

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's Review )  
And Adjustment of the Fuel and Purchased )  
Power and System Reliability Tracker ) Case No. 07-723-EL-UNC  
Components of Duke Energy Ohio, Inc. )  
and Related Matters )

)  
In the Matter of the Application of )  
Duke Energy Ohio, Inc. to Adjust and Set its ) Case No. 07-975-EL-UNC  
2008 System Reliability Tracker )

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**DUKE ENERGY OHIO, INC.'S  
MOTION FOR PROTECTIVE ORDER TO PROTECT THE  
CONFIDENTIALITY OF INFORMATION CONTAINED IN ITS APPLICATION  
TO ADJUST AND SET ITS 2008 SYSTEM RELIABILITY TRACKER  
MARKET PRICE AND IN THE ANNUAL FILINGS, TESTIMONY AND  
ATTACHMENTS OF THE ABOVE CAPTIONED CASE**

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Duke Energy Ohio, Inc. (DE-Ohio) hereby moves this honorable Commission for leave to file under seal certain information contained in its Application to Adjust and Set its System Reliability Tracker Market Price (SRT Application) in Case No. 07-975-EL-UNC, and in the testimony and attachments in Case No. 07-723-EL-UNC(Annual Filing). DE-Ohio sets forth in the attached Memorandum in Support its reasons why confidential treatment of this information contained in its Application is necessary.

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## **MEMORANDUM IN SUPPORT**

Duke Energy Ohio, Inc. (DE-Ohio) is an Ohio corporation with its principal office in Cincinnati, Ohio and is engaged in the business of supplying electric transmission, distribution, and generation service in Adams, Brown, Butler, Clinton, Clermont, Hamilton, Montgomery, and Warren Counties in Southwestern Ohio to approximately 642,000 consumers, and supplying electric transmission and distribution service to approximately 23,000 consumers that receive generation service from Competitive Retail Electric Service (CRES) Providers.

DE-Ohio is a “public utility” as defined by R. C. 4905.02 and 4905.03; and an “electric distribution company,” “electric light company,” “electric supplier,” and an “electric utility” as defined by R. C. 4928.01.

DE-Ohio respectfully requests that the Public Utilities Commission of Ohio (Commission) grant its Motion for Protective Order to Protect the Confidentiality of Information Contained in its SRT Application, and Annual Filings.

Pursuant to the Commission’s Entry of February 9, 2005 in Case No. 04-1820-EL-ATA, and contemporaneously with the present motion DE-Ohio filed its SRT Application. In support of the Application, DE-Ohio attached documents, including Schedule A and B all of which contain highly confidential trade secret information. DE-Ohio has also filed its Annual Filings to review the company’s previous quarterly charges for its Rider SRT. The information contained in and supporting the aforementioned filings and accompanying testimony is interrelated and identical.

Specifically, Schedule A presents the estimated the 2007-2008 sales and demand in kW/kWh and rates and revenue. Schedule B describes DE-Ohio's proposed Resource Plan, including the type and cost of various proposed supply-side power purchase options, DE-Ohio's existing capacity position, forecasted demand for native load consumers, and supply requirements necessary for the provision of a 15% reserve margin in the competitive retail and wholesale electric markets. This confidential trade secret information, if publicly disclosed, would give DE-Ohio's competitors access to competitively sensitive, confidential information, which in turn could allow the competitors to make offers to sell wholesale power at higher prices than the competitors might offer in the absence of such information and to the detriment of DE-Ohio and its customers.

Ohio Administrative Code Section 4901-1-24(D) allows DE-Ohio to seek leave of the Commission to file information DE-Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form under seal.<sup>1</sup> This rule also establishes a procedure for presenting to the Commission that information which is confidential, and therefore should be protected.<sup>2</sup>

DE-Ohio is filing a redacted version of the confidential material (Schedules A and B ) which is an attachment to the testimony of Charles R. Whitlock and Don Wathen in its filings concurrently with this Motion. Additionally, the testimony of Mr. Wathen makes specific reference to this confidential information. As such, DE-Ohio is also filing three unredacted versions of the confidential material, (Schedules A and B and the relevant portion of Mr. Wathen's testimony) under seal and attached to this Motion. DE-Ohio has

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<sup>1</sup> OHIO ADMIN. CODE § 4901-1-24 (Anderson 2003)

<sup>2</sup> *Id.*

marked as confidential, trade secret, or proprietary, each redacted page of the Confidential Material pursuant to OAC 4901-1-24(D)(2).

The Confidential Material described above, if disclosed, would enable competitors in the wholesale power market to ascertain the manner in which DE-Ohio plans, manages and operates their generating facilities, the cost associated therewith, and would enable competitors to ascertain DE-Ohio's positions (long and short) with respect to electric generation capabilities. Further, the competitively sensitive information will provide power marketing competitors with knowledge that will allow them to potentially manipulate the marketplace so as to unnecessarily cause consumers to pay more for electricity than they otherwise would.

For example, the proposed supply-side power purchase options contained in Schedule B would grant competitors a distinct advantage in that they would be able to anticipate DE-Ohio's power supply needs and the types of instruments DE-Ohio intends to utilize. Additionally, the availability and extent of DE-Ohio's generating resources, coupled with its high-level maintenance schedule and expected native load requirements contained in Schedule B would grant competitors a distinct advantage in that they would be able to anticipate when DE-Ohio's plants would be down or otherwise constrained and where DE-Ohio may be long or short.

With the information contained in Schedules A and B, a competitor could take actions that, in the absence of this information, it would not otherwise take. Such actions might include adjusting its prices, either to win contracts on which DE-Ohio may also be bidding – business the competitors otherwise would not be in a position to win, or to set

its prices artificially high to take advantage of an overall short market, the latter action obviously forcing consumers to pay higher prices for power.

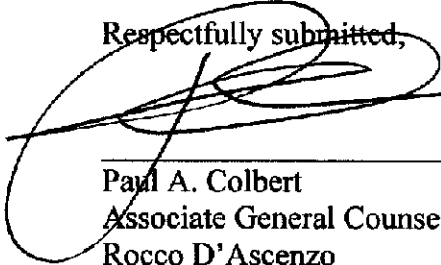
The information for which DE-Ohio is seeking confidential treatment is not known outside of DE-Ohio, and it is not disseminated within DE-Ohio except to those employees with a legitimate business need to know and act upon the information.

The public interest will be served by granting this Motion. By protecting the confidentiality of the DE-Ohio's proposed Resource Plan and its existing capacity position, forecasted demand for native load consumers, and supply requirements necessary for a 15% reserve margin, the Commission will prevent undue harm to DE-Ohio and its ratepayers, as well as ensuring a sound competitive marketplace.

DE-Ohio considers the Confidential Material to be proprietary, confidential, and trade secrets, as that term is used in R. C. 1333.61. In addition, this information should be treated as confidential pursuant to R. C. 4901.16. The redacted versions of Schedule A and B do not include the Confidential Material. Three unredacted versions of Schedule A and B and the confidential portion of Mr. Wathen's testimony are filed herewith, under seal, as Exhibit A.

WHEREFORE, DE-Ohio respectfully requests that the Commission, pursuant to Ohio Admin. Code Section 4901-1-24(D), grant its Motion for Protective Order to Protect the Confidentiality of Information Contained in Schedule A and B, attached to and supporting DE-Ohio's SRT Application, and Annual Filings by making a determination that the Confidential Material is confidential, proprietary and a trade secret under R. C. 4901.16 and 1333.61.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to be 'P. Colbert', is written over a horizontal line. The signature is somewhat circular and loops around the line.

Paul A. Colbert  
Associate General Counsel  
Rocco D'Ascenzo  
Counsel  
139 Fourth Street, 25Atrium II  
Cincinnati, Ohio 45202  
(513) 287-3015