

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 2008) Case No. 07-975-EL-UNC
System Reliability Tracker.)

ENTRY

The attorney examiner finds:

- (1) On September 4 and 21, 2007, and October 31, 2007, Duke Energy Ohio, Inc. (Duke) filed motions for a protective order for certain information related to its system reliability tracker (SRT) applications in the above-captioned cases, specifically Schedules A and B and the management/performance (m/p) and financial audits. As described by Duke, Schedule A presents the estimated 2007-2008 sales and demand in kW/KWh and rates and revenue. Schedule B describes Duke's proposed resource plan, including the types and costs of various proposed supply-side power purchase options, existing capacity position, forecasted demand for native load consumers, and supply requirements. The m/p and financial audits include information related to Duke's fuel procurement, emission allowance strategies, coal contracts and purchased power generation, and general business strategies.
- (2) By entry of August 4, 2008, Duke's motions for a protective order were granted for a period of 18 months, ending on February 4, 2010.
- (3) Rule 4901-1-24, Ohio Administrative Code, (O.A.C.), provides that, unless otherwise ordered, a protective order automatically expires 18 months after the date of its issuance. Rule 4901-1-24, O.A.C., also requires that a party wishing to extend a protective order file an appropriate motion at least 45 days in advance of the expiration date.

- (4) On December 9, 2009, Duke filed a motion for continuation of the August 4, 2008 protective order. Duke contends that the information subject to the protective order remains trade secret information that, if publicly disclosed, would give Duke's competitors access to competitively sensitive confidential information. According to Duke, this could allow its competitors to make offers to sell wholesale power at higher prices than the competitors might offer in the absence of such information, to the detriment of Duke and its customers. Duke states that it has filed this information in accordance with Rule 4901-1-24(D), O.A.C. Duke also claims that the information is not known outside of Duke and is not disseminated within Duke, except to those employees with a legitimate business need to know.
- (5) The attorney examiner finds that the same procedures used for considering the initial issuance of a protective order, should similarly be used for considering an extension of the protective order. Therefore, in order to determine whether to extend the protective order in these cases, it is necessary to review the materials in question to assess whether the information constitutes a trade secret under Ohio law; to decide whether non-disclosure of the materials will be consistent with the purposes of Title 49, Revised Code; and to evaluate whether the confidential material can reasonably be redacted.
- (6) The attorney examiner has reviewed the information in Schedules A and B and the m/p and financial audits, as well as the assertions set forth in the memorandum in support of Duke's December 9, 2009 motion. The attorney examiner notes initially that while the competitive value of this information, given its age, seemingly has diminished, after 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, at the present time, that the documents still contain trade secret information. Their release is therefore prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not

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

inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that these documents cannot be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Duke's December 9, 2009 motion should be granted.

- (7) Accordingly, confidential treatment shall be afforded for a period of 18 months from the date of this entry, ending on June 30, 2011. Until that date, the docketing division of the Commission should maintain, under seal, the information filed confidentially in these cases on September 4 and 21, 2007, and on October 31, 2007.
- (8) If Duke wishes to extend this confidential treatment, it should file an appropriate motion in accordance with Rule 4901-1-24(F), O.A.C., at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Duke.

It is, therefore,

ORDERED, That the motion by Duke for continuation of the protective order be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the information filed by Duke in these dockets on September 4 and 21, 2007, and on October 31, 2007, for a period of 18 months, ending on June 30, 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: Scott Farkas
Attorney Examiner

grt
/vrm

Entered in the Journal

DEC 30 2009



Renee J. Jenkins
Secretary