Security Plan)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("the Companies") and Office of the Ohio Consumers' Counsel ("Receiving Party") (collectively, "the Parties"). This Agreement is designed to facilitate and expedite the exchange with Receiving Party of information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Companies and Receiving Party as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Companies' obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document means the above-captioned case(s), including any appeals, remands and other cases related thereto.

3.A. "Protected Materials" means documents and information designated under this Agreement as "CONFIDENTIAL" that ~~customarily~~ are treated by the Companies or third parties as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, may ~~would~~ subject the Companies or third parties to risk of competitive disadvantage or other business injury, and ~~may~~ includes materials that may ~~meeting~~ the definition of "trade secret" under Ohio law.

B. "Protected Materials" also includes documents and information designated under this Agreement as "COMPETITIVELY SENSITIVE CONFIDENTIAL" that contain highly proprietary or competitively-sensitive information, that, if disclosed to suppliers, competitors or customers, may damage the producing party's competitive position or the competitive position of the third party which created the documents or information. COMPETITIVELY SENSITIVE CONFIDENTIAL DOCUMENTS can include documents or information prepared by the Companies or provided to the Companies by a third-party pursuant to a nondisclosure agreement.

C. "Protected Materials" do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Companies and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

D. "Protected Materials" that are in writing shall be conspicuously marked with the appropriate designation, or counsel for the Companies may orally state on the deposition record that a response to a question posed at a deposition is considered Protected Materials.

E. "Protected Materials" includes documents or information that are stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, discs, networks or tapes) ("Computerized Material"). The Companies at their discretion may produce Computerized Material in such form. To the extent that Receiving Party reduces Computerized Material to hard copy, Receiving Party shall conspicuously mark such hard copy as confidential.

4. "Fully Authorized Representative" must execute a Non-Disclosure Certificate in the form of Exhibit B (applicable to COMPETITIVELY SENSITIVE CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Receiving Party's outside legal counsel and in-house legal counsel who are actively engaged in the conduct of this Proceeding;

B. Paralegals and other employees who are associated for purposes of this case with the attorneys described in Paragraph 4(A); and

~~C. An outside expert or employee of an outside expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding and who is not involved in (or providing advice regarding) decision-making by or on behalf of any entity concerning any aspect of competitive retail electric service or of competitive wholesale electric procurements.~~

An outside expert or employee of an outside expert retained by Receiving Party or by Receiving Party's outside legal counsel for the purpose of advising, preparing for or testifying in this Proceeding and who is not involved in (or providing advice regarding) decision-making by or on behalf of any supplier, marketer, broker, aggregator, or governmental aggregator concerning any aspect of competitive retail electric service or of any supplier, marketer, or broker concerning any aspect of competitive wholesale electric procurements.

5. “Limited Authorized Representative” must execute the Non-Disclosure Certificate in the form of Exhibit A (applicable to CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Legal counsel who have made an appearance in this proceeding or are actively engaged in this Proceeding for Receiving Party;

B. Paralegals and other employees who are associated for purposes of this case with an attorney described in Paragraph 5(A);

C. An employee of Receiving Party who is involved in the Proceedings on behalf of Receiving Party;

D. An expert or employee of an expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding.

6. Copies of all executed Non-Disclosure Certificates signed by Fully Authorized Representatives and Limited Authorized Representatives in this proceeding shall be provided to counsel for the Companies as soon as possible after the Certificates are executed.

7. Access to Protected Materials designated as “CONFIDENTIAL” is permitted to Fully Authorized Representatives and Limited Authorized Representatives who have executed the appropriate Non-Disclosure Certificate. Notwithstanding other provisions of this Agreement to the contrary, Protected Materials designated as “COMPETITIVELY SENSITIVE CONFIDENTIAL” or with words of similar import will be **strictly** limited to Fully Authorized Representatives. Counsel for Receiving Party will ensure that individuals who are not Fully Authorized Representatives are not permitted to access COMPETITIVELY SENSITIVE CONFIDENTIAL materials. Receiving Party, its Counsel, Fully Authorized Representatives

and Limited Authorized Representatives must treat all Protected Materials (no matter how designated), copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than Receiving Party's counsel and those persons authorized to have access to the Protected Materials as set forth in this Agreement.

8. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Companies and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain. Nothing in this Agreement precludes Receiving Party from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

9. If any Receiving Party counsel, Fully Authorized Representative or Limited Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to a counsel of Receiving Party who is a Fully Authorized Representative, and if there is no such counsel of Receiving Party who is a Fully Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who

has signed either form of the foregoing Non-Disclosure Certificates will continue to be bound by the provisions of this Agreement even if no longer so engaged.

10. Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives are prohibited from disclosing Protected Materials to another party or that party's authorized representatives, provided however, (i) Receiving Party's counsel may disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding, (ii) for Protected Materials identified as CONFIDENTIAL, Receiving Party's counsel may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials and has signed a Non-Disclosure Certificate applicable to materials designated as CONFIDENTIAL, and (iii) for Protected Materials identified as COMPETITIVELY SENSITIVE CONFIDENTIAL, Receiving Party's counsel may disclose such materials to another party's counsel as long as Receiving Party's Counsel has executed the **appropriate** Non-Disclosure Certificate and the Receiving Party's counsel (a) represents a party that has signed a protective agreement with the Companies and (b) has signed a Non-Disclosure Certificate applicable to materials designated as COMPETITIVELY SENSITIVE CONFIDENTIAL. Protected Materials, designated as "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL" and provided to Receiving Party by another party or its counsel shall be treated by Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives as being provided by the Companies and all terms of this Protective Agreement shall apply to the treatment of such materials.

11. Receiving Party may file Protected Materials under seal in this Proceeding whether or not Receiving Party seeks a ruling that the Protected Materials should be in the public domain. If Receiving Party desires to include, utilize, refer to, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then Receiving Party must first give notice (as provided in Paragraph 15) to the Companies, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Companies will have five (5) business days after service of Receiving Party's notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Companies do not file such a motion within five (5) business days of Receiving Party's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

12. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel who are either a signatory to this Agreement or who have executed a Non-Disclosure Certification prior to any access, any other person who would otherwise be permitted to have access to the Protected Materials under the terms of Paragraph 7, and others authorized by the administrative agency or court to be present; however,

characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

13. Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

14. It is expressly understood that upon a filing made in accordance with Paragraph 11 of this Agreement, the burden will be upon the Companies to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

15. OCC will give the Companies notice (as provided in Paragraph 15) if OCC receives a public records request for Protected Materials. The Companies will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. If the Companies file such a pleading, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Companies do not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret and not subject to this Agreement. Alternatively, the Companies may provide notice to OCC that the Protected Materials may be disclosed in response to a public records request.

16. If, under Ohio's public records law, a court awards a relator or person or party attorney's fees or statutory damages or court costs in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Companies will pay such awarded fees.

statutory damages, and/or court costs to the relator or person or party so that the State of Ohio, OCC and OCC's employees and officials are held harmless.

175. All notices referenced in Paragraph 11 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

186. Once Receiving Party has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and Receiving Party determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, Receiving Party must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. Receiving Party may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

197. By entering into this Protective Agreement, Receiving Party does not waive any right that it may have to dispute the Companies' determination regarding any material identified as confidential by the Companies and to pursue those remedies that may be available to Receiving Party before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes Receiving Party from filing a motion to compel.

2018. By entering into this Protective Agreement, the Companies do not waive any right it may have to object to the discovery of confidential material on grounds other than

confidentiality and to pursue those remedies that may be available to the Companies before the administrative agency of competent jurisdiction or court of competent jurisdiction.

2149. Inadvertent production of any document or information during discovery without a designation of “CONFIDENTIAL” or “COMPETITIVELY SENSITIVE CONFIDENTIAL” will not be deemed to waive the Companies’ claim to its confidential nature or estop the Companies from designating the document or information at a later date. Disclosure of the document or information by Receiving Party prior to such later designation shall not be deemed a violation of this Agreement and Receiving Party bears no responsibility or liability for any such disclosure. Receiving Party does not waive its right to challenge the Companies’ delayed claim or designation of the inadvertent production of any document or information as “CONFIDENTIAL” or “COMPETITIVELY SENSITIVE CONFIDENTIAL.”

220. This Protective Agreement shall become effective upon the date first above written, and shall remain in effect until terminated in writing by either party or three (3) years from the date first set forth above, whichever occurs earlier. Notwithstanding any such termination, the rights and obligations with respect to the disclosure of Protected Materials as defined hereinabove shall survive the termination of this Protective Agreement for a period of three (3) years following the later of the Commission’s final Order or Entry on Rehearing in this proceeding.

234. To the extent of any conflicts between this Agreement and any previously signed confidentiality or nondisclosure agreement related to the disclosure of information associated with the Companies’ fourth electric security plan, this Agreement prevails.

242. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the

Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

23. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Ohio Edison Company, The Cleveland
Electric Illuminating Company and The
Toledo Edison Company

Office of the Ohio Consumers' Counsel

BY:

BY:

Counsel

Counsel

Date

Date

Exhibit A

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant to)
R.C. § 4928.143 in the Form of an Electric)
Security Plan.)

NON-DISCLOSURE CERTIFICATE FOR
CONFIDENTIAL PROTECTED MATERIALS

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____ 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

Exhibit B

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant to)
R.C. § 4928.143 in the Form of an Electric
Security Plan.

NON-DISCLOSURE CERTIFICATE FOR
COMPETITIVELY SENSITIVE CONFIDENTIAL PROTECTED MATERIALS

I certify my understanding that access to COMPETITIVELY SENSITIVE CONFIDENTIAL Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____ 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

CASE NO. 14-1297-EL-SSO: CONFIDENTIAL

OCC Set 1
Witness: Eileen M. Mikkelsen

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
The Toledo Edison Company for Authority to Provide for a Standard Service Offer
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

OCC Set 1 – Referring to page 17 of the Direct Testimony of Companies' witness Mikkelsen on PJM legacy
INT-12 RTEP costs:

- a. By year, what are the actual PJM legacy RTEP costs that have not been recovered from retail customers?
- b. By year, what are the estimated PJM legacy RTEP costs that will not be recovered from retail customers?

Response: *Subject to any objections, the requested information is Confidential* and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

Case No. 14-1297-EL-SSO: Competitively Sensitive Confidential

OCC Set 2
Witness: Jay A. Ruberto
As to objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
The Toledo Edison Company for Authority to Provide for a Standard Service Offer
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

OCC Set 2 – Referring to page 4 of the Direct Testimony of Companies' witness Ruberto, please identify
INT-37 the reports, reviews, memoranda and/or documents that contain the EDU team's
evaluation and determination "whether the Plants' projected levels of costs were
reasonable for the output."

Response: Objection. This request seeks information that is protected by the attorney client and work-product privileges. ***Subject to any objections***, a response will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

CASE NO. 14-1297-EL-SSO: COMPETITIVELY SENSITIVE CONFIDENTIAL

OCC Set 2
Witness: Jay A. Ruberto
As to objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
The Toledo Edison Company for Authority to Provide for a Standard Service Offer
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

OCC Set 2 –
INT-41 Referring to page 6, line 12 of the Direct Testimony of Companies' witness Ruberto, please
identify the reports, reviews, memoranda and/or documents that contain the EDU team's
verification of "Mr. Lisowski's revenue analysis".

Response: ***Subject to any objections, the requested information is Competitively-Sensitive Confidential*** and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

CASE NO. 14-1297-EL-SSO: COMPETITIVELY SENSITIVE CONFIDENTIAL

OCC Set 2

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
The Toledo Edison Company for Authority to Provide for a Standard Service Offer
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

**OCC Set 2 –
RPD-18**

Please provide a copy of the electronic spreadsheet, with formulas intact, for the
following workpapers filed with the Application and Direct Testimony:

- a. Fanelli Workpapers;
- b. Strah Workpapers;
- c. Lisowski Workpapers; and
- d. Rose Workpapers.

Response:

Subject to any objections, the requested information is Confidential and Competitively-Sensitive Confidential and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

CASE NO. 14-1297-EL-SSO: COMPETITIVELY SENSITIVE CONFIDENTIAL

OCC Set 2

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
The Toledo Edison Company for Authority to Provide for a Standard Service Offer
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

**OCC Set 2 –
RPD-22**

Referring to page 4 of the Direct Testimony of Companies' witness Lisowski, please
provide the 20-year forecast from OVEC upon which Mr. Lisowski based his cost
projections.

Response: *Subject to any objections, the requested information is Competitively-Sensitive Confidential* and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

CASE NO. 14-1297-EL-SSO: CONFIDENTIAL

OCC Set 3
Witness: Eileen M. Mikkelsen
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
The Toledo Edison Company for Authority to Provide for a Standard Service Offer
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

OCC Set 3 – If the answer to Ohio Consumers' Counsel ("OCC") Interrogatory No. 64 is that the rate is
INT-65 currently set equal to \$0.00, please itemize all anticipated MTEP charges. Please provide
all calculations of all anticipated MTEP charges on both a NPV and a nominal dollar basis
and the source(s) for the inputs to the calculations.

Response:

Objection. The request is vague, ambiguous, overly broad, unduly burdensome, and seeks information neither relevant nor likely to lead to the discovery of admissible evidence. Moreover, the request in OCC Set 3-INT-64 is vague and ambiguous as to the term "FirstEnergy."

Subject to objections, the requested information is Confidential and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

CASE NO. 14-1297-EL-SSO: CONFIDENTIAL

OCC Set 3

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
The Toledo Edison Company for Authority to Provide for a Standard Service Offer
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

OCC Set 3 – Please provide the calculations of all anticipated MTEP charges on both a NPV basis and a
RPD-25 nominal dollar basis and the source(s) for the inputs to the calculations including the
agreements, contracts and documents identified in response to OCC Interrogatory No. 65.

Response:

The requested information is Confidential and will be provided to the requesting party,
provided that said party has executed a mutually agreeable protective agreement.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo	)	Case No. 12-1230-EL-SSO
Edison Company for Authority to Provide)	
for a Standard Service Offer Pursuant to)	
R.C. § 4928.143 in the Form of an Electric)	
Security Plan)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "FirstEnergy EDUs" or "Company") and *Northeast Ohio Public Energy Council* ("RECEIVING PARTY") (collectively with the Company, the "Parties"). This Agreement is designed to facilitate and expedite the exchange with RECEIVING PARTY of all information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Company and RECEIVING PARTY as to the manner in which "Protective Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Company's obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use solely for the purposes of this Proceeding while protecting such data from disclosure without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document shall mean the above-captioned cases, including any appeals and cases with which the above-captioned cases are consolidated.

3. "Protected Materials" shall mean documents and information furnished on or after the filing of applications in this Proceeding that are subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential or by counsel for the Company orally notifying RECEIVING PARTY's counsel, on the deposition record, prior to a response to a question posed at a deposition that the response is considered "Protected Materials." Protected Materials shall not include any information or documents contained in the public files of any state or federal administrative agency or court and shall not include documents or information which at, or prior to, commencement of this Proceeding is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

4. Protected Materials provided in the context of this Proceeding shall be provided to RECEIVING PARTY for use by RECEIVING PARTY in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the

Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain. Nothing in this Agreement precludes RECEIVING PARTY from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

5. As used in this Agreement, the term "Authorized Representative" shall include RECEIVING PARTY's counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants or other persons employed or retained by RECEIVING PARTY and engaged in this Proceeding who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access.

6. Access to Protected Materials is permitted to RECEIVING PARTY's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. RECEIVING PARTY shall treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and shall safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than RECEIVING PARTY's Authorized Representatives.

7. In the event that any RECEIVING PARTY's Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person

shall be terminated immediately and such person shall promptly return Protected Materials in his or her possession to another Authorized Representative of RECEIVING PARTY and if there shall be no such Authorized Representative, such person shall treat such Protected Materials in the manner set forth in Provision 12 hereof as if this Proceeding herein had been concluded. Any person who has signed the attached Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this Proceeding, RECEIVING PARTY may disclose Protected Materials or writings regarding their contents to any individual or entity that is already in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order in this proceeding with respect to the Protected Materials. RECEIVING PARTY may also disclose Protected Materials for use in this proceeding to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. If RECEIVING PARTY desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, RECEIVING PARTY shall first give notice to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain or to third persons not subject to a protective order or protective agreement with the Company. RECEIVING PARTY will serve said notice on the Company, to the attention of one of the Company's counsel in these cases by one of the following methods: (1) hand-delivering the notice to the counsel's offices, or (2) sending the notice to the counsel's offices by an overnight delivery service, or (3) hand-

delivering the notice to counsel in person at any location, or (4) sending the notice to counsel via email during regular business hours. Service effected by the any of the first three methods listed in the prior sentence shall be deemed made at the time of delivery to the Company's counsel and shall be accompanied by notice to counsel via email during regular business hours. If service is made by email (method "(4)", *supra*), the Company shall respond to RECEIVING PARTY by email (during regular business hours) acknowledging the receipt of such notice, and service by RECEIVING PARTY shall be deemed to be made at the time of the sending of such responsive email during regular business hours. After service of RECEIVING PARTY's notice, the Company shall have five (5) business days within which to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and/or affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion shall set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Company does not file such a motion within five (5) business days of RECEIVING PARTY's service of the notice, then the Protected Materials shall be deemed nonconfidential, not a trade secret and not subject to this Agreement.

The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such proceedings should be open only to the Parties, their counsel who are either a signatory to this

Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access, other RECEIVING PARTY Authorized Representatives, and others authorized by the administrative agency or court to be present.

Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected shall be filed under seal. RECEIVING PARTY may file Protected Materials under seal or use Protected Materials *in camera* in this Proceeding regardless of whether RECEIVING PARTY seeks a ruling that the Protected Materials should be in the public domain. All Protected Materials filed under seal shall remain confidential pending a ruling by such administrative agency or court.

10. It is expressly understood that upon a filing made in accordance with Provision 9 or Provision 11 of this Agreement, the burden shall be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

11. RECEIVING PARTY will give the Company notice if RECEIVING PARTY receives a public records request for Protected Materials. The Company will have five (5) business days after service of RECEIVING PARTY's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. During the same five business day period, RECEIVING PARTY will consider its own independent determination under the Public Records Act as to whether such Protected Materials are "public records" subject to mandatory disclosure under Section 149.43 of the Ohio Revised Code and RECEIVING PARTY, in its

discretion, may consult with the Company regarding any additional information needed in order to reach that determination. Also during the same five business day period, RECEIVING PARTY will not disclose or produce the Protected Materials in response to the request unless ordered to disclose the Protected Materials during the same five business day period by a court of competent jurisdiction. RECEIVING PARTY will notify the Company within three business days of service of RECEIVING PARTY's notice if RECEIVING PARTY has independently determined that the Protected Materials are not "public records," so that the Company may avoid filing a pleading before a court of competent jurisdiction. If the Company files such a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials, RECEIVING PARTY will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) business days of service of RECEIVING PARTY's notice, then such Protected Materials can be deemed by RECEIVING PARTY to be non-confidential, not a trade secret, and not subject to this Agreement. Notice in this provision will be effected in the same manner as the notice in Provision 9 of this Agreement.

Alternatively, the Company may provide notice to RECEIVING PARTY that the Protected Material may be disclosed by the RECEIVING PARTY in response to a public records request. Notice to RECEIVING PARTY in this Provision 11 will be effected by means of the alternatives set out in Provision 9 of this Agreement regarding notice to the Company.

If, under Ohio's public records law, a court awards a relator or person attorney's fees or statutory damages in connection with RECEIVING PARTY's non-disclosure or delayed disclosure of Protected Materials, then the Company will pay such awarded fees and/or statutory damages to the relator or person so that the State of Ohio, RECEIVING PARTY and RECEIVING PARTY's employees and officials are held harmless.

12. Once RECEIVING PARTY has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and RECEIVING PARTY determines that it has no further legal obligations to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, RECEIVING PARTY shall return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain (in a manner not inconsistent with the terms of this Agreement, a protective order, or a similar protective agreement with the Company) or filed with a state or federal administrative agency or court under seal. RECEIVING PARTY may keep one copy of all testimony, cross examination, transcripts, briefs and work product pertaining to such information and shall maintain that copy under secure conditions as provided in this Agreement.

13. By entering into this Protective Agreement, RECEIVING PARTY does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to RECEIVING PARTY before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes RECEIVING PARTY from filing a motion to compel with regards to disclosure.

14. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on other grounds and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

15. Inadvertent production of any document or information during discovery without a designation of "Confidential" will not be deemed to waive the Company's claim to its confidential nature or estop the Company from designating the document or information at a later date. Disclosure of the document or information by RECEIVING PARTY prior to such later designation shall not be deemed a violation of this Agreement and RECEIVING PARTY bears no responsibility or liability for any such disclosure. RECEIVING PARTY does not waive its right to challenge the Company's delayed claim or designation of the inadvertent production of any document or information as "Confidential."

16. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement shall be valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by RECEIVING PARTY.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

FirstEnergy EDUs

BY:

Laura C. McBride
Counsel

5/11/2012
Date

Northeast Ohio Public Energy Council
RECEIVING PARTY

BY:

Glenn S. Harsh
Counsel

5/11/12
Date

Exhibit A

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 12-1230-EL-SSO
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant to)
R.C. § 4928.143 in the Form of an Electric)
Security Plan)

NON-DISCLOSURE CERTIFICATE

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed this _____ day of _____, 2012, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from Protected Materials shall not be voluntarily disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of this "Proceeding" as defined in Provision 2 of the Protective Agreement.

Name: _____
Company: _____
Address: _____
Telephone: _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of)	
the Existence of Significantly Excessive)	
Earnings for 2013 Under the Electric)	Case No. 14-828-EL-UNC
Security Plans of Ohio Edison)	
Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company.)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "FirstEnergy EDUs" or "Company") and the Office of the Ohio Consumers' Counsel ("OCC") (collectively with the Company, the "Parties"). This Agreement is designed to facilitate and expedite the exchange with OCC of all information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Company and OCC as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Company's obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use solely for the purposes of this Proceeding while protecting such data from disclosure without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document shall mean the above-captioned case, including any appeals and cases with which the above-captioned case is consolidated.

3. "Protected Materials" shall mean documents and information furnished on or after the filing of the application in this Proceeding that are subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential or by counsel for the Company orally notifying OCC's counsel, on the deposition record, prior to a response to a question posed at a deposition that the response is considered "Protected Materials." Protected Materials shall not include any information or documents contained in the public files of any state or federal administrative agency or court and shall not include documents or information which at, or prior to, commencement of this Proceeding is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

4. Protected Materials provided in the context of this Proceeding shall be provided to OCC for use by OCC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public

domain. Nothing in this Agreement precludes OCC from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

5. As used in this Agreement, the term "Authorized Representative" shall include OCC's counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants or other persons employed or retained by OCC and engaged in this Proceeding who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access.

6. Access to Protected Materials is permitted to OCC's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC shall treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and shall safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than OCC's Authorized Representatives.

7. In the event that any OCC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person shall be terminated immediately and such person shall promptly return Protected Materials in his or her possession to another Authorized Representative of OCC and if there shall be no such Authorized Representative, such person shall treat such Protected Materials in the

manner set forth in Provision 12 hereof as if this Proceeding herein had been concluded. Any person who has signed the attached Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this Proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is already in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order in this Proceeding with respect to the Protected Materials. OCC may also disclose Protected Materials for use in this Proceeding to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. If OCC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, OCC shall first give notice to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain or to third persons not subject to a protective order or protective agreement with the Company. OCC will serve said notice on the Company, to the attention of one of the Company's counsel in this case by one of the following methods: (1) hand-delivering the notice to the counsel's offices, or (2) sending the notice to the counsel's offices by an overnight delivery service, or (3) hand-delivering the notice to counsel in person at any location, or (4) sending the notice to counsel via email during regular business hours. Service effected by the any of the first three methods listed in the prior sentence shall be deemed made at the time of delivery to the Company's counsel and shall be accompanied by notice to counsel via email during regular business hours. If service is made by email

(method "(4)", *supra*), the Company shall respond to OCC by email (during regular business hours) acknowledging the receipt of such notice, and service by OCC shall be deemed to be made at the time of the sending of such responsive email during regular business hours. After service of OCC's notice, the Company shall have five (5) business days within which to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and/or affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion shall set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Company does not file such a motion within five (5) business days of OCC's service of the notice, then the Protected Materials shall be deemed nonconfidential, not a trade secret and not subject to this Agreement.

The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such proceedings should be open only to the Parties, their counsel who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access, other OCC Authorized Representatives, and others authorized by the administrative agency or court to be present.

Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected shall

be filed under seal. OCC may file Protected Materials under seal or use Protected Materials *in camera* in this Proceeding regardless of whether OCC seeks a ruling that the Protected Materials should be in the public domain. All Protected Materials filed under seal shall remain confidential pending a ruling by such administrative agency or court.

10. It is expressly understood that upon a filing made in accordance with Provision 9 or Provision 11 of this Agreement, the burden shall be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

11. OCC will give the Company notice if OCC receives a public records request for Protected Materials. The Company will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. During the same five business day period, OCC will consider its own independent determination under the Public Records Act as to whether such Protected Materials are "public records" subject to mandatory disclosure under Section 149.43 of the Ohio Revised Code and OCC, in its discretion, may consult with the Company regarding any additional information needed in order to reach that determination. Also during the same five business day period, OCC will not disclose or produce the Protected Materials in response to the request unless ordered to disclose the Protected Materials during the same five business day period by a court of competent jurisdiction. OCC will notify the Company within three business days of service of OCC's notice if OCC has independently determined that the Protected Materials are not "public records," so that the Company may avoid filing a pleading before a court of competent jurisdiction. If the Company files such a pleading before a

court of competent jurisdiction to prevent disclosure of the Protected Materials, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret, and not subject to this Agreement. Notice in this provision will be effected in the same manner as the notice in Provision 9 of this Agreement.

Alternatively, the Company may provide notice to OCC that the Protected Material may be disclosed by the OCC in response to a public records request. Notice to OCC in this Provision 11 will be effected by means of the alternatives set out in Provision 9 of this Agreement regarding notice to the Company.

If, under Ohio's public records law, a court awards a relator or person attorney's fees or statutory damages in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Company will pay such awarded fees and/or statutory damages to the relator or person so that the State of Ohio, OCC and OCC's employees and officials are held harmless.

12. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligations to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC shall return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain (in a manner not inconsistent with the terms of this Agreement, a protective order, or a similar protective agreement with the Company) or filed with a state or federal administrative

agency or court under seal. OCC may keep one copy of all testimony, cross examination, transcripts, briefs and work product pertaining to such information and shall maintain that copy under secure conditions as provided in this Agreement.

13. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to OCC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes OCC from filing a motion to compel with regards to disclosure.

14. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on other grounds and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

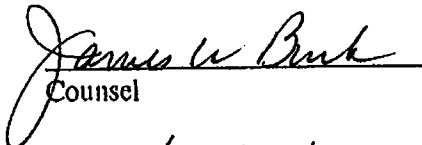
15. Inadvertent production of any document or information during discovery without a designation of "Confidential" will not be deemed to waive the Company's claim to its confidential nature or estop the Company from designating the document or information at a later date. Disclosure of the document or information by OCC prior to such later designation shall not be deemed a violation of this Agreement and OCC bears no responsibility or liability for any such disclosure. OCC does not waive its right to challenge the Company's delayed claim or designation of the inadvertent production of any document or information as "Confidential."

16. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any

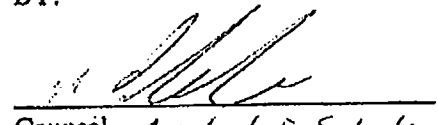
provision of this Agreement shall be valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

FirstEnergy EDUs
BY:


Counsel
7/21/14
Date

Office of the Ohio Consumers' Counsel
BY:


Counsel Michael J. Schuler
7/21/14
Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of)	
the Existence of Significantly Excessive)	
Earnings for 2013 Under the Electric)	Case No. 14-828-EL-UNC
Security Plans of Ohio Edison)	
Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company.)	

NON-DISCLOSURE CERTIFICATE

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed this _____ day of _____, 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from Protected Materials shall not be voluntarily disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of this "Proceeding" as defined in Provision 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of)	
the Existence of Significantly Excessive)	
Earnings for 2013 Under the Electric)	Case No. 14-828-EL-UNC
Security Plans of Ohio Edison)	
Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company.)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "FirstEnergy EDUs" or "Company") and the Office of the Ohio Consumers' Counsel ("OCC") (collectively with the Company, the "Parties"). This Agreement is designed to facilitate and expedite the exchange with OCC of all information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Company and OCC as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Company's obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use solely for the purposes of this Proceeding while protecting such data from disclosure without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document shall mean the above-captioned case, including any appeals and cases with which the above-captioned case is consolidated.

3. "Protected Materials" shall mean documents and information furnished on or after the filing of the application in this Proceeding that are subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential or by counsel for the Company orally notifying OCC's counsel, on the deposition record, prior to a response to a question posed at a deposition that the response is considered "Protected Materials." Protected Materials shall not include any information or documents contained in the public files of any state or federal administrative agency or court and shall not include documents or information which at, or prior to, commencement of this Proceeding is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

4. Protected Materials provided in the context of this Proceeding shall be provided to OCC for use by OCC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public

domain. Nothing in this Agreement precludes OCC from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

5. As used in this Agreement, the term "Authorized Representative" shall include OCC's counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants or other persons employed or retained by OCC and engaged in this Proceeding who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access.

6. Access to Protected Materials is permitted to OCC's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC shall treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and shall safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than OCC's Authorized Representatives.

7. In the event that any OCC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person shall be terminated immediately and such person shall promptly return Protected Materials in his or her possession to another Authorized Representative of OCC and if there shall be no such Authorized Representative, such person shall treat such Protected Materials in the

manner set forth in Provision 12 hereof as if this Proceeding herein had been concluded. Any person who has signed the attached Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this Proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is already in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order in this Proceeding with respect to the Protected Materials. OCC may also disclose Protected Materials for use in this Proceeding to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. If OCC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, OCC shall first give notice to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain or to third persons not subject to a protective order or protective agreement with the Company. OCC will serve said notice on the Company, to the attention of one of the Company's counsel in this case by one of the following methods: (1) hand-delivering the notice to the counsel's offices, or (2) sending the notice to the counsel's offices by an overnight delivery service, or (3) hand-delivering the notice to counsel in person at any location, or (4) sending the notice to counsel via email during regular business hours. Service effected by the any of the first three methods listed in the prior sentence shall be deemed made at the time of delivery to the Company's counsel and shall be accompanied by notice to counsel via email during regular business hours. If service is made by email

(method "(4)", *supra*), the Company shall respond to OCC by email (during regular business hours) acknowledging the receipt of such notice, and service by OCC shall be deemed to be made at the time of the sending of such responsive email during regular business hours. After service of OCC's notice, the Company shall have five (5) business days within which to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and/or affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion shall set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Company does not file such a motion within five (5) business days of OCC's service of the notice, then the Protected Materials shall be deemed nonconfidential, not a trade secret and not subject to this Agreement.

The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such proceedings should be open only to the Parties, their counsel who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access, other OCC Authorized Representatives, and others authorized by the administrative agency or court to be present.

Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected shall

be filed under seal. OCC may file Protected Materials under seal or use Protected Materials *in camera* in this Proceeding regardless of whether OCC seeks a ruling that the Protected Materials should be in the public domain. All Protected Materials filed under seal shall remain confidential pending a ruling by such administrative agency or court.

10. It is expressly understood that upon a filing made in accordance with Provision 9 or Provision 11 of this Agreement, the burden shall be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

11. OCC will give the Company notice if OCC receives a public records request for Protected Materials. The Company will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. During the same five business day period, OCC will consider its own independent determination under the Public Records Act as to whether such Protected Materials are "public records" subject to mandatory disclosure under Section 149.43 of the Ohio Revised Code and OCC, in its discretion, may consult with the Company regarding any additional information needed in order to reach that determination. Also during the same five business day period, OCC will not disclose or produce the Protected Materials in response to the request unless ordered to disclose the Protected Materials during the same five business day period by a court of competent jurisdiction. OCC will notify the Company within three business days of service of OCC's notice if OCC has independently determined that the Protected Materials are not "public records," so that the Company may avoid filing a pleading before a court of competent jurisdiction. If the Company files such a pleading before a

court of competent jurisdiction to prevent disclosure of the Protected Materials, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret, and not subject to this Agreement. Notice in this provision will be effected in the same manner as the notice in Provision 9 of this Agreement.

Alternatively, the Company may provide notice to OCC that the Protected Material may be disclosed by the OCC in response to a public records request. Notice to OCC in this Provision 11 will be effected by means of the alternatives set out in Provision 9 of this Agreement regarding notice to the Company.

If, under Ohio's public records law, a court awards a relator or person attorney's fees or statutory damages in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Company will pay such awarded fees and/or statutory damages to the relator or person so that the State of Ohio, OCC and OCC's employees and officials are held harmless.

12. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligations to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC shall return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain (in a manner not inconsistent with the terms of this Agreement, a protective order, or a similar protective agreement with the Company) or filed with a state or federal administrative

agency or court under seal. OCC may keep one copy of all testimony, cross examination, transcripts, briefs and work product pertaining to such information and shall maintain that copy under secure conditions as provided in this Agreement.

13. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to OCC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes OCC from filing a motion to compel with regards to disclosure.

14. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on other grounds and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

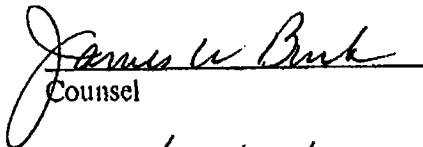
15. Inadvertent production of any document or information during discovery without a designation of "Confidential" will not be deemed to waive the Company's claim to its confidential nature or estop the Company from designating the document or information at a later date. Disclosure of the document or information by OCC prior to such later designation shall not be deemed a violation of this Agreement and OCC bears no responsibility or liability for any such disclosure. OCC does not waive its right to challenge the Company's delayed claim or designation of the inadvertent production of any document or information as "Confidential."

16. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any

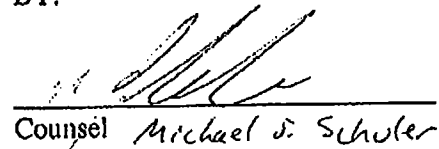
provision of this Agreement shall be valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

FirstEnergy EDUs
BY:


Counsel
7/21/14
Date

Office of the Ohio Consumers' Counsel
BY:


Counsel Michael J. Schuler
7/21/14
Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of)	
the Existence of Significantly Excessive)	
Earnings for 2013 Under the Electric)	Case No. 14-828-EL-UNC
Security Plans of Ohio Edison)	
Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company.)	

NON-DISCLOSURE CERTIFICATE

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed this _____ day of _____, 2014, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from Protected Materials shall not be voluntarily disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of this "Proceeding" as defined in Provision 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric	)	Case No. 12-2190-EL-POR
Illuminating Company, and The Toledo	)	Case No. 12-2191-EL-POR
Edison Company For Approval of Their	)	Case No. 12-2192-EL-POR
Energy Efficiency and Peak Demand)	
Reduction Program Portfolio Plans for)	
2013 through 2015.)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "FirstEnergy EDUs" or "Company") and the Office of the Ohio Consumers' Counsel ("OCC") (collectively with the Company, the "Parties"). This Agreement is designed to facilitate and expedite the exchange with OCC of all information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Company and OCC as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Company's obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use solely for the purposes of this Proceeding while protecting such data from disclosure without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document shall mean the above-captioned case, including any appeals and cases with which the above-captioned case is consolidated.

3. "Protected Materials" shall mean documents and information furnished on or after the filing of the application in this Proceeding that are subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential or by counsel for the Company orally notifying OCC's counsel, on the deposition record, prior to a response to a question posed at a deposition that the response is considered "Protected Materials." Protected Materials shall not include any information or documents contained in the public files of any state or federal administrative agency or court and shall not include documents or information which at, or prior to, commencement of this Proceeding is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

4. Protected Materials provided in the context of this Proceeding shall be provided to OCC for use by OCC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain. Nothing in this Agreement precludes OCC from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

5. As used in this Agreement, the term "Authorized Representative" shall include OCC's counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants or other persons employed or retained by OCC and engaged in this Proceeding who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access.

6. Access to Protected Materials is permitted to OCC's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC shall treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and shall safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than OCC's Authorized Representatives.

7. In the event that any OCC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person shall be terminated immediately and such person shall promptly return Protected Materials in his or her possession to another Authorized Representative of OCC and if there shall be no such Authorized Representative, such person shall treat such Protected Materials in the manner set forth in Provision 12 hereof as if this Proceeding herein had been concluded. Any person who has signed the attached Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this Proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is already in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order in this Proceeding

with respect to the Protected Materials. OCC may also disclose Protected Materials for use in this Proceeding to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. If OCC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, OCC shall first give notice to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain or to third persons not subject to a protective order or protective agreement with the Company. OCC will serve said notice on the Company, to the attention of one of the Company's counsel in this case by one of the following methods: (1) hand-delivering the notice to the counsel's offices, or (2) sending the notice to the counsel's offices by an overnight delivery service, or (3) hand-delivering the notice to counsel in person at any location, or (4) sending the notice to counsel via email during regular business hours. Service effected by the any of the first three methods listed in the prior sentence shall be deemed made at the time of delivery to the Company's counsel and shall be accompanied by notice to counsel via email during regular business hours. If service is made by email (method "(4)", *supra*), the Company shall respond to OCC by email (during regular business hours) acknowledging the receipt of such notice, and service by OCC shall be deemed to be made at the time of the sending of such responsive email during regular business hours. After service of OCC's notice, the Company shall have five (5) business days within which to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and/or affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion shall set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification

for the injury that would result from the disclosure of such information. If the Company does not file such a motion within five (5) business days of OCC's service of the notice, then the Protected Materials shall be deemed nonconfidential, not a trade secret and not subject to this Agreement.

The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such proceedings should be open only to the Parties, their counsel who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access, other OCC Authorized Representatives, and others authorized by the administrative agency or court to be present.

Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected shall be filed under seal. OCC may file Protected Materials under seal or use Protected Materials *in camera* in this Proceeding regardless of whether OCC seeks a ruling that the Protected Materials should be in the public domain. All Protected Materials filed under seal shall remain confidential pending a ruling by such administrative agency or court.

10. It is expressly understood that upon a filing made in accordance with Provision 9 or Provision 11 of this Agreement, the burden shall be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

11. OCC will give the Company notice if OCC receives a public records request for Protected Materials. The Company will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the

Protected Materials in question. During the same five business day period, OCC will consider its own independent determination under the Public Records Act as to whether such Protected Materials are "public records" subject to mandatory disclosure under Section 149.43 of the Ohio Revised Code and OCC, in its discretion, may consult with the Company regarding any additional information needed in order to reach that determination. Also during the same five business day period, OCC will not disclose or produce the Protected Materials in response to the request unless ordered to disclose the Protected Materials during the same five business day period by a court of competent jurisdiction. OCC will notify the Company within three business days of service of OCC's notice if OCC has independently determined that the Protected Materials are not "public records," so that the Company may avoid filing a pleading before a court of competent jurisdiction. If the Company files such a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret, and not subject to this Agreement. Notice in this provision will be effected in the same manner as the notice in Provision 9 of this Agreement.

Alternatively, the Company may provide notice to OCC that the Protected Material may be disclosed by the OCC in response to a public records request. Notice to OCC in this Provision 11 will be effected by means of the alternatives set out in Provision 9 of this Agreement regarding notice to the Company.

If, under Ohio's public records law, a court awards a relator or person attorney's fees or statutory damages in connection with OCC's non-disclosure or delayed disclosure of Protected

Materials, then the Company will pay such awarded fees and/or statutory damages to the relator or person so that the State of Ohio, OCC and OCC's employees and officials are held harmless.

12. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligations to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC shall return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain (in a manner not inconsistent with the terms of this Agreement, a protective order, or a similar protective agreement with the Company) or filed with a state or federal administrative agency or court under seal. OCC may keep one copy of all testimony, cross examination, transcripts, briefs and work product pertaining to such information and shall maintain that copy under secure conditions as provided in this Agreement.

13. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to OCC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes OCC from filing a motion to compel with regards to disclosure.

14. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on other grounds and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

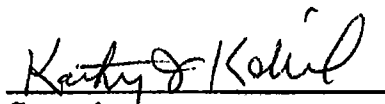
15. Inadvertent production of any document or information during discovery without a designation of "Confidential" will not be deemed to waive the Company's claim to its confidential nature or estop the Company from designating the document or information as a

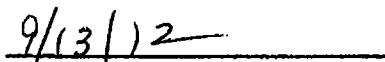
later date. Disclosure of the document or information by OCC prior to such later designation shall not be deemed a violation of this Agreement and OCC bears no responsibility or liability for any such disclosure. OCC does not waive its right to challenge the Company's delayed claim or designation of the inadvertent production of any document or information as "Confidential."

16. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement shall be valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

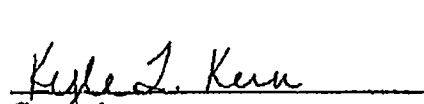
17. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

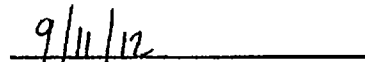
FirstEnergy EDUs
BY:


Counsel


Date

Office of the Ohio Consumers' Counsel
BY:


Counsel


Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric	)	Case No. 12-2190-EL-POR
Illuminating Company, and The Toledo	)	Case No. 12-2191-EL-POR
Edison Company For Approval of Their	)	Case No. 12-2192-EL-POR
Energy Efficiency and Peak Demand)	
Reduction Program Portfolio Plans for)	
2013 through 2015.)	

NON-DISCLOSURE CERTIFICATE

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed this _____ day of _____, 2012, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from Protected Materials shall not be voluntarily disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of this "Proceeding" as defined in Provision 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company for Authority to	)	Case No. 10-388-EL-SSO
Establish a Standard Service Offer)	
Pursuant to R.C. § 4928.143 in the Form)	
of an Electric Security Plan.)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between FirstEnergy Solutions Corp. ("FES" or "Company") and the Office of the Ohio Consumers' Counsel ("OCC") (collectively with the Company, the "Parties"). This Agreement is designed to facilitate and expedite the exchange with OCC of all information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Company and OCC as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Company's obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use solely for the purposes of this Proceeding while protecting such data from disclosure without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document shall mean the above-captioned case, including any appeals and cases with which the above-captioned case is consolidated.

3. "Protected Materials" shall mean documents and information furnished on or after the filing of applications in this Proceeding that are subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential or by counsel for the Company orally notifying OCC's counsel, on the deposition record, prior to a response to a question posed at a deposition that the response is considered "Protected Materials." Protected Materials shall not include any information or documents contained in the public files of any state or federal administrative agency or court and shall not include documents or information which at, or prior to, commencement of this Proceeding is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

4. Protected Materials provided in the context of this Proceeding shall be provided to OCC for use by OCC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain. Nothing in this Agreement precludes OCC from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

5. As used in this Agreement, the term "Authorized Representative" shall include OCC's counsel of record in this Proceeding and other attorneys, paralegals, economists,

statisticians, accountants, consultants, or other persons employed or retained by OCC and engaged in this Proceeding.

6. Access to Protected Materials is permitted to OCC's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC shall treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and shall safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than OCC's Authorized Representatives.

7. In the event that any OCC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person shall be terminated immediately and such person shall promptly return Protected Materials in his or her possession to another Authorized Representative of OCC and if there shall be no such Authorized Representative, such person shall treat such Protected Materials in the manner set forth in Provision 12 hereof as if this Proceeding herein had been concluded. Any person who has signed the attached Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this Proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is already in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement with the Company or bound by an Order with respect to the Protected Materials. OCC may also disclose Protected

Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. If OCC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, OCC shall first give notice to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain or to third persons not subject to a protective order or protective agreement with the Company. OCC will serve said notice on the Company, to the attention of one of the Company's counsel in this case by one of the following methods: (1) hand-delivering the notice to the counsel's offices, or (2) sending the notice to the counsel's offices by an overnight delivery service, or (3) hand-delivering the notice to counsel in person at any location, or (4) sending the notice to counsel via email. Service effected by the any of the first three methods listed in the prior sentence shall be deemed made at the time of delivery to the Company's counsel. If service is made by email (method "(4)", *supra*), the Company shall diligently respond to OCC by email (during regular business hours) acknowledging the receipt of such notice, and service by OCC shall be deemed to be made at the time of the sending of such responsive email. After service of OCC's notice, the Company shall have five (5) business days within which to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion shall set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Company does not file such a motion within five (5)

business days of OCC's service of the notice, then the Protected Materials shall be deemed non-confidential, not a trade secret and not subject to this Agreement.

The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such proceedings should be open only to the Parties, their counsel, other OCC Authorized Representatives, and others authorized by the administrative agency or court to be present.

Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected shall be filed under seal. OCC may file Protected Materials under seal or use Protected Materials *in camera* in this Proceeding regardless of whether OCC seeks a ruling that the Protected Materials should be in the public domain. All Protected Materials filed under seal shall remain confidential pending a ruling by such administrative agency or court.

10. It is expressly understood that upon a filing made in accordance with Provision 9 or Provision 11 of this Agreement, the burden shall be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

11. OCC will give the Company notice if OCC receives a public records request for Protected Materials. The Company will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. During the same five business day period, OCC will consider its own independent determination under the Public Records Act as to whether such Protected Materials are "public records" subject to mandatory disclosure under Section 149.43 of the Ohio

Revised Code and OCC, in its discretion, may consult with the Company regarding any additional information needed in order to reach that determination. Also during the same five business day period, OCC will not disclose or produce the Protected Materials in response to the request unless ordered to disclose the Protected Materials during that same five business day period by a court of competent jurisdiction. OCC will notify the Company within four business days of service of OCC's notice if OCC has independently determined that the Protected Materials are not "public records," so that the Company may avoid filing a pleading before a court of competent jurisdiction. If the Company files such a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret, and not subject to this Agreement. Notice in this provision will be effected in the same manner as the notice in Provision 9 of this Agreement.

Alternatively, the Company may provide notice to OCC that the Protected Materials may be disclosed by the OCC in response to a public records request. Notice to OCC in this Provision 11 will be effected by means of the alternatives set out in Provision 9 of this Agreement regarding notice to the Company.

If, under Ohio's public records law, a court awards a relator or person attorney's fees or statutory damages in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Company will pay such awarded fees and/or statutory damages to the relator or person so that the State of Ohio, OCC and OCC's employees and officials are held harmless.

12. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC shall return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain (in a manner not inconsistent with the terms of this Agreement, a protective order, or a similar protective agreement with the Company) or filed with a state or federal administrative agency or court under seal. OCC may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross examination, transcripts, briefs and work product pertaining to such information and shall maintain that copy under secure conditions as provided in this Agreement.

13. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to OCC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes OCC from filing a motion to compel with regards to disclosure.

14. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on other grounds and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

15. Inadvertent production of any document or information during discovery without a designation of "Confidential" will not be deemed to waive the Company's claim to its confidential nature or estop the Company from designating the document or information at a

later date. Disclosure of the document or information by OCC prior to such later designation shall not be deemed a violation of this Agreement and OCC bears no responsibility or liability for any such disclosure. OCC does not waive its right to challenge the Company's delayed claim or designation of the inadvertent production of any document or information as "Confidential."

16. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement shall be valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

FirstEnergy Solutions Corp.

BY: Eric B. Gallon
Eric B. Gallon

Counsel

3-26-10

Date

Office of the Ohio Consumers' Counsel

BY: Jeffrey L. Small
Jeffrey L. Small

Counsel

3-25-10

Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company for Authority to	)	Case No. 10-388-EL-SSO
Establish a Standard Service Offer)	
Pursuant to R.C. § 4928.143 in the Form)	
of an Electric Security Plan.)	

NON-DISCLOSURE CERTIFICATE

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed March ___, 2010, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from Protected Materials shall not be voluntarily disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of this "Proceeding" as defined in Provision 2 of the Protective Agreement.

Name:

Company:

Address:

Telephone:

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company for Authority to)	Case No. 10-388-EL-SSO
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of an Electric Security Plan.)	

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "FirstEnergy EDUs" or "Company") and the Office of the Ohio Consumers' Counsel ("OCC") (collectively with the Company, the "Parties"). This Agreement is designed to facilitate and expedite the exchange with OCC of all information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Company and OCC as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Company's obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use solely for the purposes of this Proceeding while protecting such data from disclosure without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document shall mean the above-captioned case, including any appeals and cases with which the above-captioned case is consolidated.

3. "Protected Materials" shall mean documents and information furnished on or after the filing of applications in this Proceeding that are subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential or by counsel for the Company orally notifying OCC's counsel, on the deposition record, prior to a response to a question posed at a deposition that the response is considered "Protected Materials." Protected Materials shall not include any information or documents contained in the public files of any state or federal administrative agency or court and shall not include documents or information which at, or prior to, commencement of this Proceeding is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

4. Protected Materials provided in the context of this Proceeding shall be provided to OCC for use by OCC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Company and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain. Nothing in this Agreement precludes OCC from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

5. As used in this Agreement, the term "Authorized Representative" shall include OCC's counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by OCC and engaged in this Proceeding.

6. Access to Protected Materials is permitted to OCC's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC shall treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and shall safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than OCC's Authorized Representatives.

7. In the event that any OCC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person shall be terminated immediately and such person shall promptly return Protected Materials in his or her possession to another Authorized Representative of OCC and if there shall be no such Authorized Representative, such person shall treat such Protected Materials in the manner set forth in Provision 12 hereof as if this Proceeding herein had been concluded. Any person who has signed the attached Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this Proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is already in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to

the Protected Materials. OCC may also disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. If OCC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, OCC shall first give notice to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain or to third persons not subject to a protective order or protective agreement with the Company. OCC will serve said notice on the Company, to the attention of one of the Company's counsel in this case by one of the following methods: (1) hand-delivering the notice to the counsel's offices, or (2) sending the notice to the counsel's offices by an overnight delivery service, or (3) hand-delivering the notice to counsel in person at any location, or (4) sending the notice to counsel via email. Service effected by the any of the first three methods listed in the prior sentence shall be deemed made at the time of delivery to the Company's counsel. If service is made by email (method "(4)", *supra*), the Company shall diligently respond to OCC by email (during regular business hours) acknowledging the receipt of such notice, and service by OCC shall be deemed to be made at the time of the sending of such responsive email. After service of OCC's notice, the Company shall have five (5) business days within which to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion shall set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from

the disclosure of such information. If the Company does not file such a motion within five (5) business days of OCC's service of the notice, then the Protected Materials shall be deemed non-confidential, not a trade secret and not subject to this Agreement.

The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such proceedings should be open only to the Parties, their counsel, other OCC Authorized Representatives, and others authorized by the administrative agency or court to be present.

Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected shall be filed under seal. OCC may file Protected Materials under seal or use Protected Materials *in camera* in this Proceeding regardless of whether OCC seeks a ruling that the Protected Materials should be in the public domain. All Protected Materials filed under seal shall remain confidential pending a ruling by such administrative agency or court.

10. It is expressly understood that upon a filing made in accordance with Provision 9 or Provision 11 of this Agreement, the burden shall be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

11. OCC will give the Company notice if OCC receives a public records request for Protected Materials. The Company will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. During the same five business day period, OCC will consider its own independent determination under the Public Records Act as to whether such Protected

Materials are “public records” subject to mandatory disclosure under Section 149.43 of the Ohio Revised Code and OCC, in its discretion, may consult with the Company regarding any additional information needed in order to reach that determination. Also during the same five business day period, OCC will not disclose or produce the Protected Materials in response to the request unless ordered to disclose the Protected Materials during that same five business day period by a court of competent jurisdiction. OCC will notify the Company within four business days of service of OCC’s notice if OCC has independently determined that the Protected Materials are not “public records,” so that the Company may avoid filing a pleading before a court of competent jurisdiction. If the Company files such a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) business days of service of OCC’s notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret, and not subject to this Agreement. Notice in this provision will be effected in the same manner as the notice in Provision 9 of this Agreement.

Alternatively, the Company may provide notice to OCC that the Protected Materials may be disclosed by the OCC in response to a public records request. Notice to OCC in this Provision 11 will be effected by means of the alternatives set out in Provision 9 of this Agreement regarding notice to the Company.

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12. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC shall return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain (in a manner not inconsistent with the terms of this Agreement, a protective order, or a similar protective agreement with the Company) or filed with a state or federal administrative agency or court under seal. OCC may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross examination, transcripts, briefs and work product pertaining to such information and shall maintain that copy under secure conditions as provided in this Agreement.

13. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to OCC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes OCC from filing a motion to compel with regards to disclosure.

14. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on other grounds and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

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later date. Disclosure of the document or information by OCC prior to such later designation shall not be deemed a violation of this Agreement and OCC bears no responsibility or liability for any such disclosure. OCC does not waive its right to challenge the Company's delayed claim or designation of the inadvertent production of any document or information as "Confidential."

16. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement shall be valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

FirstEnergy EDUs

BY:

James W. Burk
Counsel

April 2, 2010

Date

Office of the Ohio Consumers' Counsel

BY:

Jeffrey L. Small
Counsel

3-25-10

Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company for Authority to)	Case No. 10-388-EL-SSO
Establish a Standard Service Offer)	
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NON-DISCLOSURE CERTIFICATE

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Name:

Company:

Address:

Telephone:

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/31/2014 5:29:04 PM

in

Case No(s). 14-1297-EL-SSO

Summary: Motion Compel of Northeast Ohio Public Energy Counsel and the Office of the Ohio Consumers' Counsel to electronically filed by Teresa Orahod on behalf of Dane Stinson