

BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

2013 MAY 15 PM 12:22

In the Matter of the Annual Energy )  
Efficiency Portfolio Status Report of )  
Duke Energy Ohio, Inc. )

Case No. 13-1129-EL-EEC

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**MOTION FOR PROTECTIVE ORDER  
OF DUKE ENERGY OHIO, INC.**

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Duke Energy Ohio, Inc., (Duke Energy Ohio), is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio has the corporate power and authority, among others, to engage, and it is engaged, in the business of supplying electric distribution service in the State of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of that term as used in R. C. 4905.02 and 4905.03. As such, Duke Energy 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.

Pursuant to the Public Utilities Commission of Ohio (Commission) regulations set forth in Ohio Administrative Code, O.A.C., 4901:1-39-05, Duke Energy Ohio is submitting its Annual Energy Efficiency Status Report (Status Report). Some of the information provided in the Status Report details contracts with business entities within Duke Energy Ohio's service territory who wish to undertake energy efficiency and commit the benefits thereof to the Company in exchange for a payment. The relevant information is contained in Appendix D to the Status Report. Such information constitutes trade secret and is proprietary to both Duke Energy Ohio and the individual business entities. Therefore, pursuant to Rule 4901-1-24(D), O.A.C., Duke Energy Ohio

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is submitting a redacted version of the information requested as contained in Appendix D, and seeks a protective order for this information. The reasons for this motion are set forth more fully in the attached Memorandum in Support.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy B. Spiller", is written over a horizontal line.

Amy B. Spiller (0047277)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Assistant General Counsel

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## MEMORANDUM IN SUPPORT

Duke Energy Ohio, Inc. (Duke Energy Ohio) respectfully requests the Public Utilities Commission of Ohio (Commission) grant its Motion for Protective Order related to the payments made for commitments of energy efficiency to various business entities within the Company's service territory. Such payments are individually negotiated with entities agreeing to participate in Duke Energy Ohio's Customer SmartSaver program. Knowledge of the payments made to competitors, and of the competitors specific energy efficiency programs is competitively sensitive. The information related to such payments is entirely contained within Appendix D to the Status Report.

O.A.C. 4901-1-24(D) provides that the Commission or its attorney examiners may issue a protective order to assure the confidentiality of information contained in filed documents, to the extent that state or federal law prohibits the release of the information, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The Commission, therefore, generally refers to the requirements of R.C. 1333.61 for a determination of whether specific information should be released or treated confidentially. Subsection (D) of that section defines "trade secret" 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 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.<sup>1</sup>

Thus, business information or plans and financial information are trade secrets if they derive independent economic value from not being generally known to or ascertainable by others who can obtain their own value from use of the information and they are the subject of reasonable efforts to maintain their secrecy.

Information related to Duke Energy Ohio's payments to individual customers for commitment of energy savings to the Company's baseline constitutes proprietary information which is sensitive for competitive business reasons. Such information, if released publicly, would directly affect the market for the commitment of energy efficiency. The Company takes steps, internally to ensure that this information is not disclosed to anyone who does not have a business need to know the material. Externally, the Company does not disclose this information other than under the terms of appropriate protective devices, such as confidentiality agreements.

This information derives actual, independent economic value to the Company as a result of its not being generally known or readily ascertainable by other persons who could use it to affect the market prices and availability of renewable energy credits in the market. Public disclosure of this information could have a real effect on the financial position of Duke Energy Ohio as well as on the business and proprietary aspects of each individual company involved in such agreements. Duke Energy Ohio ensures that this market information remains secret, both internally and externally.

O.A.C. 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information Duke Energy Ohio considers to be proprietary trade secret

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<sup>1</sup> R.C. 1333.61(emphasis added).

information, or otherwise confidential, in a redacted and non-redacted form, under seal.<sup>2</sup>  
Duke Energy Ohio is filing the information in unredacted form, under seal, together with this Motion.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(D), grant its Motion for Protective Order for the proprietary information contained within Appendix D to the Status Report by making a determination that the redacted information is confidential, proprietary, and a trade secret under R. C. 1333.61.

Respectfully submitted,



Amy B. Spiller  
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Cincinnati, Ohio 45202  
Phone (614) 222-1331

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<sup>2</sup> Ohio Admin. Code Rule 4901-1-24.