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 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**

OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL AND THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S JOINT MOTION TO COMPEL

I. INTRODUCTION

In their Joint Motion to Compel, the Northeast Ohio Public Energy Council ("NOPEC") and the Office of the Ohio Consumers' Counsel ("OCC") (collectively, the "Joint Movants") seek to have the Commission order Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") to provide the Joint Movants with access to competitively sensitive information belonging to FirstEnergy Solutions Corp. ("FES"). This information includes cost and pricing information. Notably, Joint Movants don't dispute that such information is competitively valuable. Nevertheless, the Joint Movants want the Commission to force the Companies to enter into a proposed protective agreement that fails to safeguard this highly competitively sensitive information from being disclosed to competitors.

From the outset of these proceedings, the Companies have offered and entered into a protective agreement that both protects the competitively sensitive information at issue and affords intervenors the ability to participate fully in this matter. Indeed, several intervenors have

already entered into that agreement and acquired full access to the competitively sensitive information that is the subject of this motion. The Joint Movants claim that their proposed protective agreement is sufficient and that the Companies' proposed protective agreement somehow hinders their ability to participate fall well wide of the mark. As demonstrated below, the Joint Movants' protective agreement simply does not provide the level of proprietary protection called for here. This is so particularly in light of the fact that NOPEC is an FES customer and is apparently affiliated with a CRES provider and a direct competitor of FES. Further, the Companies' protective agreement in no way prevents any intervenor, including the Joint Movants, from participating fully in these proceedings. Indeed, the Joint Movants fail to show how they are hindered at all by the Companies' proposal. Thus, for the reasons set forth below, the Commission should deny the Joint Movants' motion to compel.

II. RELEVANT FACTS

A. The Economic Stability Program

On August 4, 2014, the Companies filed their Application for their fourth electric security plan, Powering Ohio's Progress ("ESP IV"). A key component of ESP IV is the Economic Stability Program. Case No. 14-1297-EL-SSO, Application at 9 (Aug. 4, 2014). As explained in the Companies' Application, the Economic Stability Program "will act as a retail rate stability mechanism against increasing market prices and price volatility for all retail customers over the longer term." *Id.* As part of ESP IV, the Companies are seeking Commission approval of only the Retail Rate Stability Rider. The Economic Stability Program includes a detailed description of a proposed purchased power transaction between the Companies and FES whereby the Companies would purchase all of the generation output of certain assets owned by FES. Case No. 14-1297-EL-SSO, Direct Testimony of Jay A. Ruberto at 3 (Aug. 4, 2014). In turn, the Companies would "offer this output into the PJM markets, and

net 100% of the revenues against costs, with the differences being passed along to customers through [proposed] Rider RRS." *Id.*

Joint Movants mischaracterize the Economic Stability Program. Mot. at 3. As explained in the Companies' Application, the Economic Stability Program "will act as a retail rate stability mechanism against increasing market prices and price volatility for all retail customers over the longer term." Application at 9. The Economic Stability Program will provide three types of benefits both to the Companies' customers and the State of Ohio as a whole. Specifically, the Economic Stability Program will: (1) convey over $2 billion in potential credits over the term of the program; (2) enhance stability and reliability through ensuring "diversity of generation fuel supply and plant type"; and (3) provide over $1 billion dollars annually in benefits to Ohio's economy. Case No. 14-1297-EL-SSO, Direct Testimony of Steven E. Strah at 2 (Aug. 4, 2014).

B. The Proprietary Data

As part of their Application and supporting testimony related to the Economic Stability Program, the Companies included highly competitively sensitive pricing, cost and forecasting information related to FES's generating assets and internal business operations (the "Proprietary Data"). Cost and pricing data, forecasts and other operational information would be extremely valuable to CRES providers, marketers, brokers and aggregators as well as participants in competitive wholesale procurements to compete against FES in these markets. It would also be valuable to customers who may purchase FES's services through contracts negotiated directly with FES. Accordingly, the Proprietary Data was filed, and remains, under seal. The Companies further moved for a protective order to govern the Proprietary Data on the same day that the Companies filed their Application. *See* Case No. 14-1297-EL-SSO, Motion for Protective Order of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (Aug. 4, 2014). As the Companies indicated in their motion, the Proprietary

Data "was provided to the Companies pursuant to a nondisclosure agreement solely for purposes of the proposed transaction underlying the Companies' Economic Stability Program." *Id.* at 6. Notably – no party, including NOPEC or OCC – opposed this motion. In fact, neither NOPEC nor OCC dispute that FES's cost, pricing and operational information is competitively valuable.

C. The Companies' Proposed Protective Agreement

To continue to protect the Proprietary Data, yet allow other parties access to this information, the Companies, following past practice, have offered a proposed protective agreement ("Protective Agreement"). The Protective Agreement, again following past practice, offers two-tiers of designations, protection and access. Access to information designated as "Confidential"[1] is provided to "Limited Authorized Representatives" of parties. Protective Agreement at ¶ 5 (attached as Ex. A.) "Limited Authorized Representatives" may include: (a) a party's in-house or outside legal counsel; (b) paralegals or other employees associated with relevant counsel; (c) an employee of a party who is involved in the proceedings; and (d) "an expert or employee of an expert retained....for the purpose" of advising or testifying in this proceeding." *Id.* at ¶ 5(A)-(D). Access to information designated as "Competitively Sensitive Confidential"[2] is limited to "Fully Authorized Representative[s]." *Id.* at ¶ 4. Pursuant to the terms of the Protective Agreement, a Fully Authorized Representative may be: (a) a party's in-house or outside legal counsel; (b) paralegals or other employees associated with relevant

[1] "Confidential" information is defined as "documents and information....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." Protective Agreement at ¶3(A).

[2] "Competitively Sensitive Confidential" information includes "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." *Id.* at ¶3(B).

counsel; and (c) "an outside expert or employee of an outside expert retained....for the purpose" of advising or testifying in this proceeding. *Id.* at ¶ 4(A)-(C).

The Protective Agreement further requires that any such outside expert or associated employee not be "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." *Id.* at ¶ 4(A). To permit otherwise – as the protective agreement proposed by the Joint Movants does – would risk disclosure of the Proprietary Data to a competitor who later retained that expert. Several intervenors to this proceeding have executed the Protective Agreement. The Companies, accordingly, have provided those intervenors' Fully Authorized Representatives with the Proprietary Data.

The Joint Movants mistakenly claim that, under the Protective Agreement, the Companies would "unilaterally determine" what falls under each layer of protection and that the Protective Agreement does not provide for a process to "challenge" Confidential or Competitively Sensitive Confidential designations. Mem. in Support at 4. This is false. Paragraphs 11 and 14 of the Protective Agreement expressly address the process for when an intervenor that has executed the Protective Agreement "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 [competitively sensitive or confidential] material." Protective Agreement at ¶11. Paragraph 14 of the Protective Agreement specifically provides: "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." *Id.* at ¶14. Thus, any intervenor receiving protected materials under the Protective Agreement has the

ability to challenge the Companies' designation of information as "confidential" or "competitively sensitive confidential."

D. NOPEC Is A Customer Of FES And Is Closely Affiliated With A Competitor Of FES.

Contrary to NOPEC's claims, disclosure of FES's commercially valuable pricing and cost information would be competitively harmful to FES. For starters, NOPEC is a customer of FES. Knowing FES's costs, for example, certainly would aid NOPEC in its future negotiations with FES over power or other contracts. NOPEC incompletely states that one current power contract will last until 2019. *See* Email from Dane Stinson to Martin Harvey (Oct. 24, 2014)[3]. NOPEC omits that FES and NOPEC have had continuing regular discussions and interactions, including: (a) other contracts that amend or supplement the parties' master agreement; and (b) other agreements relating to additional products and services. (*See* Affidavit of Trent Smith at ¶3 ("Smith Aff."), attached as Ex. C.)

NOPEC also misleadingly claims that it is not a competitor of FES. NOPEC, however, neglects to advise the Commission about NOPEC, Inc., a company that is closely linked with NOPEC and that is certified as a retail generation provider and a power marketer – and thus, a direct competitor.

Specifically, NOPEC, Inc. is an Ohio non-profit corporation. The Articles of Incorporation for NOPEC, Inc. list its purpose as, among other things, "procuring electricity ... and related products and services for sale to electric ... customers in those political subdivisions that are members of the Northeast Ohio Public Energy Council...." Art. at 5 (attached as Ex. D). Notably, NOPEC, Inc. is based in Solon, Ohio. NOPEC is also based in Solon, Ohio. In fact,

[3] The relevant email chain between NOPEC and the Companies is attached as Ex. B.

NOPEC's offices are apparently located next door to those of NOPEC, Inc. NOPEC, Inc. received a Certificate of Continued Existence on May 14, 2012, after a filing was made and signed by its President, Charles Keiper. Mr. Keiper is also Executive Director of NOPEC.[4]

On April 30, 2014, NOPEC, Inc., filed to renew its certificate as a retail generation provider, power broker and power marketer. *See* "Renewal Application for Retail Generation Providers and Power Marketers," Original CRS Case No. 07-891-EL-CRS, NOPEC, Inc. (April 30, 2014). Charles Keiper, again NOPEC's Executive Director, signed the renewal application and is listed as NOPEC, Inc.'s President. *Id.* at 5. On June 3, 2014, the Commission issued Renewal Certificate 07-139E(4) to NOPEC, Inc. The certificate states that NOPEC, Inc. may provide "retail generation, power marketer, and power broker services with the State of Ohio effective May 31, 2014." Case No. 07-891-EL-CRS, Renewal Certificate 07-139E(4) at 1 (June 3, 2014). NOPEC, Inc., as a certified CRES provider, is thus a direct competitor with FES.

E. The Joint Movants Failed To Attempt To Resolve This Dispute In Good Faith And Have Simply Refused To Consider Any Position Other Than Their Own.

Joint Movants attempt to portray the Companies as inflexible and failing to attempt to resolve this dispute. As shown below, the exact opposite is true. Neither of these parties ever attempted to propose any alternative to their initial position. NOPEC claimed – falsely – that it would not be advantaged by seeing FES's competitive information. OCC, on the other hand, simply claimed, without any explanation, that the Companies' proposals were "too broad."

1. Communications With OCC Regarding The Protective Agreement

On August 15, 2014, counsel for the Companies sent a draft of the Protective Agreement to counsel for OCC. Email from Martin Harvey to Larry Sauer (Aug. 15, 2014).[5] On August 21,

[4] *See* http://www.nopecinfo.org/about-nopec/leadership/board/.

2014, counsel for OCC sent an email to counsel for the Companies asking why the Protective Agreement was not identical to the one used in Case No. 11-5201-EL-RDR, the Commission's recent audit of the Companies' alternative energy rider. Email from Larry Sauer to Martin Harvey (Aug. 21, 2014). On August 22, 2014, counsel for the Companies responded that while the two protective agreements were very similar, there were a few substantive differences between the two agreements that reflected the different subject matter of the two proceedings. Email from Martin Harvey to Larry Sauer (Aug. 22, 2015). Specifically, counsel for the Companies noted:

> [U]nder 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 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.

Id.

On September 2, 2014, counsel for OCC communicated to counsel for the Companies that counsel for OCC lacked "authority to sign the Protective Agreement" and stated that OCC was "not a competitor." Email from Larry Sauer to Martin Harvey (Sept. 2, 2014). On

(continued...)

[5] The relevant email chain between OCC and the Companies is attached as Ex. E.

September 3, 2014, counsel for the Companies responded that OCC had not explained what specific problems OCC had with the Protective Agreement. Email from Martin Harvey to Larry Sauer (Sept. 3, 2014). In that email, counsel for the Companies also stated that "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.'" *Id.* Counsel for the Companies further noted: "The same would be true for any outside experts that OCC retains who were not providing advice to participants in such markets." *Id.*

In response, on September 8, 2014, counsel for OCC sent a redline of the Protective Agreement to counsel for the Companies. Email from Larry Sauer to Martin Harvey (Sept. 8, 2014). In that email, counsel for OCC requested three substantive additions to the Protective Agreement: (1) a provision regarding the protocol in the event OCC received a public records request related to the competitively sensitive materials; (2) an indemnification provision; and (3) a sovereign immunity provision. *Id.* Counsel for OCC also complained that Paragraph 4(C) – the provision addressing who could see "Competitively Sensitive Confidential" material – was too broad; he did not suggest any modifications to that paragraph. *Id.*

On September 11, 2014, counsel for the Companies sent an email with a redlined protective agreement to counsel for OCC. Email from Martin Harvey to Larry Sauer (Sept. 11, 2014). In that redline, the Companies accepted, in substance, the three additions to the Protective Agreement requested by OCC. Per OCC's request, the Companies also proposed language to limit Paragraph 4(C). *Id.* Approximately five weeks later, on October 17, 2014, counsel for OCC responded to the Companies' September 11, 2014 email. Email from Larry Sauer to Martin Harvey (Oct. 17, 2014). In that email, counsel for OCC complained that

Paragraph (4)(C) was still "over-broad," but again provided no suggestions as how to further modify the paragraph to address OCC's alleged concerns. *Id.* Counsel for OCC also threatened to file a motion to compel. *Id.*

On October 20, 2014, counsel for the Companies responded to counsel for OCC:

> [T]he Commission has long protected competitively sensitive information from being disclosed to competitors or others where disclosure could place the disclosing party at a competitive disadvantage. We believe that the revised language we provided to you, in response to your earlier email, accomplishes that objective in a specific way. To the extent that you believe that the revised language continues to be overbroad for OCC's purposes, we suggest that you propose language, consistent with the proper protection of competitive information, that would be acceptable to OCC.

Email from Martin Harvey to Larry Sauer (Oct. 20, 2014). Counsel for OCC never responded to this email. Indeed, Joint Movants make no mention of this email at all.

2. Communications With NOPEC Regarding The Protective Agreement

On October 14, 2014, counsel for NOPEC sent an email to the Companies with a proposed protective agreement that does not provide for a Competitively Sensitive Confidential designation. Email from Dane Stinson to Jim Burk *et al.* (Oct. 14, 2014). In that email, counsel for NOPEC further claimed that the Protective Agreement was too "severe" and would preclude counsel from "sharing" competitively sensitive information with NOPEC's Executive Director. *Id.*

On October 20, 2014, counsel for the Companies responded to NOPEC's counsel, explaining:

> 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....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."

Email from Martin Harvey to Dane Stinson (Oct. 20, 2014).[6] On October 21, 2014, counsel for the Companies sent a copy of the Protective Agreement to counsel for NOPEC. Email from Martin Harvey to Dane Stinson (Oct. 21, 2014).

On October 24, 2014, counsel for NOPEC simply reiterated that the Protective Agreement imposed an "excessive restriction" because it precluded the "sharing" of competitively sensitive information with, among others, NOPEC's executive director. Email from Dane Stinson to Martin Harvey (Oct. 24, 2014). Counsel for NOPEC further stated, "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." *Id.* NOPEC did not propose any changes or modifications to the Protective Agreement that would address NOPEC's alleged concerns.

On October 27, 2014, counsel for the Companies responded to counsel for NOPEC and again explained:

> We do not believe that our proposal places an undue restriction on NOPEC's participation in this case. NOPEC is free to show the

[6] Contrary to Joint Movants' claim, this email hardly contains an admission on the part of the Companies "that almost all of the confidential information Joint Movants seek in discovery is 'Competitively Sensitive Confidential' related to FES' cost and pricing information." Mem. in Support at 7. The description provided by the Companies counsel was to information already designated to date by the Companies as "Competitively Sensitive Confidential."

> competitively sensitive confidential material to counsel and outside experts....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.

Email from Martin Harvey to Dane Stinson (Oct. 27, 2014).

On October 31, 2014, counsel for NOPEC emailed counsel for the Companies. Email from Dane Stinson to Martin Harvey (Oct. 31, 2014). In that email, counsel for NOPEC claimed that NOPEC was certified as a government aggregator and a customer of FES but not a competitor. As noted, this claim was deceptive, if not outright false. *Id.* Once again, NOPEC did not provide any proposed changes or modifications to the Protective Agreement. *See id.* On that same day, NOPEC, as a Joint Movant with OCC, filed its Motion to Compel with the Commission requesting an expedited ruling.

Notably, neither NOPEC nor OCC ever communicated the Joint Movants' request for an expedited ruling to the Companies.

After this motion was filed, the Companies again reached out to counsel for NOPEC and for OCC. In a telephone call on November 5, the Companies offered to enter into a protective agreement relating to the production of documents designated as "Confidential," and expressly leaving the conditions of the production of documents designated as "Competitively Sensitive Confidential," subject to later agreement or Commission order. The Companies provided Joint Movants with drafts of such a protective agreement on November 6.[7] As of the filing of this Memorandum, neither Joint Movant has responded.

[7] The relevant emails are attached as Ex. F.

III. LAW AND ARGUMENT

The Joint Movants' motion to compel rests on the meritless assertion that the Protective Agreement somehow precludes the Joint Movants from meaningfully participating in this proceeding. Nothing could be further from the truth. As noted, this argument is belied by the fact that several intervenors in this proceeding have already executed versions of the Protective Agreement and have had access to the Proprietary Data for several weeks. Moreover, as demonstrated below, well-settled Commission precedent is on the side of the Companies. On repeated occasions, the Commission has routinely held that competitively sensitive information like the Proprietary Data, including that of third parties, warrants sufficient protection to prevent disclosure to a competitor.

A. The Commission Routinely Recognizes The Need To Protect Competitively Sensitive Information, Including That Of Third Parties.

1. The Commission routinely protects competitively sensitive information to prevent an unfair competitive advantage.

The Commission routinely affords protection to competitively sensitive pricing, cost and forecasting information like the Proprietary Data to prevent competitors from gaining an unfair advantage.[8] For example, in AEP Ohio's second ESP proceeding, the utility sought protection for the following types of information:

> [P]rojected proposed rider rates analyses; environmental compliance timeline and projected capacity rate projections; estimates of the impact of the termination or modification of certain provisions of the Pool Agreement; projected earnings and margins from off-system sales; the projected capacity factor of the

[8] As a general matter, the Commission has recognized the highly competitive nature of Ohio's electrical generation market. As the Commission has found: "[T]he business of providing electrical generation, especially by combustion turbine generators, is a highly competitive business. This is especially true in view of FERC Order 888 and the electric industry restructuring bill recently enacted into law in this state." *In the Matter of the Application of DPL Energy, Inc. for a Certificate of Environmental Compatibility and Public Need for an Electric Generating Plant in Fairfield County, Ohio*, Case No. 00-100-EL-BGN, 2000 Ohio PUC LEXIS 908 at *1-2 (Sept. 19, 2000).

> Turning Point Solar facility; details of offerings for energy and capacity; reserve margins through 2029; planned retirements; and projected sales and load data.

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 11-346-EL-SSO, 2011 Ohio PUC LEXIS 920 at *4-5 (Aug. 4, 2011) ("AEP ESP 2"). The utility claimed that the release of this information would cause competitive harm to the utility. *Id.* at *5. The Commission held that such information was "confidential, proprietary, competitively sensitive" and therefore warranted protection. *Id.* at *5.

Likewise, in *In the Matter of the Application of Metromedia Energy, Inc., for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 02-1926-GA-CRS, 2008 Ohio PUC LEXIS 806 at *4-6 (Oct. 29, 2008), a natural gas supplier sought protection for, among other things, proprietary pricing information. The Commission agreed with the utility that "if released, this information would provide a competitive advantage to other marketers, as [the supplier's] competitors and suppliers would be able to use it for pricing and product strategies." *Id.* at *5. Thus, the Commission is keenly aware of the need to protect competitively sensitive information like the Proprietary Data from access by competitors. *See also, In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 14-1329-EL-RDR, 2014 Ohio PUC LEXIS 225 at *4-6 (Sept. 17, 2014) (finding that pricing information contained in special arrangement contracts was proprietary in nature and warranted protection after movants claimed release of information would "compromise their business position and ability to compete"); *In the Matter of the Application of Ohio Gas Company for Approval of a Special Arrangement to Provide Firm Gas Transportation Service to Campbell Soup Supply Co. LLC*, Case No. 13-1884-GA-AEC, 2013

Ohio PUC LEXIS 233 at *1-3 (Oct. 23, 2013) (agreeing with joint applicants for a protective order that "public disclosure of...pricing information would impair both parties' business position and ability to compete"); *In the Matter of the Application of Paulding Wind Farm, LLC, for a Certificate to Construct a Wind-Powered Electric Generating Facility in Paulding County, Ohio*, Case No. 09-980-EL-BGN, 2010 Ohio PUC LEXIS 782 at *1-2 (July 22, 2010) (agreeing with applicant that disclosure of pricing information "could harm [applicant] by providing its competitors with access to proprietary information, thereby placing [applicant] at an undue competitive disadvantage").

2. The Commission routinely protects third-party competitively sensitive information to prevent an unfair competitive advantage.

The Commission also routinely protects third-party competitively sensitive and proprietary information, such as the Proprietary Data. For example, in *AEP ESP 2*, the utility sought to protect the confidential information of the utility, as well as two third parties, regarding a solar power participation agreement. *See* Case No. 11-346-EL-SSO, 2011 Ohio PUC LEXIS 920 at *1-3. The information at issue included "commercial terms and conditions, pricing, payment structure and key terms of the agreement." *Id.* at *1. The utility claimed that "disclosure of the information [would] provide [the utility's and third parties'] competitors an unfair competitive advantage causing harm" to the utility and the third parties. *Id.* at *2. The Commission found that the third-party materials "constitute[d] confidential, proprietary, competitively sensitive" information and warranted protection. *Id.*

Likewise, in *In the Matter of the Review of Duke Energy Ohio, Inc.'s, Riders Supplier Cost Reconciliation, Retail Capacity, Retail Energy, Load Factor Adjustment, Electric Security Stabilization Charge, and Economic Competitiveness Fund*, Case No. 14-81-EL-RDR, 2014 Ohio PUC LEXIS 90 (April 16, 2014), the utility sought to protect "third-party vendor

information regarding auction fees." *Id.* at *3. The information was contained in the utility's filed workpapers. *Id.* The utility maintained that if such information were released:

> [T]he vendor's competitors would have access to competitively sensitive, confidential information that, in turn, could allow the competitors to offer auction services at different prices than the competitors would offer in the absence of such information, thus, being able to significantly undermine the vendor's ability to compete.

Id. at *3. The Commission agreed and granted protection. *Id.* at *4. *See also, In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, 2014 Ohio PUC LEXIS 83 at *5-8 (April 2, 2014) (granting protection to "competitively sensitive" third-party contractor information related to storm damage restoration); *In the Matter of the Application of Verizon North, Inc. to Determine Permanent Rates for Unbundled Network Element Prices*, Case No. 00-1186-TP-UNC, 2000 Ohio PUC LEXIS 928 at *1-2 (Sept. 26, 2000) (granting protection of "cost studies" containing information that was proprietary to utility's third-party vendors and filed with utility's application after utility claimed that such information would be of "interest to competitors").

B. The Protective Agreement Does Not Prevent The Joint Movants From Meaningfully Participating In This Proceeding.

1. The Protective Agreement does not impede the Joint Movants' Discovery Rights.

On a preliminary note, the Joint Movants appear to imply that the Protective Agreement somehow interferes with their right to discovery. Mem. in Support at 6. As the ample Commission precedent cited above demonstrates, however, the right to conduct discovery is tempered by the equally important need to protect competitively sensitive information like the Proprietary Data. To claim otherwise, as the Joint Movants apparently do, could well "significantly undermine" FES's "ability to compete." *Metromedia* at *3. Requiring the Joint

Movants to enter into a suitable protective agreement that adequately safeguards the Proprietary Data thus in no way impacts their ability to conduct discovery. As noted, several intervenors have already entered into versions of the Protective Agreement and are currently fully engaged in the discovery process.

2. The Protective Agreement does not restrict NOPEC's ability to participate in this Proceeding.

NOPEC's claims regarding its supposed non-competitive status ring decidedly hollow. NOPEC asserts that "while NOPEC is a CRES, it is not FES' competitor." Mem. in Support at 9. And further: "[NOPEC] 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." *Id.* NOPEC breathlessly states that the Protective Agreement will, "incredibly," prevent NOPEC's Executive Director from accessing the Proprietary Data. *Id.* at 8.[9]

Tellingly, however, the Joint Movants' motion is silent on a few salient facts. NOPEC is a customer of FES. In fact, FES has a number of ongoing relationships and agreements with NOPEC. (Smith Aff. at ¶2.) Those parties meet regularly to discuss ongoing and new business matters. (*Id.*) In fact, since signing their Master Agreement (for service to NOPEC member customers), the parties have amended it and have discussed and entered into agreements to

[9] Joint Movants baselessly assert that the Protective Agreement raises "serious implications under the Ohio Rules of Professional Conduct." Mem. in Support at 8. This is nonsense. Protective agreements and orders precluding competitor/customer clients from seeing another party's information under "attorney's eyes only" provisions have been standard fare in litigation for years. *See, e.g., Northeast Prof'l Home Care, Inc. v. Advantage Home Health Servs.*, 188 Ohio App. 3d 704 (5th Dist. 2010) (discussing at length an "attorney's eyes only" designation permitted by a trial court's protective order to protect proprietary or other business information and not indicating that such a designation was improper when used appropriately by the parties); *Ramun v. Ramun*, 2009-Ohio-6405, P40 (7th Dist., Dec. 4, 2009) (discussing the value of such a designation in protecting trade secrets from opposing parties and noting that such designations are permitted both by Ohio statute and other courts who have considered them). Tellingly, the other intervenors that have already signed the Protective Agreement apparently don't share Joint Movants' alleged ethical concerns.

provide supplemental services. (*Id.* at ¶3.) Thus, by gaining access to FES's costs and pricing information, among other competitively sensitive information, NOPEC would get an improper competitive advantage in its future dealings with FES. (*Id.* at ¶4.)

Joint Movants also fail to reveal NOPEC's relationship with its CRES affiliate, NOPEC, Inc. NOPEC, Inc. is a "retail generation provider." NOPEC, Inc. has described one of its primary purposes as "procuring electricity ... and related products and services for sale to electric ... customers." Art. of Incorporation at 5. NOPEC and NOPEC, Inc. are apparently intimately related. Both are located in Solon, Ohio.[10] The Executive Director of NOPEC and the President of NOPEC, Inc. are one and the same person, Charles Keiper.

NOPEC, Inc. is clearly a direct competitor of FES and access to the Proprietary Data provides a window into FES's internal business operations. Pursuant to the Commission precedent cited above, allowing NOPEC, Inc. business and marketing employees full access to the Proprietary Data "would provide a competitive advantage" to NOPEC, Inc. and cause competitive "harm" to FES. *Metromedia* at *5; *AEP ESP 2* at *5. Thus, given Mr. Keiper's "dual roles," unless he is properly shielded from the Proprietary Data, there can be no dispute that FES would be placed at grave risk of competitive harm.

Joint Movants' proffered solution (its proposed protective agreement) is simply not up to the task of protecting the Proprietary Data. It only allows for one category of protected information, i.e, "Protected Materials," which are simply "documents or information" designated as "confidential" that may be seen by "counsel of record...and other attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed" by the party

[10] The street address for NOPEC is 31320 Solon Rd, Suite 20, Solon, OH 44138. *See* Case No. 00-2317-EL-GAG, Renewal Certification Application (Nov. 19, 2012). The street address for NOPEC, Inc. is 31360 Solon Road, Suite 33, Solon, OH 44139. *See* Case No. 07-891-EL-CRS, Renewal Application for Retail Generation Providers and Power Marketers (April 30, 2014).

executing the agreement. Mot., Ex. 1 at ¶5. Thus, individuals at NOPEC who have interests that are competitive with FES would have access to the Proprietary Data.

In contrast, the Protective Agreement contemplates the protection of "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." Protective Agreement at ¶3(B). The Protective Agreement, in turn, limits access to such information to "Fully Authorized Representatives." *Id.* at ¶4. Only the Protective Agreement provides the requisite safeguards necessary for the Proprietary Data and in doing so it is on all fours with the Commission precedent discussed at length above. *See*, *AEP ESP 2* at *4-5; *Metromedia* at *5; *Ohio Power Company (Economic Development Rider)* at *4-6; *Ohio Gas* at *1-3; *Paulding Wind* at *1-2. Further, even if, as NOPEC blithely claims, it is merely FES's customer, this analysis does not change. Requiring a vendor to provide competitively sensitive pricing and cost information to its customer would completely undermine that vendor's competitive position vis-a-vis that customer.

The Protective Agreement by no means limits, or in any way impedes, the ability of NOPEC to meaningfully participate in this proceeding. NOPEC's counsel – who have participated in numerous proceedings before the Commission – can have full access to the Proprietary Data. The same is true for any outside expert secured by NOPEC, as long as that expert does not provide advice to other CRES providers or participate in wholesale power procurements. Indeed, several intervenors have already gone down this path, and the Companies are working cooperatively with them during the discovery process. Moreover, pursuant to the Protective Agreement, "characterizations of the Protected Materials [i.e., the Proprietary Data] that do not disclose the Protected Materials may be used in public." Protective Agreement at ¶12.

Hence the Protective Agreement properly balances the need to protect the Proprietary Data with the right to participate meaningfully in this proceeding. Given the obvious competitive concerns raised by NOPEC's association with NOPEC, Inc. and NOPEC's own admitted status as a customer of FES, NOPEC cannot reasonably complain otherwise.

3. The Protective Agreement does not restrict the ability of OCC to participate in this Proceeding.

OCC's opposition to the Protective Agreement is puzzling for a number of reasons. First, the Companies informed OCC that, to the extent OCC was not a competitor of FES, there should be no problem with OCC executing the Protective Agreement. "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.'" Email from Martin Harvey to Larry Sauer (Sept. 3, 2014). Thus, for example, there is nothing in the Protective Agreement that would preclude "OCC's Governing Board" from accessing the Proprietary Data, assuming the proper non-disclosure certificates could be and were executed by those board members. Mem. in Support at 8.

Second, two-tiered protective agreements are nothing new. Indeed, in AEP Ohio's second ESP proceeding, Case No. 11-346-EL-SSO, the standard protective agreement employed three tiers of protection, "Confidential," "Competitively Sensitive Confidential," and "Restricted Access Confidential," and two separate non-disclosure certificates. *See* Case No. 11-346-EL-SSO, Protective Agreement at 1 (attached as Ex. G). OCC participated fully in that proceeding and executed such an agreement. Likewise, there is no reason for OCC to assert that the two-tiered nature of the Protective Agreement will in any way negatively impact OCC's ability to participate fully in this proceeding.

Third, it is unclear what more the Companies could have done to accommodate OCC. On September 11, 2014, the Companies agreed to three substantive additions to the Protective Agreement requested by OCC: (1) a public records protocol provision; (2) an indemnification provision; and (3) a sovereign immunity provision. *See* Email from Martin Harvey to Larry Sauer (Sept. 11, 2014). Per OCC's request, the Companies also proposed a modification to Paragraph 4(C). *Id.* For approximately five weeks, OCC did nothing. Finally, on October 17, 2014, counsel for OCC reiterated that Paragraph 4(C) was still too broad, but did not provide or suggest any proposed modifications. *See* Email from Larry Sauer to Martin Harvey (Oct. 17, 2014). On October 20, 2014, counsel for the Companies sent an email to counsel for OCC requesting that OCC suggest changes or modifications that could allay OCC's concerns. *See* Email from Martin Harvey to Larry Sauer (Oct. 20, 2014). OCC never responded to that email. It is thus OCC that has been "steadfast in refusing" to negotiate in good faith with the Companies. Mem. in Support at 3.

4. The Protective Agreement does not "unreasonably restrict" the Joint Movants' ability to secure an outside expert.

The Joint Movants claim that "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 consultants of their choosing." Mem. in Support at 11. The Joint Movants' provide no factual basis for this obviously conclusory statement. Joint Movants never say that they, in fact, have been prevented from using the expert of their choice. Indeed, OCC is currently participating in both Duke's and AEP's pending ESP proceedings, Case Nos 13-2385-EL-SSO and 14-841-EL-SSO. A cursory review of the testimony of several

of OCC's witnesses from those proceedings does not indicate that any of them would be obviously precluded by the Protective Agreement from participating in this proceeding.[11]

At the very least, assuming that Joint Movants had particular experts in mind, the Joint Movants could have suggested modifications to Paragraph 4(C). But neither did. In any event, the Joint Movants are simply wrong. All Paragraph 4(C) of the Protective Agreement does is prevent the Proprietary Data from falling into the hands of a competitor by ensuring that any outside expert retained by an intevenor in this proceeding is not also under contract with a competitor of FES.

Given the Commission's recognition of the need to protect highly competitively sensitive information like the Proprietary Data, this limitation is by no means unreasonable. To do otherwise would likely provide a "competitive advantage" a competitor of FES and cause competitive "harm" to FES. *Metromedia* at *5; *AEP ESP 2* at *5. Further, numerous intervenors to this proceeding have both entered into the Protective Agreement and secured the services of a suitable outside expert. The Joint Movants can point to no reason why they cannot do the same.

5. The authority relied upon by the Joint Movants is inapposite.

All of the cases relied on by the Joint Movants are inapposite. First, the Joint Movants place great stock in a recent decision in Case No. 14-841-EL-SSO, Duke's current ESP proceeding. In that decision, the utility attempted to use a two-tiered protective agreement that also: (a) required a recipient of confidential information to "acknowledge" that disclosure of such information would injure the utility; (b) prohibited the recipient of confidential information

[11] *See, e.g.*, the direct testimony of OCC witnesses Jonathan F. Wallach, James F. Wilson, James D. Williams, and David J. Effron from Case No. 13-2385-EL-SSO and the direct testimony of Beth E. Hixon and Anthony J. Yankel from Case No. 14-841-EL-SSO.

from using that information against the utility in a future proceeding; and (c) required the recipient of confidential information to acknowledge that "the disclosure of the information would cause the utility "irreparable harm." Case No. 14-841-EL-SSO, Entry at 2 (Aug. 27, 2014). At a hearing, the Attorney Examiner ordered these provisions modified or deleted and the utility filed an interlocutory appeal. *Id.* The Commission denied the utility's interlocutory appeal and ordered the utility to employ a protective agreement similar to that proposed by the Joint Movants. *Id.* at 5-6.

In relying on the Entry in the Duke ESP case, the Joint Movants leave out two important bits of information. First, the two-tiered nature of the utility's original protective agreement was not at issue. None of the controversial provisions in Duke's ESP case are contained in the Protective Agreement. Thus, the Commission's decision in the Duke ESP case has no bearing here.

Second, in Duke's ESP case, the Commission found that the protective agreement it ordered the utility to adopt "sufficiently protect[ed the utility's] interests" relative to the concerns raised by the utility. *Id.* at 5. Here, the single-tiered protective agreement, as demonstrated above, is not up to the task of "sufficiently" protecting the Proprietary Data which belongs to FES. Duke's ESP proceeding does not involve highly competitively sensitive information that belongs to a third party, i.e.. the Proprietary Data, and the Entry in that proceeding thus has no application here.

Likewise, the remaining cases relied on by the Joint Movants do not involve the need to protect highly competitively sensitive information that belongs to a third party, such as the Proprietary Data. *In re the Application of Cincinnati Gas & Electric Company* addressed confidential information which belonged to the utility regarding its provider of last resort charge.

See Case No. 03-93-EL-ATA, Entry at 2 (May 13, 2004). *In re Duke Energy Ohio, Inc.'s System Reliability Tracker* involved confidential information belonging to a utility that was related to an audit of its system reliability tracker. *See* Case No. 07-723-EL-UNC, Entry at 1 (Oct. 29, 2007). *In re Application of United Telephone Company* involved confidential "disaggregated competitive local exchange carrier" data belonging to the utility. Case No. 07-760-TP-BLS, Entry at 2 (Aug. 10, 2007). Unlike here, in the above cases there simply was no competitively sensitive third-party information in play. These decisions are thus inapplicable to the instant matter.

Lastly, *In re Application of Columbus Southern Power* did involve third-party proprietary information, but it is readily distinguishable from the present proceeding. In that proceeding, the utility was ordered to provide to OCC, along with the utility's own confidential information, certain third-party confidential information related to coal gasification that was in the utility's possession. *See* Case No. 05-376-EL-UNC, Entry at 3 (July 21, 2005). Notably, the utility in that proceeding had never moved to protect the third-party information at issue. *See* Case No. 05-376-EL-UNC, Memorandum in Support of General Electric Company, GE Energy USA (LLC), Bechtel Corporation, and Bechtel Power Corporation's Motion for a Protective Order at 3 (July 26, 2005). Here, the Proprietary Data has not been left so unprotected. On August 4, 2014, the same day that the Proprietary Data was filed at the Commission along with the Companies' ESP Application, the Companies moved to protect it. *See* Case No. 14-1297-EL-SSO, Motion for Protective Order of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (Aug. 4, 2014). Case No. 05-376-EL-UNC is thus inapposite here.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny the Joint Movant's Motion to Compel.

Date: November 7, 2014

Respectfully submitted,

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ATTORNEYS FOR OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on November 7, 2014.

/s/ David A. Kutik
David A. Kutik

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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 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

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 _____ ("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:	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 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

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 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

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: _____

EXHIBIT B

Subject:
RE: Case No. 14-1297-EL-SSO NOPEC Protective Agreement
From:
Stinson, Dane
10/31/2014 10:05 AM
To:
Martin T Harvey
Cc:
"David A. Kutik", "Krassen, Glenn", "Stinson, Dane"
Hide Details
From: "Stinson, Dane" <DStinson@bricker.com>
To: Martin T Harvey <mtharvey@JonesDay.com>,
Cc: "David A. Kutik" <dakutik@JonesDay.com>, "Krassen, Glenn" <GKrassen@bricker.com>, "Stinson, Dane" <DStinson@bricker.com>
History: This message has been forwarded.

Marty:

While NOPEC is a "CRES," it is certified by the Commission only to provided 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.

Bricker & Eckler
ATTORNEYS AT LAW

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**

From: Martin T Harvey [mailto: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 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,

Bricker & Eckler
ATTORNEYS AT LAW

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**

From: Martin T Harvey [mailto: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 [attachment "NOPEC Proposed Protective Agreement.docx" deleted by Martin T Harvey/JonesDay]

To:
Cc:
Bcc:
Subject: Fw: NOPEC Proposed Protective Order, Case No. 14-1297-EL-SSO

From: Stinson, Dane [mailto:DStinson@bricker.com]
Sent: Tuesday, October 14, 2014 12:29 PM
To: 'burkj@firstenergy.com'; 'cdunn@firstenergy.com'; 'dakutik@jonesday.com'; Lang, Jim; Alexander, Trevor
Cc: Stinson, Dane; Krassen, Glenn
Subject: NOPEC Proposed Protective Order, Case No. 14-1297-EL-SSO

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.

Bricker & Eckler
ATTORNEYS AT LAW

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.

electronic mail (webmaster@bricker.com) and promptly destroy the original transmission. Thank you for your assistance.

Protective Agreement (NTA draft 9.10.14) (02677033).docx

NOPEC Proposed Protective Agreement.docx

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

From: Martin T Harvey 10/21/2014 03:09 PM
To: dstinson
Cc: David A. Kutik
Bcc: burkj

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

CLI_202265315_1_14-1297-EL-SSO NOPEC Protective Agreement.DOCX

- NOPEC Protective Agreement .pdf

EXHIBIT C

STATE OF OHIO)

) ss:

COUNTY OF SUMMIT)

TRENT SMITH, being first duly sworn, states:

1. I am Vice President – Sales & Marketing for FirstEnergy Solutions Corp. ("FES"). In this position, I lead an organization responsible for the sale and marketing of electricity in competitive retail markets in six states. I have regular dealings with major customers, governmental aggregators and brokers, including entities such as the Northeast Ohio Public Energy Council ("NOPEC").

2. FES currently has a number of ongoing relationships and agreements with NOPEC. Moreover, FES meets regularly with NOPEC to discuss ongoing and new business matters. One of FES' principal contacts at NOPEC is Charles Keiper, NOPEC's Executive Director.

3. FES and NOPEC have a Master Agreement, entered into in 2010, that deals with the terms of service that FES will provide to residents and businesses in NOPEC's member municipalities. Since the Master Agreement was entered into, FES and NOPEC have engaged in continuing discussions to supplement the services provided by FES or to amend some of the terms of the Master Agreement. Since 2010, we have entered into amendments to the Master Agreement and have entered into a separate agreement to make certain customer services available to NOPEC member customers. We also recently arrived at an agreement in principle on another service enhancement. Throughout all of these negotiations and discussions, FES has

never revealed its costs or operational information to NOPEC to allow NOPEC to see FES' competitively sensitive pricing structure, strategies or objectives.

4. Given FES' ongoing relationship with NOPEC, NOPEC would have a competitive advantage in our present and future dealings if NOPEC were to be provided competitively sensitive information, such as our cost and other operational information.

TRENT SMITH

Sworn to and subscribed in my presence by TRENT SMITH on the 6th day of November , 2014.

Notary Public

STACY A. MOORE
NOTARY PUBLIC, STATE OF OHIO
MEDINA COUNTY
My Comm. Expires Sept. 17, 2019

CLI-202269597v1

EXHIBIT D

Doc ID --> 200714102092

DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
05/22/2007	200714102092	DOMESTIC ARTICLES/NON-PROFIT (ARN)	125 00	.00	00	00	00

Receipt

This is not a bill Please do not remit payment

BRICKER & ECKLER
100 SOUTH THIRD STREET
ATTN. CHRISTINA MILLER
COLUMBUS, OH 43215

STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Jennifer Brunner

1701404

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

NOPEC, INC.

and, that said business records show the filing and recording of:

Document(s)	Document No(s):
DOMESTIC ARTICLES/NON-PROFIT	**200714102092**

United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 18th day of May, A.D. 2007.

Ohio Secretary of State

Prescribed by:

Ohio Secretary of State
Central Ohio: (614) 466-3910
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.sos.state.oh.us
e-mail: busserv@sos.state.oh.us

Expedite this Form: (Select One)	
○ Yes	PO Box 1390 Columbus, OH 43216 *** Requires an additional fee of $100 ***
◉ No	PO Box 670 Columbus, OH 43216

INITIAL ARTICLES OF INCORPORATION

(For Domestic Profit or Nonprofit)
Filing Fee $125.00

THE UNDERSIGNED HEREBY STATES THE FOLLOWING:

(CHECK ONLY ONE (1) BOX)

(1) ☐ Articles of Incorporation Profit (113-ARF) ORC 1701	(2) ☑ Articles of Incorporation Nonprofit (114-ARN) ORC 1702	(3) ☐ Articles of Incorporation Professional (170-ARP) Profession _____ ORC 1785

Complete the general information in this section for the box checked above.

FIRST: Name of Corporation NOPEC, Inc.

SECOND: Location Macedonia *(City)* Summit *(County)*

Effective Date **(Optional)** _____ *(mm/dd/yyyy)* ***Date specified can be no more than 90 days after date of filing. If a date is specified, the date must be a date on or after the date of filing.***

☒ ***Check here if additional provisions are attached***

Complete the information in this section if box (2) or (3) is checked. Completing this section is optional if box (1) is checked.

THIRD: Purpose for which corporation is formed

See Exhibit A attached hereto and made a part hereof

Complete the information in this section if box (1) or (3) is checked.

FOURTH: The number of shares which the corporation is authorized to have outstanding (Please state if shares are common or preferred and their par value if any)

_____ *(No. of Shares)* _____ *(Type)* _____ *(Par Value)*

(Refer to instructions if needed)

Does Not Apply

2007 MAY 18 PM 3:24
CLIENT SERVICE CENTER
SECRETARY OF STATE

Completing the information in this section is optional

FIFTH: The following are the names and addresses of the individuals who are to serve as initial Directors.

None

(Name)

(Street) *NOTE: P.O. Box Addresses are NOT acceptable.*

(City) *(State)* *(Zip Code)*

(Name)

(Street) *NOTE: P.O. Box Addresses are NOT acceptable.*

(City) *(State)* *(Zip Code)*

(Name)

(Street) *NOTE: P.O. Box Addresses are NOT acceptable.*

(City) *(State)* *(Zip Code)*

REQUIRED
Must be authenticated (signed) by an authorized representative
(See Instructions)

x Glenn S. Krassen — May 18, 2007

Authorized Representative — Date

Glenn S. Krassen, Incorporator

(print name)

Authorized Representative — Date

(print name)

Authorized Representative — Date

(print name)

Complete the information in this section if box (1) (2) or (3) is checked.

ORIGINAL APPOINTMENT OF STATUTORY AGENT

The undersigned, being at least a majority of the incorporators of NOPEC, Inc
hereby appoint the following to be statutory agent upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served. The complete address of the agent is

OSAC, Inc.
(Name)
100 S. Third Street
(Street) NOTE: P.O. Box Addresses are NOT acceptable.
Columbus, Ohio 43215
(City) (Zip Code)

Must be authenticated by an authorized representative

x Glen S. Krassen Authorized Representative	May 18, 2007 Date
Authorized Representative	Date
Authorized Representative	Date

ACCEPTANCE OF APPOINTMENT

The Undersigned, OSAC, Inc., named herein as the
Statutory agent for, NOPEC, Inc.
, hereby acknowledges and accepts the appointment of statutory agent for said entity.

OSAC, Inc.
Signature: x _____ (Statutory Agent)
By: John W. Cook II
Its: President

532 Page 3 of 3 Last Revised: May 2002

ARTICLES OF INCORPORATION

OF

NOPEC, INC.

EXHIBIT A

THIRD
PURPOSE

The Corporation is organized and shall be operated exclusively for promotion of social welfare within the meaning of section 501(c)(4) of the Internal Revenue Code of 1986, as now or hereafter amended (the "Code"). To such ends, and within such restrictions, the Corporation 's activities will include, but not be limited to: (a) procuring electricity and/or natural gas and related products and services for sale to electric and/or natural gas customers in those political subdivisions that are members of the Northeast Ohio Public Energy Council ("NOPEC"), a regional council of governments established under Chapter 167 of the Ohio Revised Code, which have been aggregated by NOPEC pursuant to the authority provided under Sections 4928.20 and 4929.26 of the Ohio Revised Code; and (b) promoting any other cooperative programs that relate to political subdivisions of the State of Ohio which may be approved, from time to time, in accordance with these Articles of Incorporation and the Code of Regulations of the Corporation. In carrying out these purposes, the Corporation shall have all powers conferred by the laws of the State of Ohio on nonprofit corporations under the provisions of Chapter 1702 of the Ohio Revised Code, as amended, or the provisions of any similar law, provided the Corporation shall at all times exercise only such powers as are consistent with section 501(c)(4) of the Code.

FOURTH
PROHIBITED
ACTIVITIES AND
CONSTRUCTION
OF ARTICLES

No part of the property or earnings of the Corporation shall inure, directly or indirectly, to the benefit of, or be distributable to, the Corporation's directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered or goods furnished, including to the Corporation's officers and directors, and to make payments and distributions in furtherance of the purposes set forth in Article Third of these Articles.

Nothing herein contained shall be deemed to authorize or permit the Corporation to carry on activities or to exercise any power or to do any act which a corporation formed under Ohio Revised Code Chapter 1702, as amended from time to time, may not at the time lawfully carry on or do.

These Articles of Incorporation shall be construed and interpreted to permit the Corporation to engage in only such activities as are consistent with the Corporation's status as an entity exempt

from federal income tax under section 501(a) of the Code as an entity organized and operated as described in section 501(c)(4) of the Code.

FIFTH
MEMBERS

The Members of the Corporation shall be persons, entities or organizations that are named as Members in the Corporation's Code of Regulations as amended from time to time. To the extent set forth in such Code of Regulations, the Corporation may have only a single Member as named therein.

SIXTH
DIRECTORS

The corporate powers, property and affairs of the Corporation shall be exercised, conducted and controlled by the Board of Directors of the Corporation in such a manner as is consistent with the Corporation's Code of Regulations.

SEVENTH
AMENDMENTS

These Articles of Incorporation may only be amended, either in whole or in part, by an action of the Members of the Corporation and only in the manner prescribed by law and the Corporation's Code of Regulations.

EIGHTH
DISSOLUTION

Upon the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, shall dispose of all the assets of the Corporation exclusively for the exempt purposes of the Corporation as stated in Article Third hereof, including by distributing the assets in the following order of distribution, at the direction of the Board of Directors: (i) First, to NOPEC, if it is still in existence; (ii) Second, if NOPEC is not in existence, to the political subdivisions that were members of NOPEC and participating in NOPEC's electricity program on January 1, 2007; and (iii) Third, if neither NOPEC nor the political subdivisions that were members of NOPEC and participating in NOPEC's electricity program on January 1, 2007 are in existence, to any other organization or organizations that are political subdivisions or instrumentalities of the State of Ohio. Any such assets not so disposed of shall be disposed of as directed by the Court of Common Pleas of the county in which the principal office of the Corporation is then located, exclusively for the purposes of the Corporation as stated in Article Third hereof.

EXHIBIT E

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

From: Martin T Harvey 10/20/2014 10:40 AM
Extension: 6-7026

To: Sauer, Larry

Cc: David A. Kutik

Larry:

As you know, the Commission has long protected competitively sensitive information from being disclosed to competitors or others where disclosure could place the disclosing party at a competitive disadvantage. We believe that the revised language we provided to you, in response to your earlier email, accomplishes that objective in a specific way. To the extent that you believe that the revised language continues to be overbroad for OCC's purposes, we suggest that you propose language, consistent with the proper protection of competitive information, that would be acceptable to OCC.

Thank you,

Marty

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

"Sauer, Larry" Martin, I am in receipt of your latest draft of the P... 10/17/2014 05:08:29 PM

From: "Sauer, Larry" <Larry.Sauer@occ.ohio.gov>
To: Martin T Harvey <mtharvey@JonesDay.com>,
Cc: "David A. Kutik" <dakutik@JonesDay.com>, "burkj@firstenergycorp.com" <burkj@firstenergycorp.com>
Date: 10/17/2014 05:08 PM
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

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.

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. Kutik" <dakutik@JonesDay.com>, "burkj@firstenergycorp.com" <burkj@firstenergycorp.com>
Date: 09/02/2014 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.

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>, "burkj@firstenergycorp.com" <burkj@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.

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

----- 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]

without copying it and notify sender by reply e-mail, so that our records can be corrected.
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EXHIBIT F

Subject: Case No. 14-1297 NOPEC Protective Agreement-- Confidential Materials Only

From: Martin T Harvey 11/06/2014 11:47 AM
Extension 6-7026

To: Stinson, Dane

Cc: cdunn, David A. Kutik

Dane,

Pursuant to yesterday's call attached please find a clean copy of the Companies' proposed protective agreement related to Confidential materials only and a redline comparing this agreement to the one that was previously sent to NOPEC on October 21, 2014.

Thank you,

Marty

CLI_202269520_1_NOPEC Redline Confidential Only.DOCX

CLI_202269348_1_14-1297-EL-SSO NOPEC Protective Agreement-- Confidential Only.DOCX

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

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Subject: Case No. 14-1297-EL-SSO Protective Agreement for OCC--Confidential Materials Only

From: Martin T Harvey 11/06/2014 11:44 AM
Extension: 6-7026

To: Sauer, Larry

Cc: cdunn, David A. Kutik

Larry,

Pursuant to yesterday's phone call, attached please find a redline and clean copy of a protective agreement which only treats access to confidential materials. Please note that this document is based on the version of the Protective Agreement that was sent to you on September 11, 2014 which incorporated various additions suggested by the prior concerns raised by OCC.

Thank you,

Marty

CLI_202269382_1_14-1297 Protective Agreement for OCC-Confidential only.DOCX

CLI_202269507_1_Redline of OCC Protective Agreement Confidential Only.DOCX

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

EXHIBIT G

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.	))))))	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	))))	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between Columbus Southern Power Company ("CSP") and Ohio Power Company (OP), collectively referred to as the "Company" or "AEP Ohio," and FirstEnergy Solutions Corp. (Intervenor).

1. This Agreement shall govern the use of all Protected Materials produced by, or on behalf of, the Company in connection with the above-captioned cases (the Proceedings). Notwithstanding any order terminating the Proceedings, this Agreement shall remain in effect until specifically modified or terminated by the Public Utilities Commission of Ohio (Commission).

2. "Authorized Representative" shall mean a person who has signed either or both of the attached Non-Disclosure Certificates, Attachment A (applicable to CONFIDENTIAL Protected Materials) and Attachment B (applicable to COMPETITIVELY-SENSITIVE CONFIDENTIAL and RESTRICTED ACCESS CONFIDENTIAL Protected Materials) and who is: (a) an attorney who has made an appearance in this proceeding for Intervenor; (b) attorneys, paralegals, and other

employees associated for purposes of this case with an attorney described in (a); (c) an employee of Intervenor affiliate involved in Proceedings on behalf of Intervenor including any expert or employee of an expert retained by Intervenor to the Proceeding for the purpose of advising, preparing for or testifying in this Proceeding Upon request, Intervenor shall provide a copy of the Non-Disclosure Certificates signed by Intervenor's Authorized Representatives.

3. "Protected Materials" are materials designated as "CONFIDENTIAL" or with words of similar import by Company which customarily are treated by Company as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject Company to risk of competitive disadvantage or other business injury. This includes materials meeting the definition of "trade secret" under Ohio law. Protected Materials shall not include (a) any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (b) information that is public knowledge or becomes public knowledge, other than through disclosure in violation of this Agreement or in violation of a similar agreement executed by Company in this proceeding. As a Competitive Retail Electric Service (CRES) provider in Ohio, Intervenor also provides retail electric generation, aggregation, power marketing, power brokerage services, and other related competitive retail electric services. Thus, notwithstanding other provisions of this Agreement that permit any Authorized Representative to access Protected Materials, Intervenor's access to the subset of Protected Materials that are labeled by the Company as "COMPETITIVELY-SENSITIVE CONFIDENTIAL" or with words of similar import will be

strictly limited to the following Authorized Representatives: (i) Intervenor's legal counsel of record for purposes of advancing Intervenor's interest in this Proceeding, (ii) Intervenor witness(es) and support staff who are not engaged in competitive sales or marketing for Intervenor and who are evaluating and/or testifying to matters that advance Intervenor's interest in this Proceeding. The Authorized Representatives identified in (i) and (ii), including both outside counsel and in house counsel, will ensure that persons involved with the CRES-related business activities are not permitted to access COMPETITIVELY-SENSITIVE CONFIDENTIAL materials. Further, certain Protected Materials may be designated and conspicuously marked as "RESTRICTED ACCESS CONFIDENTIAL" where counsel for the producing party in good faith determines that such Protected Materials are highly sensitive and could cause significant damage to the producing party if made public. Such RESTRICTED ACCESS CONFIDENTIAL materials are subject to all of the obligations listed above for COMPETITIVELY-SENSITIVE CONFIDENTIAL materials, except that these additional restrictions shall also apply: (i) RESTRICTED ACCESS CONFIDENTIAL materials shall not be copied, replicated or electronically transmitted, and (ii) counsel for the receiving party must create and maintain a written log of all persons accessing RESTRICTED ACCESS CONFIDENTIAL materials including the name, title, date of review and scope of review of the information. The balance of this Agreement continues to categorically apply to all Protected Materials, including CONFIDENTIAL, COMPETITIVELY-SENSITIVE CONFIDENTIAL and RESTRICTED ACCESS CONFIDENTIAL materials.

4. "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Protected Materials. Notes of Protected Materials are subject to the same restrictions

provided in this Agreement for Protected Materials except as specifically provided otherwise in this Agreement.

5. Protected Materials shall be made available under the terms of this Agreement only to Intervenor for this Proceeding and only by provision of the Protected Materials to its Authorized Representatives.

6. Protected Materials shall remain available to Intervenor until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, Intervenor shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Company, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Materials may be retained, if they are maintained in accordance with Paragraph 7, below. Within such time period, Intervenor, if requested to do so, shall also submit to Company an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 7. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

7. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to Authorized Representatives. Protected Materials shall be treated as confidential by Intervenor and by the Authorized Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this

proceeding, nor shall they be disclosed in any manner to any person except an Authorized Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Authorized Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials. Authorized Representatives may not use information contained in any Protected Materials obtained through this proceeding to give Intervenor or any competitor of the Company a commercial advantage.

8 In the event that Intervenor wishes to designate as an Authorized Representative a person not described in Paragraph 2 above, Intervenor shall seek agreement from the Company. If agreement is reached, that person shall become an Authorized Representative. If no agreement is reached, Intervenor shall submit the disputed designation to the Attorney Examiner for resolution.

9. An Authorized Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials unless that Authorized Representative has first executed the attached Non-Disclosure Certificate; provided, that if an attorney qualified as an Authorized Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys qualified as Authorized Representatives are responsible for ensuring that persons under their supervision or control comply with this order. A copy of each Non-Disclosure Certificate shall be provided to the Company prior to disclosure of any Protected Material to an Authorized Representative.

10. An Authorized Representative may disclose Protected Materials to another other Authorized Representative (for the same Intervenor) as long as the disclosing Authorized Representative and the receiving Authorized Representative have both executed a Non-Disclosure Certificate. In the event that any Authorized Representative to whom the Protected Materials are disclosed ceases to be engaged in these Proceedings, access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement and the Non-Disclosure Certificate. Intervenor and Authorized Representatives are prohibited from disclosing Protected Materials to another Party or that Party's Authorized Representatives, regardless of whether that Party has also signed a Protective Agreement with the Company in these Proceedings.

11. Intervenor shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected materials, shall be filed and served in compliance with the applicable procedures for filing confidential information in this proceeding. If Intervenor seeks to make use of or reference to Protected Materials, it must do so under seal as required by the Commission's regulations

13. If Intervenor desires to include, utilize, or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these Proceedings in such a manner that might require disclosure of such material to persons other than Authorized Representatives, such participant shall first notify both counsel for

the Company and the Attorney Examiner of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of the so-identified Protected Materials will be governed by procedures determined by the Attorney Examiner.

14. Nothing in this Agreement shall be construed as precluding the Company from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Agreement shall preclude Intervenor from requesting that the Attorney Examiner, Commission or any other body having appropriate authority, to find that this Agreement should not apply to all or any materials designated as Protected Materials pursuant to this Agreement. However, Intervenor shall continue to treat any Protected Materials as Protected Materials under this Agreement until the Attorney Examiner or Commission issues a ruling that such materials should not be designated as Protected Materials. Neither the Company nor Intervenor waives its rights to seek additional administrative or judicial remedies after the Attorney Examiner's decision respecting Protected Materials or Authorized Representatives, or the Commission's denial of any appeal thereof.

16. Nothing in this Agreement shall be deemed to preclude the parties from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Agreement.

17. Neither the Company nor Intervenor waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

18. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in

accordance with this Protective Order and shall be used only in connection with this proceeding.

BY: FirstEnergy Solutions Corp.

Counsel

Date

BY: Columbus Southern Power Power Company and Ohio Power Company

Counsel

Date

ATTACHMENT A

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.	))))))	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	))))	Case No 11-349-EL-AAM Case No. 11-350-EL-AAM

NON-DISCLOSURE CERTIFICATE FOR

CONFIDENTIAL PROTECTED MATERIALS

I hereby certify my understanding that access to CONFIDENTIAL Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement between Columbus Southern Power Company and FirstEnergy Solutions Corp. in this proceeding, 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 the above-referenced Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses the above-referenced Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Agreement, and will be used only for the purposes of this proceeding.

BY: _____

Title: _____

Representing: _____

Date: _____

ATTACHMENT B

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.	))))))	Case No 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	))))	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM

NON-DISCLOSURE CERTIFICATE FOR COMPETITIVELY-SENSITIVE CONFIDENTIAL PROTECTED MATERIALS AND RESTRICTED ACCESS CONFIDENTIAL PROTECTED MATERIALS

I hereby certify my understanding that access to COMPETITIVELY-SENSITIVE CONFIDENTIAL Protected Materials and RESTRICTED ACCESSS CONFIDENTIAL Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement between Columbus Southern Power Company and FirstEnergy Solutions Corp. in this proceeding, 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 the above-referenced Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses the above-referenced Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Agreement, and will be used only for the purposes of this proceeding.

BY: _____

Title: _____

Representing: _____

Date: _____

Summary: Memorandum Contra The Northeast Ohio Public Energy Council And The Office Of The Ohio Consumers' Counsel's Joint Motion to Compel electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company