

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.)	Case No. 08-709-EL-AIR
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)	Case No. 08-710-EL-ATA
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 08-711-EL-AAM
)	
)	
In the Matter of the Application of the Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.)	Case No. 06-718-EL-ATA
)	
)	

ENTRY

The attorney examiner finds:

- (1) On February 23, 2009, the Ohio Cable Telecommunications Association (OCTA) filed, in the above-captioned proceeding, a motion for a protective order covering OCTA's deposition exhibit nos. 11 through 14, 20, a portion of exhibit 21, and exhibits 23 through 28 (collectively, deposition exhibits), and the following deposition transcript excerpts: the December 15, 2008 deposition of James Dean, page 52, line 11 through page 98, line 9; the January 29, 2009 deposition of Richard Harrell page 55, line 1 through page 74, line 16; and the January 30, 2009 deposition of James Dean page 47, line 6 through page 115, line 15 (collectively, deposition excerpts). No memoranda contra OCTA's motion were filed.
- (2) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended

to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.

- (3) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (4) Ohio law defines a trade secret as "information . . . that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being 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." Section 1333.61(D), Revised Code.
- (5) The attorney examiner has reviewed the information included in OCTA's motion for protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in the deposition exhibits and excerpts contains trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that non-disclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that these documents have been reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that OCTA's motion for protective order is reasonable and should be granted.
- (6) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until May 12, 2011. Until that date, the docketing division should maintain, under seal, the information filed confidentially.

- (7) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. Therefore, if the OCTA wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the docketing division may release this information without prior notice to the OCTA.


It is, therefore,

ORDERED, That the OCTA's motion for protective order be granted with regard to the deposition exhibits and excerpts. It is, further,

ORDERED, That the Commission's docketing division shall maintain, under seal, the deposition exhibits and excerpts, for a period of 18 months, ending on May 12, 2011. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

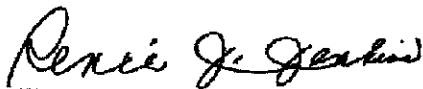
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Katie L. Stenman
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QRT
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Entered in the Journal

NOV 13 2009



Renee J. Jenkins
Secretary