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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**DUKE ENERGY OHIO, INC.'S MOTION FOR PROTECTIVE ORDER TO
PROTECT THE CONFIDENTIALITY OF INFORMATION CONTAINED IN
THE DOCUMENT TITLED "MANAGEMENT/PERFORMANCE AUDIT AND
FINANCIAL AUDIT DUKE ENERGY OHIO CASE NO. 07-723-EL-UNC"**

Duke Energy Ohio, Inc., (DE-Ohio) hereby moves this honorable Commission for leave to file under seal certain information contained in the document titled "Management/Performance Audit and Financial Audit Duke Energy Ohio Case No. 07-723-EL-UNC" (Report). This Report was filed by the staff on October 31, 2007 under seal. DE-Ohio has now reviewed the Report and sets forth in the attached Memorandum in Support its reasons why confidential treatment of certain information contained in this Report is necessary.

Respectfully submitted,


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**DUKE ENERGY OHIO'S MEMORANDUM IN SUPPORT OF ITS MOTION
FOR PROTECTIVE ORDER TO PROTECT THE CONFIDENTIALITY OF
INFORMATION CONTAINED IN THE DOCUMENT TITLED
"MANAGEMENT/PERFORMANCE AUDIT AND FINANCIAL AUDIT DUKE
ENERGY OHIO CASE NO. 07-723-EL-UNC"**

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 the Report.

DE-Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. DE-Ohio has the corporate power and authority, among others, to engage, and it is engaged, in the business of supplying electric distribution service to the public in the State of Ohio. Accordingly, DE-Ohio is a public utility within the meaning of that term as used in R. C. 4905.02 and 4905.03. As such, DE-Ohio is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Ohio.

DE-Ohio owns, operates, manages and controls plants, properties and equipment used and useful in supplying electric distribution service over 660,000 customers in southwestern Ohio.

On June 27, 2007, an Entry was issued which caused the opening of Case No. 07-723-EL-UNC for the FPP and SRT audits for the period of July 1, 2006 through June 30, 2007. It is the FPP and the SRT for the period of July 1, 2006 through June 30, 2007 that is the subject matter of the Report. This report contains confidential trade secret information. Specifically, the Report describes DE-Ohio's fuel procurement strategy, emission allowance strategy, coal contract information, purchased power information, generation information, and general business strategy.

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 coal, etc. 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 contained in or attached to the Report that DE-Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form under seal.¹ This rule also establishes a procedure for presenting to the Commission that information which is confidential, and therefore should be protected.²

The staff has filed a redacted version of the confidential material of the Report on October 31, 2007. The staff has also filed the requisite number of unredacted versions of the confidential material of the Report under seal.

The redacted information contained in the Report constitutes trade secret information in accordance with Ohio's Uniform Trade Secret Act and relevant jurisprudence.

The definition of Trade Secret contained in R.C. 1333.61(D) is as follows:

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being

¹ OHIO ADMIN. CODE § 4901-1-24 (Anderson 2007)

² *Id.*

readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.³

In analyzing a trade secret claim, the Ohio Supreme Court has adopted the following factors as relevant to determining whether a document constitutes a trade secret:

(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.⁴

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 fuel purchasing strategy, the purchase power strategy, the emission allowance strategy, 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.

If this information becomes public, DE-Ohio will be placed at a competitive disadvantage, in among other things, reducing its ability to negotiate contracts for fuel.

³ Ohio Rev. Code Ann. § 133361(D) (Baldwin 2007).

⁴ *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 732 N.E.2d 373 (2000).

With the information contained in the Report, 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 Report and its existing business plans regarding fuel purchases, purchased power, emission allowance information and contract information, the Commission will prevent undue harm to DE-Ohio and its ratepayers, as well as ensuring a sound competitive marketplace.

DE-Ohio considers the Report's 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 the Report do not include the confidential material.

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 the document titled "MANAGEMENT/PERFORMANCE AUDIT AND FINANCIAL AUDIT DUKE ENERGY OHIO CASE NO. 07-723-EL-UNC" 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 handwritten signature in black ink, appearing to read "Paul A. Colbert", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Protective Order was sent by first class US Mail to all parties of record and listed below this 31st day of October, 2007.



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