BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company	Case No. 11-5201-EL-RDR

REPLY OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S MEMORANDUM CONTRA MOTION FOR RENEWAL OF PROTECTIVE ORDER

I. INTRODUCTION

In its Memorandum Contra FirstEnergy's Motion for Renewal of Protective Order ("OCC Memo Contra"), the Office of the Ohio Consumers' Counsel ("OCC") does nothing more than provide a rehash of various arguments that the Commission has already considered and rejected on multiple occasions. In their Motion for Renewal of Protective Order ("Motion for Renewal"), Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") seek to continue protection for certain proprietary information related to their procurement of renewable energy credits ("RECs"). This information includes: (a) the identities of specific REC suppliers who participated in a series of request for proposals ("RFPs") held by the Companies; (b) the specific prices for the RECs bid by these specific suppliers in response to each RFP; and (c) detailed financial information regarding specific REC transactions between the suppliers and the Companies (the "REC Procurement Data").

The REC Procurement Data was voluntarily provided by the Companies to Staff to assist with the instant audit proceeding and is contained in various documents filed under seal with the Commission (these documents are listed in the Companies' Motion for Renewal). The REC Procurement Data has also been filed under seal at the Supreme Court of Ohio in the Companies' appeal related to this proceeding. On May 6, 2014, the Attorney Examiner, as was the case on four previous occasions, again granted trade secret protection to the REC Procurement Data. That Entry also provided that protection would lapse on February 13, 2015 and that the Companies could move for continued protection at the appropriate time. On December 23, 2014, pursuant to Rule 4901-1-24(F), the Companies timely filed their Motion for Renewal. In that motion, the Companies readily show that the REC Procurement Data warrants continued protection as a trade secret under Ohio law. The Companies further show that its release also is prohibited by Section 4901.16 of the Ohio Revised Code. OCC's arguments to the contrary are thus meritless.

II. LAW AND ARGUMENT

A. The REC Procurement Data Continues To Be A Trade Secret Under Ohio Law Warranting Protection.

1. The REC Procurement Data continues to satisfy the requirements for trade secret protection as set forth in Section 1331.61(D).

In its Memo Contra, OCC "reiterates" the same arguments it has made on several prior occasions in this proceeding. OCC Memo Contra at 3. OCC neglects to mention that the Commission has repeatedly rejected these arguments. As the Commission has found on several prior occasions, the REC Procurement Data warrants trade secret protection under Ohio law. Here, the REC Procurement Data continues to warrant trade secret protection and nothing in OCC's Memo Contra demonstrates otherwise. Indeed, OCC's "incorporation by reference"

maneuver is an acknowledgement that OCC is doing nothing more than offering the same tired arguments which the Commission has repeatedly rejected in the past.

The REC Procurement Data continues to satisfy the two-pronged test set forth in Section 1333.61(D). First, the REC Procurement Data continues to bear independent economic value. The release of the REC Procurement Data could reveal proprietary bidding strategies, lead to collusive behavior amongst suppliers (thereby driving up prices and hurting ratepayers), and undermine supplier participation in Ohio's REC market. *See* Case No. 11-5201-EL-RDR, Affidavit of Daniel R. Bradley at ¶4, Motion of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For a Protective Order, Ex. D (Feb. 7, 2013); *see also*, Case No. 11-5201-EL-RDR, Navigant Consulting, Inc., Comments Letter, p. 2 (Oct. 29, 2012). Indeed, as Dean W. Stathis, the Director of Regulated Commodity Sourcing for FirstEnergy Service Company, stated at length in his affidavit:

> As a matter of business practice, the Companies do not voluntarily publicly release data, such as individual supplier pricing or bids or supplier-identifying information. Releasing such information, regardless of its age, would harm the ability of the Companies to attract suppliers to participate in RFPs. Because of the fear that information supplied to the Companies in confidence would someday become public, suppliers that would otherwise participate in the Companies' RFPs would be inclined instead to choose to participate in other utilities' RFPs (in Ohio or elsewhere) if the suppliers came to believe that information provided in confidence to the Companies would be released. This adverse impact on supplier participation would undermine the competitive outcome of any RFP, thereby potentially driving up the prices that the Companies and their customers would have to pay for RECs.

Case No. 11-5201-EL-RDR, Affidavit of Dean W. Stathis at ¶5, Motion of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Renewal of Protective Order, Ex. D (Dec. 23, 2014) (Stathis Aff."). The Commission concurred with this assessment in its Second Entry on Rehearing: "If this trade secret information [i.e., the REC Procurement Data] was public, it could discourage REC suppliers' confidence in the market

and impede the function of the REC market." *Id*., Second Entry on Rehearing at 4 (Dec. 18, 2013). Hence, OCC's conclusory claim that the REC Procurement Data lacks independent economic value falls flat.

Second, the Companies have gone to great lengths to safeguard the secrecy of the REC Procurement Data. The REC Procurement Data has not been revealed to any third parties outside of this audit proceeding and subsequent appeal. *See* Stathis Aff. at ¶¶3-4. It has also only been revealed to those parties to this proceeding that have executed a confidentiality and protective agreement with the Companies. Further, it was provided to Staff and the outside auditors with the understanding that it would be kept confidential and remain under seal. *See id.* at ¶4. Internally, the REC Procurement Data was segregated and only provided to the Companies' employees on a need-to-know basis. *See id.* at ¶3. The Companies consistently have moved to protect the REC Procurement Data contained in any filings in this matter, including direct and rebuttal witness testimony, deposition testimony, and all post-hearing briefing. To further safeguard the REC Procurement Data, the hearing in this matter was bifurcated into confidential and public portions with access to the transcripts for the confidential portions restricted accordingly. *See* Case No. 11-5201-EL-RDR, Entry, p. 2 (Mar. 19, 2013). Further, in their recent filing at the Supreme Court of Ohio, the Companies filed portions of their appendix and supplements to their merit briefs under seal because these materials contained the same REC Procurement Data that is at issue here.

As shown by the above, the REC Procurement Data was afforded trade secret protection by the Commission on five separate prior occasions in this proceeding, and further, this protection should continue. Indeed, the Commission has consistently rejected OCC's claims that the REC Procurement Data is not deserving of trade secret protection. *See* Case No. 11-5201-

EL-RDR, Hearing Tr. at 17-18 (Dec. 4, 2012) (granting trade secret protection to the REC Procurement Data contained in the unredacted Exeter Report and rejecting arguments to the contrary by OCC and other intervenors); Entry at 5 (Feb. 14, 2013) ((granting trade secret protection to the REC Procurement Data contained in commentary by the Companies on the Exeter Report and rejecting arguments to the contrary by OCC); Opinion and Order at 8-12 (Aug. 7, 2013) (affirming the trade secret status of the REC Procurement Data (with one slight modification), granting protection to the REC Procurement Data contained in several documents filed with the Commission, and rejecting arguments to the contrary by OCC and other intervenors); Second Entry on Rehearing at 4-7 (Dec. 18, 2013) (affirming the trade secret status of the REC Procurement Data and rejecting arguments to the contrary by OCC and other intervenors); Entry at 3-4 (May 6, 2014) (finding that the REC Procurement Data contained in various documents filed with the Commission constituted a trade secret under Ohio law).

2. OCC fails to distinguish the authority relied on by the Companies in their Motion for Renewal.

OCC's attempt to distinguish some (but not all) of the Commission decisions relied on by the Companies in their Motion for Renewal also fails. OCC argues that these decisions – *In the Matter of DPL Energy Resources, Inc.'s Annual Alternative Energy Portfolio Status Report*, Case No. 12-1205-EL-ACP, 2013 Ohio PUC LEXIS 265 (Nov. 13, 2013) and *In the Matter of the Alternative Energy Portfolio Status Report of Dominion Retail, Inc.*, Case No. 12-1223-EL-ACP, 2013 Ohio PUC LEXIS 251 (Nov. 13, 2013) – involved requests by CRES providers to protect their bidding information. *See* OCC Memo Contra at 4. Because no CRES providers have sought protection here, OCC argues, these decisions allegedly do not apply. This misses the point. These decisions stand for the general proposition that certain REC data generated by utilities to meet their renewable energy compliance obligations (*e.g.*, the identity of REC

suppliers) is proprietary in nature and worthy of trade secret protection. *See DPL Energy Resources* at *3-8; *Dominion Retail* at *3-5. *See also In re Alternative Energy Portfolio Status Report for 2011 of Ohio Power Co.*, Case No. 12-1212-EL-ACP, Finding and Order at 2 (July 30, 2014) (granting trade secret protection to REC data contained in AEPS report).

Notably, OCC makes no attempt to distinguish the competitive bid process ("CBP") auction cases relied on by the Companies in their Motion for Renewal. In those cases, the Commission held that certain bidder-identifying and pricing information warranted protection due to its proprietary nature. *See*, *In the Matter of the Application of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison 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. 08-935-EL-SSO, Entry (May 23, 2011) ("Companies' First ESP") (granting protection to CBP data contained in two post-auction reports, including identities of unsuccessful bidders, price information (including starting price methodologies and round prices/quantities for individual bidders), and "indicative pre-auction offers"); *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio*, Inc., Case No. 11-6000-EL-UNC, 2013 Ohio PUC LEXIS 257, *3-4 (Nov. 13, 2013) (agreeing with Staff that "disclosure of [confidential bidder-identity and pricing] information would be highly prejudicial to the bidding parties and the viability of any future auction in Ohio" and ordering that such information be protected "indefinitely" due to its "highly competitive sensitive nature").

The REC Procurement Data remains on all-fours with the REC data protected in *DPL Energy Resources*, *Dominion Retail* and *Ohio Power* and directly analogous to the CBP auction data in the Companies' First ESP and *Duke Energy*. Thus, the REC Procurement Data continues

to warrant protection. Moreover, OCC's claims regarding the age and allegedly "historic" nature of the REC Procurement Data are of no moment. In *Dominion Retail*, the REC procurement data found to bear independent economic value involved RECs retired in 2010 and was therefore, at a minimum, 36 months old when placed under protection. *See* Case No. 12-1223-EL-ACP, Motion for Protective Order of Dominion Retail, Inc., at 2 (April 13, 2012) ("If disclosed to competitors, the identity and sources of the RECs retired by Dominion Retail in 2010 to meet its [AEPS compliance obligations] would damage Dominion Retail's position in the Ohio retail electric market.") (emphasis added). Likewise the CBP auction data from the Companies' First ESP remains under seal and protected, some 60 months after protection was originally sought.

3. The inadvertent and involuntary disclosure of a portion of the REC Procurement Data does not compromise its trade secret status.

OCC also claims that because the Companies did not immediately seek to protect certain REC Procurement Data contained in the unredacted version of an audit report filed in this proceeding, renewed trade secret protection is not available. *See* OCC Memo Contra at 4. OCC's conclusory claim omits several crucial facts. First, OCC's Memo Contra incorrectly implies that all of the REC Procurement Data has been "publicly disclosed." OCC Memo Contra at 1. In fact, only a small portion of the REC Procurement Data has been inadvertently disclosed. The vast majority of the REC Procurement Data, including additional supplier-identifying information and specific pricing information, remains under seal at both the Commission and the Supreme Court and has not been publicly disseminated.

Further, the partial disclosure at issue occurred without the Companies' knowledge, consent or control. As part of the audit proceeding, Staff secured the services of Exeter Associates ("Exeter") to conduct a management/performance audit of the Companies' REC RFPs, which culminated in a report (the "Exeter Report"). Because the Exeter Report contained

the REC Procurement Data, Staff was to file a confidential, unredacted version of the Exeter Report under seal and a redacted version on the public docket. On August 15, 2012, Staff filed the public version of the Exeter Report, which was improperly redacted and inadvertently disclosed two discrete pieces of the REC Procurement Data.

Prior to the filing of the public version of the Exeter Report, Staff agreed that the Companies would have an opportunity to conduct a final review of the Exeter Report. Case No. 11-5201-EL-RDR, Opinion and Order at 9-10 (Aug. 7, 2013) ("Order"). The Companies did not get that opportunity. *Id.*

With the improper filing, the Companies were placed in a "no win" position: file a motion which publicly pointed out the material that should have been protected or do nothing and be accused later of waiving the trade secret status of this information. As they explained at the start of the evidentiary hearing, the Companies decided to wait for an opportunity to address the issue in a way that would: (a) allow the Companies to address the disclosure in a confidential fashion; and (b) permit all parties to participate. *See* Tr. Vol. I at 19 (Conf.). That opportunity came on the first day of the evidentiary hearing. Thus, the improper redactions occurred without the Companies' knowledge, consent or control. If the Companies had been given an opportunity to review the finalized Exeter Report, this disclosure would not have happened.

Importantly, the disclosure here was involuntary and thus does not undermine the trade secrete status of the vast quantity of REC Procurement Data that has not been disclosed. For example, in *Public Citizen Health Research Group v. FDA*, 953 F. Supp. 400 (D.D.C. 1996), a government agency inadvertently disclosed several corporations' trade secrets. The corporations filed their motion approximately three months after learning of the inadvertent disclosure. A party opposing the motion argued that the three month delay waived trade secret status. *Id.* at

402. Rejecting that argument, the court drew a sharp distinction between voluntary disclosure – *i.e.*, "the escape of the information into the public domain . . . [that] was due to a conscious choice by the party seeking to have the information's dissemination halted" – and involuntary disclosure, "where the government inadvertently inserted….information into the public domain." *Id.* at 404. The court held that, with involuntary disclosures, there was no "waiver of any confidentiality interests," even if there was a two to three month delay in seeking protection. *Id.* at 405. Thus, *contra* OCC, the involuntary, inadvertent disclosure of a small portion of the REC Procurement Data – and the 49 day gap following that disclosure – does not defeat its continuing trade secret status.[1]

Moreover, under Ohio law, partial disclosure of a trade secret neither compromises nor defeats trade secret status. For example, in *State ex rel. Perrea v. Cincinnati Public Schools*, 123 Ohio St.3d 410, 415 (2009), a public school teacher sought a writ of mandamus to compel the release, pursuant to a public records request, of a set of exam questions created by a school district. The teacher argued that because the school district had disseminated the confidential

[1] Cases involving the directly analogous scenario, the involuntary, inadvertent disclosure of privileged information, also prove instructive. For example, in *Hamilton County, Ohio v. Hotels.Com, L.P.*, Case No. 3:11 CV 15, 2011 U.S. Dist. LEXIS 83520 (N.D. Ohio July 29, 2011), the court found that involuntary disclosure of privileged information did not waiver any privilege. Defendant internet travel sites moved to strike plaintiff counties' use of privileged and work product information attached to the counties' notice of supplemental authority. *Id.* at *2. The counties claimed that the internet travel sites had waived any such privilege/work product protection because a Georgia state court had ordered the material produced. *Id.* at *9. Subsequently, a member of the Florida General Assembly somehow obtained copies of the privileged material and had disseminated it to other assembly members as well as the media. *Id.* at *10. Approximately 2-3 months had passed since the material had originally been disclosed via the Georgia court order. *Id.* The court granted the motion to strike of the internet travel sites. The court found that compliance with a Georgia state court's order "was not a voluntary disclosure which resulted in a waiver of the privilege." *Id*. In light of this finding, the court subsequently held: "Clearly, *the involuntary and unauthorized public dissemination of a privileged document or documents filed with a court pursuant to a court order does not constitute a waiver of the privilege*. Rather, any such disclosure must be voluntary…" *Id.* at *11 (emphasis added). *See also*, *Florida House of Representatives v. U.S. Dept. of Commerce*, 961 F.2d 941, 946 (11th Cir. 1992) (holding that deliberative process privilege not waived when privileged information produced to Congress under a threat of subpoena and pursuant to a Freedom of Information Act request because "[i]f documents are exempt from disclosure under the FOIA, the fact that they were involuntarily disclosed by means other than the FOIA should not lead to a finding of waiver").

scoring guidelines for the exams, the exam questions themselves had been disclosed. *Id.* The Court disagreed: "Even if the scoring guidelines could be used to reconstruct the four constructed-response questions, this partial disclosure would not foreclose the possibility of a trade secret." *Id.* (citing *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 528 (1997); *State ex rel. Lucas County Bd. of Comm'rs. v. Ohio EPA*, 88 Ohio St.3d 166, 174 (2000)).

So too here. The partial disclosure of the REC Procurement Data does not undermine its status as a trade secret which warrants continued protection. Indeed, only the identity of a single REC supplier was revealed in the improperly redacted Exeter Report. The identity of any other suppliers and specific pricing information has not been disseminated, and, as detailed above, the Companies have endeavored to safeguard the REC Procurement Data, including the data inadvertently disclosed. As such, OCC's claims regarding the supposed "public disclosure" of the REC Procurement Data fall well wide of the mark.

B. Section 4901.16 Precludes The Disclosure Of The REC Procurement Data.

OCC contends, wrongly, that Section 4901.16 does not preclude the disclosure of the REC Procurement Data. Section 4901.16 provides, in pertinent part:

> Except in his report to the public utilities commission or when called upon to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent.

The Commission has observed that Section 4901.16 prohibits Commission employees, including Staff and its agents, from disclosing information acquired during the course of a Commission investigation. *See, In the Matter of the Investigation of The Cincinnati Gas & Electric Company Relative to Its Compliance With the Natural Gas Pipeline Safety Standards and Related Matters,*

Case No. 00-681-GA-GPS, 2004 Ohio PUC LEXIS 271, *11 (July 28, 2004) (holding that Section 4901.16 may preclude the disclosure of confidential information that does not rise to the level of a trade secret); *In the Matter of the Commission's Investigation Into the Adequacy and Availability of Electric Power for the Summer Months of 2001 from Ohio's Investor-Owned Electric Utility Companies*, Case No. 01-985-EL-COI, 2001 Ohio PUC LEXIS 179, *5-6 (May 3, 2001) (holding that Section 4901.16 requires Staff to not divulge confidential information acquired from a utility during the course of a Commission-sponsored investigation).

In the January 18, 2012 Entry authorizing Staff to secure an outside auditor, the Commission quoted from Section 4901.16 at length and explicitly made any such auditor subject to the confidentiality strictures contained therein. "The auditor is subject to the Commission's statutory duty under Section 4901.16." Case No. 11-5201-EL-RDR, Entry at 2-3 (Jan. 18, 2012). Moreover, the REC Procurement Data clearly counts as "information…in respect of the transaction, property or business of any public utility"; indeed, it was generated as part of the RFP transactions that the Companies engaged in to secure RECs. Further, the REC Procurement Data was acquired by Staff and the auditors in their official capacity, and was provided to them with the understanding that it would remain confidential. *See* Stathis Aff. at ¶4. Thus, Section 4901.16 precludes the divulgement of the REC Procurement Data.

OCC's attempt to distinguish *Cincinnati Gas & Electric* and *Investor-Owned Electric Utility Companies* fails. OCC argues that *Cincinnati Gas & Electric* does not apply because in that decision the Commission "made a limited ruling" that Section 4901.16 cannot preclude the disclosure of "all information" provided by a utility to Staff. OCC Memo Contra at 5. But protecting all of the Companies' information is not what the Companies seek to do. Rather, the

Companies seek continued protection only for proprietary, confidential information provided to the Staff and Exeter, like the REC Procurement Data.

OCC's citation to a later Entry from *Cincinnati Gas & Electric* is similarly unavailing. In that Entry, the Commission distinguished between "staff-acquired information and Commission-ordered documentation filed with the Docketing Division." *Cincinnati Gas & Electric*, Entry, 2005 Ohio PUC LEXIS 104, at 7-8. Only "staff-acquired information" falls under the ambit of Section 4901.16. *Id.* OCC omits that the information at issue had not been acquired by Staff, but rather was contained in a final incident report filed by the utility. *Id.* The utility then sought to protect the entire report from disclosure pursuant to 4901.16. In contrast, here, the REC Procurement Data was voluntarily provided by the Companies to Staff and the outside auditors. Staff subsequently filed a redacted version of the Exeter Report on the public docket and a confidential version under seal. Hence, in this instance, the REC Procurement Data is "staff-acquired' information and the strictures of Section 4901.16 apply accordingly. OCC's claim otherwise has no basis in either fact or law.[2]

OCC is equally unsuccessful when it seeks to criticize the Companies' reliance on *Investor-Owned Electric Utility Companies*. OCC claims that this decision does not apply because: (a) information in that decision, unlike here, was shared with Staff without the filing of a report on a public docket; and (b) "there is no longer a[n ongoing] Commission-sponsored

[2] OCC also makes the curious claim that "like the information at issue in this matter, the PUCO has found that an argument based upon 4901.16 is moot when the information had already been publicly released." OCC Memo Contra at 6. Here, however, aside from a very small portion, the REC Procurement Data has not been publicly released. Thus, any argument based upon the alleged mootness of Section 4901.16 in the present circumstances misses the mark. Further, the decision which OCC relies on as authority for its mootness claim is inapposite. *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, 2011 Ohio PUC LEXIS 288, Entry at 8 (Mar. 3, 2011), involved a manufacturing company, not a utility, that sought to avail itself of Section 4901.16. As such, on its face, Section 4901.16 could not apply under those circumstances. But those circumstances are not present here where it is the Companies – *i.e.*, utilities – that have voluntarily shared the protected information with Staff, thereby triggering Section 4901.16.

investigation" in the present matter because "the Commission-sponsored investigation was completed the day" the Exeter Report was filed with the Commission. OCC Memo Contra at 6-7. Neither of these claims makes sense.

The confidentiality duties imposed by Section 4901.16 do not simply fall by the wayside if Staff files a report with the Commission based upon information acquired from a utility. Indeed, the January 18, 2012 Entry explicitly contemplated the filing of an audit report with the Commission when it made any such auditor subject to Section 4901.16. *See* Case No. 11-5201-EL-RDR, Entry at 2-3 (Jan. 18, 2012). Likewise, there is no basis in fact or law for claiming that the Commission "completed" its "investigation" when the Exeter Report was filed. The docket in this proceeding is still open and the matter is on appeal before the Supreme Court of Ohio (with the possibility of remand). This matter is thus far from "complete."

C. OCC's Alternative Proposals Should Be Rejected.

OCC's two alternative proposals should be rejected. First, OCC proposes that "[i]f the PUCO is inclined to grant FirstEnergy's motion, it should do so with the caveat that the protective order expires with any Supreme Court ruling to the contrary." OCC Memo Contra at 8. Presumably, if the Court holds that the REC Procurement Data does not count as a trade secret then, regardless of whether continued protection has been granted, the REC Procurement Data will be subject to disclosure. Indeed, the Court itself has stated in two separate Entries that the REC Procurement Data filed with the Court will remain under seal at the Court until it rules on the issue. *See* S. Ct. Case No. 2013-2026, Entry at 1 (Sept. 3, 2014); Entry at 1 (November 12, 2014). OCC's suggested "caveat" thus doesn't do anything other than state the obvious.

Second, OCC requests that the Commission simply not rule on the Companies' Motion for Renewal until the Court decides the matter. This proposal does nothing more than keep the Companies in limbo. Moreover, the May 6, 2014 Entry in this proceeding explicitly stated that

the Companies could move for continued protection, pursuant to Rule 4901-1-24, once the current protective order was set to expire. *See* Case No. 11-5201-EL-RDR, Entry at 5 (May 6, 2014). This is precisely the procedure that the Companies have followed and it is in accordance with the May 6, 2014 Entry and Rule 4901-1-24(D). OCC's second alternative runs counter to both of these authorities.

III. CONCLUSION

For the foregoing reasons, the Companies respectfully request that the Commission deny OCC's Memorandum Contra and grant the Companies' Motion for Renewal of Protective Order.

January 14, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail on the 14th day of January, 2015, upon all of the parties to this proceeding.

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Summary: Reply of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to OCC Memorandum Contra electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company