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November 3, 2014

VIA E-FILE

Ms. Barcy McNeal
Secretary, Docketing Division
Public Utilities Commission of Ohio
180 E. Broad Street, 11th floor
Columbus, Ohio 43215

Re: *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*
Case Nos. 14-841-EL-SSO & 14-842-EL-ATA

Dear Ms McNeal:

This letter is to advise the Public Utilities Commission of Ohio that the Retail Energy Supply Association supports the Interlocutory Appeal and Application for Review of the Office of the Ohio Consumers' Counsel filed October 27, 2014, in the above-captioned proceedings. The appeal takes up the difficult question of whether a litigant is entitled to have produced documents which contain attorneys' mental impressions, opinions, conclusions, judgments or legal theories, or reflect attorney-client communications regarding legal strategy; they contain information protected by the work product doctrine and the attorney-client privilege. This issue sits astride two important due process principles, the right for counsel to advise their client and prepare litigation work product, and the need for discovery which will bring into the record all the relevant facts the Commission needs to make a decision. The Bench, in a fashion similar to the Court doctrine of avoiding constitutional issues when an issue can be fully addressed on other grounds, avoided pursuing the line between discovery and attorney-client privilege, and instead ruled that material that had been already made public be produced.

There is a nuance to the implementation of that ruling that merits granting rehearing. The protection of the attorney-client privilege should protect counsel's written material that conveys impressions, opinions, conclusions, judgments, theories or advice. Specifically, the fact that the Consumers' Counsel took a position in communications under the

VORYS

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Public Utilities Commission of Ohio

November 3, 2014

Page 2

Joint Defense Agreement that was later made public should not waive the protection of the portion of that underlying document which shows the reason(s) for taking the position because it came on the advice of counsel. Thus, the Consumers' Counsel should be given the right to redact counsel's advise, impressions, opinions and conclusions even if the underlying position has been made public.

In sum, the Commission should reverse the Attorney Examiner's ruling in part on Duke's motion to compel and, thus, not compel the discovery of documents in which the joint defense agreement parties expressed impressions, opinions, conclusions, judgments, theories or advice.

By this filing, copies of this letter are being served upon all parties of record.

Sincerely,



M. Howard Petricoff

MHP/was

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in

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

Summary: Correspondence Letter in Support of the October 27, 2014 Interlocutory Appeal and Application for Review of the OCC electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association