

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio, Inc. to Adjust)	Case No. 12-3111-EL-RDR
its Alternative Energy Recovery Rider)	

**DUKE ENERGY OHIO, INC.'S
MOTION FOR PROTECTIVE ORDER**

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves this honorable Commission for leave to file under seal certain information contained in the document titled "Management/Performance and Financial Audit of the Alternative Energy Resources Recovery Rider of Duke Energy Ohio, Inc." (Report). This Report was filed by the Staff of the Public Utilities Commission of Ohio, (Staff) on July 21, 2014 under seal. Duke Energy Ohio has now reviewed the Report and sets forth in the attached Memorandum in Support its reasons why confidential treatment of certain information contained in this Report is necessary. For the reasons set forth in the Memorandum in Support, Duke Energy Ohio respectfully requests that the Commission grant this motion and provide confidential treatment as requested.

Respectfully submitted,



Amy B. Spiller (0047277)
Deputy General Counsel
Elizabeth H. Watts (0031092)
Associate General Counsel
Duke Energy Business Services, LLC
139 East Fourth Street, 1303 Main
Cincinnati, Ohio 45201-0960
Phone: (614) 222-1331

MEMORANDUM IN SUPPORT

Duke Energy Ohio, Inc., (Duke Energy Ohio) respectfully requests that the Public Utilities Commission of Ohio (Commission) grant its motion for protective order to protect the confidentiality of information contained in the *Management/Performance and Financial Audit of the Alternative Energy Resource Recovery Rider of Duke Energy Ohio, Inc.*, (Report).

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 to customers 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.

Duke Energy Ohio owns, operates, manages and controls plants, properties and equipment used and useful in supplying electric distribution service to over 624,000 customers in southwestern Ohio.

On May 22, 2013, in PUCO Case No. 12-802-EL-RDR, an Entry was issued which directed the Staff of the Public Utilities Commission of Ohio (Staff) to select Baker Tilly Virchow Krause LLP (Baker Tilly) as the auditor in order to audit Duke Energy Ohio's Alternative Energy Resource Recovery Rider (AER-R) application for the period of January 1, 2013 through December 31, 2013. It is the AER-R for the period of January 1, 2013 through December 31, 2013 that is the subject matter of the Report. This report

contains confidential trade secret information. Specifically, the Report names Duke Energy Ohio's vendors, pinpoints the purchase price of RECs and releases internal procedural documents.

This confidential trade secret information, if publicly disclosed, would give Duke Energy Ohio's competitors access to competitively sensitive, confidential information, which 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 and to the detriment of Duke Energy Ohio and its customers.

Ohio Administrative Code Section 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information contained in or attached to the Report that Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form under seal.¹ This rule also establishes a procedure for presenting to the Commission that information which is confidential, and therefore should be protected.²

The Staff of the Public Utilities Commission of Ohio (Staff) filed a redacted version of the Report on July 21, 2014. The Staff has also filed the requisite number of unredacted versions of the confidential material of the Report under seal. The redacted information contained in the Report constitutes trade secret information in accordance with Ohio's Uniform Trade Secret Act and relevant jurisprudence.

¹ OHIO ADMIN. CODE § 4901-1-24 (Anderson 2007)

² *Id.*

The definition of trade secret contained in R.C. 1333.61(D) is 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.³

In analyzing a trade secret claim, the Ohio Supreme Court has adopted the following factors as relevant to determining whether a document constitutes a trade secret:

(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.⁴

The confidential material described above, if disclosed, would enable competitors to ascertain the manner in which Duke Energy Ohio plans and manages its AERR compliance efforts and the cost associated therewith. Disclosure of such competitively sensitive information would be detrimental to Duke Energy Ohio’s ability to effectively

³ Ohio Rev. Code Ann. § 133361(D) (Baldwin 2007).

⁴ *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 732 N.E.2d 373 (2000).

negotiate, on behalf of its customers, for future supplies of renewable energy certificates, potentially increasing compliance costs for our customers.

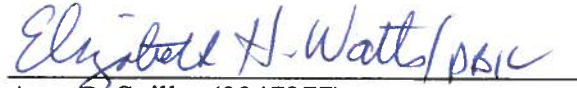
The information for which Duke Energy Ohio is seeking confidential treatment is not known outside of Duke Energy Ohio, and it is not disseminated within Duke Energy Ohio except to those employees with a legitimate business need to know and act upon the information.

The public interest will be served by granting this motion. By protecting the confidentiality of the Report and its existing business plans regarding fuel purchases, purchased power, emission allowance information and contract information, the Commission will prevent undue harm to Duke Energy Ohio and its customers, as well as ensuring a sound competitive marketplace.

Duke Energy Ohio considers the Report's confidential material to be proprietary, confidential, and trade secrets, as that term is used in R. C. 1333.61. In addition, this information should be treated as confidential pursuant to R. C. 4901.16. The redacted version of the Report includes the confidential material blacked out for the public.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to Ohio Admin. Code Section 4901-1-24(D), grant its Motion for Protective Order to Protect the Confidentiality of Information Contained in the document titled "Management/Performance and Financial Audit of the Alternative Energy Resource Recovery Rider of Duke Energy Ohio, Inc." by making a determination that the Confidential Material is confidential, proprietary and a trade secret under R. C. 4901.16 and 1333.61.

Respectfully submitted,

A handwritten signature in blue ink that reads "Elizabeth H. Watts" followed by a stylized flourish or initials.

Amy B. Spiller (0047277)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

Duke Energy Business Services, LLC

139 East Fourth Street, 1303 Main

Cincinnati, Ohio 45201-0960


Columbus office:

Phone: (614) 222-1331

elizabeth.watts@duke-energy.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties this 21st day of July, 2014, via email, hand delivery or regular U.S. Mail.


Elizabeth H. Watts

Michael DeWine
Attorney General
Werner L. Margard
Assistant Attorneys General
Public Utilities Commission of Ohio
180 East Broad Street 7th Floor
Columbus, Ohio 43215

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/21/2014 12:40:13 PM

in

Case No(s). 12-3111-EL-RDR

Summary: Motion Duke Energy Ohio, Inc.'s Motion for Protective Order electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H.