

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Establish a	)	Case No. 14-841-EL-SSO
Standard Service Offer Pursuant to	)	
Section 4928.143, Revised Code, in the	)	
Form of an Electric Security Plan,	)	
Accounting Modifications and Tariffs for	)	
Generation Service.	)	

In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Amend its	)	Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O.	)	
No. 20.	)	

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**MOTION FOR PROTECTIVE ORDER  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") hereby moves the Public Utilities Commission ("PUCO" or "Commission") for a protective order regarding information asserted to be confidential by Duke Energy Ohio ("Duke Ohio" or "Utility").<sup>1</sup> As part of discovery in this proceeding, Duke Ohio provided certain information to OCC, subject to a protective agreement. The Utility asserts that this information is proprietary and competitively-sensitive confidential, and constitutes trade secrets under Ohio law, and that non-disclosure is not inconsistent with the purposes of R.C. Title 49.

OCC hereby requests that the Commission issue such order as is necessary to protect limited portions of the Direct Testimony of Beth A. Hixon, James F. Wilson, and

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<sup>1</sup> This Motion is filed pursuant to Ohio Adm. Code 4901-1-24(D).

Jerome D. Mierzwa filed on behalf of OCC in this proceeding. The limited portions of the testimony sought to be protected contains information that Duke Ohio deems confidential. OCC is filing the testimony under seal, and is filing a redacted public version, subject to OCC's rights under the protective agreement and provisions of Ohio law.

By filing the instant motion, OCC does not concede that the information constitutes trade secrets. However, OCC acknowledges that it has obtained this information pursuant to a protective agreement with Duke Ohio. That Protective Agreement provides for such information to be treated as confidential and protected (subject to OCC's right to initiate a process for the PUCO to rule whether the information deserves confidential treatment under Ohio law).

The grounds for this Motion are more fully described in the accompanying Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady  
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**MEMORANDUM IN SUPPORT**

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Contemporaneously with the filing of this Motion, OCC is filing the testimony of six witnesses in this matter. The testimony of three OCC witnesses – James D. Williams, Anthony J. Yankel, and Matthew I. Kahal – does not contain information that Duke Ohio deems confidential. The other three OCC witnesses, Ms. Hixon, Mr. Mierzwa, and Mr. Wilson present testimony that contains information gained during discovery that the Utility asserts is competitively-sensitive confidential. Accordingly, OCC is filing the Testimony of Ms. Hixon, Mr. Mierzwa, and Mr. Wilson under seal, pursuant to Ohio Adm. Code 4901-1-24(D)(2) and the protective agreement between OCC and Duke Ohio. OCC is also filing a version of Ms. Hixon’s, Mr. Mierzwa’s and Mr. Wilson’s Testimony for viewing by the public, with the purportedly confidential information redacted pursuant to Ohio Adm. Code 4901-1-24(D)(1) and the protective agreement between OCC and AEP Ohio.

Without conceding that the allegedly confidential information meets the standard for trade secrets and deserves protection from public revelation under R.C. 1333.61(D), OCC files the instant Motion to protect the information. Accordingly, OCC requests that the Commission issue such order as is necessary to protect the Testimony of Ms. Hixon, Mr. Mierzwa, and Mr. Wilson as filed under seal. Such information was designated as confidential by Duke Ohio, subject to OCC's rights under the protective agreement. OCC, nonetheless, retains the right to initiate the process for the PUCO to decide if confidential treatment is appropriate.

OCC understands that Duke Ohio considers the redacted information to be confidential and deserving of the status of trade secrets as defined in R.C. 1333.61(D). Such assertions would be based on claims by the Utility that the information (1) derives economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by others, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Under such assertions, confidential treatment of the unredacted Testimony of Ms. Hixon, Mr. Mierzwa, and Mr. Wilson would be appropriate, subject to OCC's rights under the protective agreement to initiate a process to determine whether the information should be protected.

For the foregoing reasons and subject to the foregoing reservations of rights, this Motion for Protective Order should be granted.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

Maureen R. Grady, Counsel of Record

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Protective Order by the Office of the Ohio Consumers' Counsel has been served electronically upon those persons listed below this 26<sup>th</sup> day of September, 2014.

/s/ Maureen R. Grady

Maureen R. Grady  
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Summary: Motion Motion for Protective Order by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.