

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for Approval of its )  
2009 Advanced and Renewable Energy ) Case No. 10-511-EL-ACP  
Baseline and Benchmarks Pursuant to )  
Section 4928.64(B) of the Ohio Revised )  
Code. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for a Waiver of Rule )  
4901:1-40-04(D)(1) of the Ohio ) Case No. 10-512-EL-WVR  
Administrative Code, Regarding its 2009 )  
Benchmarks. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for Approval of a )  
Force Majeure Determination for a ) Case No. 10-513-EL-ACP  
Portion of the 2009 Solar Energy )  
Resources Benchmark Requirement )  
Pursuant to Section 4928.64(C)(4) of the )  
Ohio Revised Code. )

ENTRY

The attorney examiner finds:

- (1) Duke Energy Ohio, Inc. (Duke) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) Section 4928.64(B), Revised Code, establishes benchmarks for electric utilities to acquire a portion of the electric utility's standard service offer (SSO) from renewable energy resources. Specifically, the statute provides that, for 2009, a portion of the electric utility's electricity supply for its SSO offer must come from alternative energy sources, including 0.004 percent from solar energy resources (SER); this requirement increases to 0.010 percent for 2010.
- (3) On April 15, 2010, Duke filed its alternative energy portfolio status report for 2009.

- (4) On April 15, 2010, Duke also filed a motion for a protective order in the above-captioned cases, regarding a chart in narrative form, filed as an exhibit to its report that detailed information about Duke's efforts to comply with the Commission's alternative energy requirements and specific information regarding Duke's efforts and potential sources of in-state SRECs.
- (5) 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.
- (6) Similarly, Rule 4901-1-24, Ohio Administrative Code, allows the 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."
- (7) 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.
- (8) The attorney examiner has examined the information contained in the chart, 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,<sup>1</sup> the attorney examiner finds that the information

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

contained in the chart does not constitute trade secret information merely because it provides the names of entities Duke contacted in attempting to meet its 2009 in-state SREC requirements. Moreover, given the age of the information, any claimed value is lessened. Accordingly, state law does not prohibit the release of the chart filed under seal by Duke on April 15, 2010. Therefore, the attorney examiner finds that the Duke's motion for protective order should be denied.

- (9) Accordingly, on October 11, 2011, the docketing division of the Commission should release the unredacted spreadsheet, which was filed under seal in this docket on April 15, 2010.


It is, therefore,


ORDERED, That the motion for protective order filed by Duke be denied in accordance with Finding (8). It is, further,

ORDERED, That on October 11, 2011, the Commission's docketing division release the unredacted spreadsheet, which was filed under seal in this docket on April 15, 2010. It is, further,

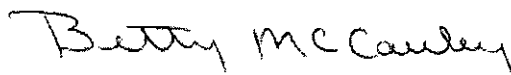
ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Katie L. Stenman  
Attorney Examiner

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Entered in the Journal  
SEP 30 2011

  
Betty McCauley  
Secretary