

**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)	Case No. 14-1297-EL-SSO
for a Standard Service Offer Pursuant to)	
R.C. 4928.143 in the Form of an Electric)	
Security Plan)	

**DUKE ENERGY OHIO'S MEMORANDUM IN OPPOSITION TO THE
INTERLOCUTORY APPEAL OF THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL AND THE NORTHEAST OHIO PUBLIC ENERGY COUNSEL**

Duke Energy Ohio, Inc., (Duke Energy Ohio) hereby submits its memorandum in opposition to the interlocutory appeal filed by the Office of the Ohio Consumers' Counsel (OCC) and the Northeast Ohio Public Energy Counsel (NOPEC). Said memorandum focuses on certain of the procedural inaccuracies set forth in Section IV.A. of the interlocutory appeal. However, this focus should not be interpreted as acquiescence to any other section of the appeal as none is intended and, instead, expressly withheld.

Through their appeal, OCC and NOPEC seek to force upon the FirstEnergy distribution companies a protective agreement entered into between the OCC and Duke Energy Ohio. In this quest, OCC and NOPEC repeatedly infer that the protective order in the Duke ESP Case (Case No. 14-841-EL-SSO) is binding precedent.¹ This inference is misplaced as it incorrectly assumes finality to the issues related to the protective agreements at issue in the Duke ESP Case.

The Duke ESP Case involved protracted motion practice related to discovery and, notably, the appropriate terms of protective agreements applicable to both the OCC and to other intervenors that are not statutorily created entities. The details of this motion practice are not

¹ See, e.g., Interlocutory Appeal, at pg. 11.

restated here, as they are not relevant. Rather, this reference is made only to ensure that the status of that activity is reflected in this proceeding. In the Duke ESP Case, following an initial, oral ruling on August 12, 2014, Duke Energy Ohio filed an interlocutory appeal on issues related to the scope of the use of confidential material and the destruction of such material.² The Commission issued an entry on August 27, 2014, modifying, in part, the attorney examiner's earlier ruling. Thereafter, Duke Energy Ohio sought rehearing of the Commission's entry, which request was subsequently denied.³ The issues raised by Duke Energy Ohio in its interlocutory appeal have been properly preserved for appeal and, importantly, the entry on rehearing in the Duke ESP Case should not be construed as controlling precedent for purposes of the captioned proceeding and the subject interlocutory appeal.⁴

Duke Energy Ohio respectfully requests that the Commission disregard the suggestions of OCC and NOPEC that the terms and conditions of a protective agreement in the Duke ESP Case have been finally concluded and, as such, merit reversal of the attorney examiner's ruling in this case.

² *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, *et al.*, Memorandum in Support of Interlocutory Appeal, at pg. 1 (August 18, 2014).

³ *Id.*, Application for Rehearing (September 26, 2014) and Entry on Rehearing, at pg. 8 (October 22, 2014).

⁴ Pursuant to R.C. 4903.13, only final orders are appealable.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in blue ink, appearing to read "Amy B. Spiller", is written over the printed name.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal, or electronic mail, on this 15th day of December, 2014, to the following parties.


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Summary: Memorandum Duke Enegy Ohio's Memorandum in Opposition to the Interlocutory Appeal of the Office of the Ohio Consumers' Counsel and the Northeast Ohio Public Energy Counsel electronically filed by Dianne Kuhnell on behalf of Spiller, Amy B. and Duke Energy Ohio, Inc. and Kingery, Jeanne W.