

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust its Alternative) Case No. 12-802-EL-RDR
Energy Recovery Rider.)

FINDING AND ORDER

The Commission finds:

- (1) Duke Energy Ohio, Inc. (Duke), is a public utility as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.
- (2) By Opinion and Order issued November 22, 2011, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., the Commission approved a stipulation that, inter alia, provides for the implementation by Duke of an Alternative Energy Recovery Rider (Rider AER-R). In accordance with the stipulation, through Rider AER-R, Duke may recover the costs it incurs in complying with the alternative energy portfolio standard requirements of R.C. 4928.64, et seq. Rider AER-R is filed quarterly and is subject to true-up and annual audits.
- (3) To assist the Commission with the audit of Rider AER-R, which is the subject of this case, the Commission directed Staff to issue a request for proposal (RFP) for audit services. Thereafter, by Entry issued May 22, 2013, the Commission selected Baker Tilly Virchow Krause, LLP (Baker Tilly) to perform the audit of Duke's Rider AER-R.
- (4) On October 3, 2013, Baker Tilly filed the final management/performance and financial audit report on Duke's Rider AER-R (Audit Report). The following is a summary of the Audit Report and is not intended to supplant or supersede the Audit Report. The Audit Report concluded that Duke should:
 - (a) Formally document its procurement strategy for clarity and limit the reliance on the expertise of specific traders, as such will help ensure that traders are buying at the best prices and at the least risk.

- (b) Use competitive solicitations to purchase renewable energy credits (RECs) to make purchasing decision more transparent.
- (c) Consider purchasing RECs from a larger number of providers and in smaller blocks to help mitigate risk from default by a single provider or unexpected changes in REC prices.
- (d) Consider Pennsylvania's market when purchasing solar-RECs (S-RECs), as Duke may be able to buy S-RECs that are expired in Pennsylvania but valid in Ohio at lower rates.
- (e) Consider knowledge of new renewable projects being developed in forecasting.
- (f) Review the AER-R calculation to ensure appropriate estimates are used.
- (g) Consider performing the AER-R calculations and applying the new AER monthly, rather than quarterly, in future alternative energy portfolio standard (AEPS) filings, in order to help ensure more accurate projections and more equitable recovery from customers.
- (h) In the August 2013 month-end close, make a correction for the inappropriately recorded sale of RECs to Duke Energy Retail Services, as this was a back-to-back, pass-thru, transaction; thus, no gain should be recorded.
- (i) Develop policies and procedures with internal controls that specifically relate to AEPS, in order to help reduce the number of errors in the program.
- (j) Review the new guidance provided by the Commission in *In re Application of Ohio Edison Company*, et al., Case No. 11-5201-EL-RDR to ensure the three percent provision is correctly interpreted and that Duke is in compliance.

- (5) On November 25, 2013, Direct Energy Service, LLC and Direct Energy Business, LLC (jointly referred to as Direct Energy) filed a motion to intervene in this matter. In support of the motion, Direct Energy states that it is a competitive retail electric service supplier in Ohio that provides service to retail customers in Duke's service area. Direct Energy states that its interests include ensuring that Rider AER-R is calculated and applied in a competitively neutral manner. In addition, Direct Energy states that there may be possible corporate separation issues raised in the audit. Direct Energy submits that its interests can not be represented by other intervenors, and that its intervention is timely, will contribute to the development of a complete record, and will not unduly delay this case.
- (6) On December 2, 2013, Duke filed a memorandum contra Direct Energy's motion to intervene, asserting that Direct Energy fails to offer any reason for intervention that is not already an area of inquiry by Staff and, contrary to Direct Energy's assertions, there is no hint of corporate separation issues in the audit. Finally, Duke contends that Direct Energy will not provide significant contribution to the resolution of the factual issues, and the request will unduly delay or prolong the case. Direct Energy filed a reply to Duke's memorandum contra on December 6, 2013.
- (7) Upon consideration of the motion to intervene filed by Direct Energy, the Commission finds that it is reasonable and should be granted.
- (8) By Entry issued November 1, 2013, comments and reply comments on the Audit Report were to be filed by December 2, 2013, and December 30, 2013, respectively. Duke and Direct Energy timely filed comments on the Audit Report, and Duke filed reply comments. On February 24, 2014, Duke filed correspondence in this docket stating that it accepts the recommendations set forth in the Audit Report. In addition, on February 24, 2014, Direct Energy filed correspondence stating that it does not oppose adopting the Audit Report and recommendations in this case.
- (9) Upon consideration of the recommendations in the Audit Report, and the comments and correspondence, the

Commission finds that the recommendations set forth in the Audit Report should be adopted in their entirety.

- (10) As a final matter, the Commission notes that, on October 3, 2013, Duke filed a motion for a protective order seeking protection of certain information contained in the Audit Report. Specifically, Duke states that the Audit Report names Duke's vendors, pinpoints the purchase prices of RECs, and releases internal procedural documents. According to Duke, if this information is publically disclosed, Duke's competitors would have access to competitively sensitive, confidential information that, in turn, could allow the named vendors and generators to make offers to sell RECs, etc., at higher prices than the competitors might offer in the absence of such information. Duke asserts this would be detrimental to Duke and its customers. No one filed memoranda contra Duke's motion for protective order.
- (11) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of R.C. Title 49. R.C. 149.43 specifies that the term public records excludes information which, under state or federal law, may not be released. The Supreme Court has clarified that the state or federal law exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (12) Similarly, Ohio Adm.Code 4901-1-24 allows the Commission 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."
- (13) 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.” R.C. 1333.61(D).

- (14) The Commission has reviewed the information included in Duke’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 R.C. 1333.61(D), as well as the six-factor test set forth by the Supreme Court,¹ the Commission finds that portions of the Audit Report, as outlined by Duke, contain trade secret information. Release of that information is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Therefore, the Commission finds that Duke’s motion for protective order is reasonable with respect to certain information in the Audit Report, which was filed on October 3, 2013, and should be granted. This protective order will automatically expire 24 months after the date of this Finding and Order, or April 18, 2016. Any party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date, in accordance with Ohio Adm.Code 4901-1-24.

It is, therefore,

ORDERED, That the recommendations in the Audit Report be adopted in their entirety. It is, further,

ORDERED, That the motion to intervene filed by Direct Energy is granted. It is, further,

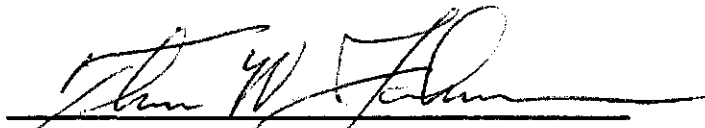
ORDERED, That the motion for protective order filed by Duke is granted. It is, further,

ORDERED, That the Commission’s docketing division maintain, under seal, certain information in the Audit Report, which was filed under seal in this docket on October 3, 2013, for a period of 24 months, ending on April 18, 2016. It is, further,

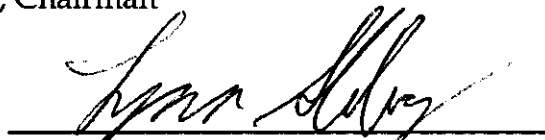
¹ See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

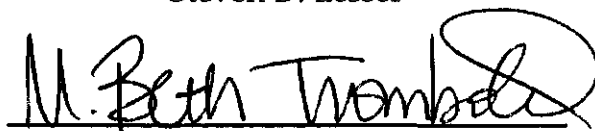
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser

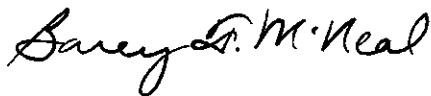

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