

BEFORE

THE PUBLIC UTILITY COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Establishment of a)
Change Pursuant to Revised Code Section) Case No. 12-2400-EL-UNC
4909.18.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to Change) Case No. 12-2401-EL-AAM
Accounting Methods.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for the Approval of a) Case No. 12-2402-EL-ATA
Tariff for a New Service.)

**MOTION OF DUKE ENERGY OHIO, INC.,
TO EXTEND PROTECTIVE ORDER**

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and pursuant to O.A.C. 4901-1-24(F), hereby respectfully requests an order extending the confidential treatment afforded certain documents submitted to the Public Utilities Commission of Ohio (Commission) in connection with its Case Nos. 12-2400-EL-UNC, *et al.*, (Capacity case). Said documents were afforded confidential treatment by the Opinion and Order in this case dated February 13, 2014.¹ Wherein it was ordered that the initial twenty-four period for which confidential protection will be afforded would expire on February 16, 2016.² Duke Energy hereby moves to extend the confidential protection ordered on February 16, 2014 (Protective Order) and to continue the confidential treatment of certain and specific information included in the exhibits admitted into evidence and subsequent briefs as listed on the following Attachment A – Confidential

¹ *In the Matter of the Application of Duke Energy Ohio for Establishment of a Change Pursuant to Revised Code Section 4909.18 and Related Matters*, Case No. 12-2400-EL-UNC, *et al.*, (February 13, 2014).

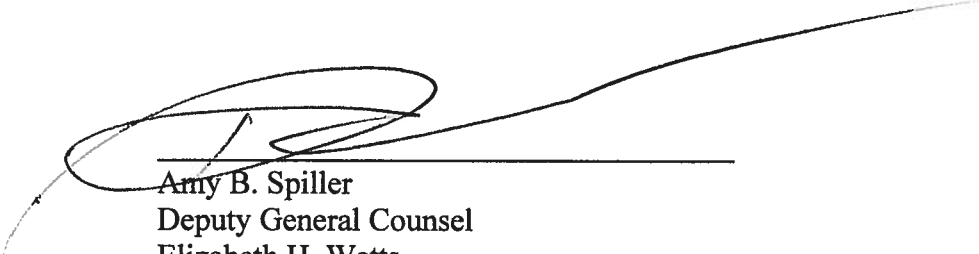
² *Id.*

Document List (Confidential Information). Specifically, the proprietary, trade-secret information the Company seeks to continue to protect includes sensitive and proprietary financial information and analysis and certain information, the public disclosure of which could damage Duke Energy Ohio's competitive position and business interests. As demonstrated herein, this information constitutes proprietary and competitively sensitive work product that should be treated as Confidential Information.

Duke Energy Ohio sets forth, in the attached Memorandum in Support, the reasons why protective treatment of the Confidential Information is necessary. Ohio law prohibits the release of this Confidential Information and nondisclosure of the Confidential Information is not inconsistent with the purposes of Title 49 of the Revised Code. The Confidential Information is as sensitive and proprietary today as it was on the date of the attorney examiner's original ruling and it will continue to be extremely sensitive and confidential for at least the next twenty-four months.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts
Associate General Counsel
Rocco D'Ascenzo
Associate General Counsel
139 E. Fourth Street, 1303-Main
P.O. Box 960
Cincinnati, Ohio 45201-0960
Telephone: (513) 287-4320
Fax: (513) 287-4385
Email: rocco.d'ascenzo@duke-energy.com

MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission extend the protection of certain Confidential Information admitted as evidence in the Company's Capacity case proceedings. Specifically, the Company requests continued protection of the Confidential Information included in the exhibits admitted into evidence and subsequent briefs listed on Attachment A hereto.

As demonstrated in the Company's Capacity case proceedings as reasserted herein, this information constitutes proprietary trade secret information related to the Company's financial analysis and planning and certain information, the public disclosure of which could damage Duke Energy Ohio's competitive position and business interests. The information for which protection was granted by Opinion and Order on February 13, 2014, and for which the Company seeks an extension of that protection, constitutes trade secret information and, therefore, requires continued protection from disclosure.

The Commission, therefore, generally refers to the requirements of R.C. 1333.61 for a determination of whether specific information should be release or treated confidentially. Subsection (D) of the section defines "trade secret" as follows:

"Trade secret" means information, including . . . 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. [Emphasis added.]

Further, the Supreme Court of Ohio adopted six factors to be used in determining whether a trade secret claim meets the statutory definition:³

- (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 affected 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.

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. The Confidential Information as listed in Attachment A meets the aforementioned definition.

Specifically, the information set forth in the rebuttal testimony of Mr. Wathen, DEO Exhibit 36A, reflects, in part, proprietary information regarding the Ohio Valley Electric Corporation (OVEC) cost of capacity going forward. Releasing this information publically would place OVEC at a competitive disadvantage as compared to its competitors in the energy markets who do not have to publically disclose similar information. Similarly, the Confidential Information set forth in OEG 4A contains contractual pricing and valuation information that

³ *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25, 1997-Ohio-75.

would place the contracting parties at a disadvantage if those terms and conditions of the contract were released into the public domain. The Confidential Information set forth in Exhibits FES 4A , FES 28A, OEG Exhibit 11A and Exhibits OCC 6A through OCC 9A and OCC 11A through 13A is considered still confidential by Duke Energy Ohio as they contain forward financial projections and forecasted information that extend into future years. Forecasted information is developed and utilized by the Company for a number of purposes. If disclosed publicly, such information could impair the Company's financing efforts, as well as having a negative impact on its activities in various aspects of the marketplace. Forecasts are generally not disclosed and are protected by the Commission in many types of proceedings.⁴ Additionally, information contained in the confidential portions of the hearing transcripts Volumes II, III, IV and VI ⁵and the confidential versions of the Post-Hearing Brief of The Ohio Energy Group⁶, Post-Hearing Brief of FirstEnergy Solutions Corp.⁷, Post-Hearing Initial Brief by The Office of the Ohio Consumers' Counsel ⁸and the Reply Brief of Duke Energy Ohio⁹ reflect discussion of the Confidential Information contained in the exhibits for which Duke Energy Ohio is seeking continued protection. For that reason, Duke Energy Ohio requests continued protection for the Confidential Information discussed in these documents,

The Confidential Information in the referenced exhibits and briefs listed in Attachment A – Confidential Document List also includes information concerning certain market positions of the Company for which the Attorney Examiner found warranted protection. Portions of the

⁴ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a 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*, Case No. 11-3549-EL-SSO, et al., Opinion and Order at page 5

⁵ Tr. II (April 30, 2013); Tr. III (May 1, 2013); Tr. IV (May 2, 2013); Tr. VI (May 6, 2013)

⁶ Post-Hearing Brief of The Ohio Energy Group (July 1, 2013)

⁷ Post-Hearing Brief of FirstEnergy Solutions Corp. (June 28, 2013)

⁸ Post-Hearing Initial Brief by The Office of the Ohio Consumers' Counsel (June 28, 2013)

⁹ Reply Brief of Duke Energy Ohio, Inc. (July 30, 2013)

analysis undertaken by the Company in preparing for hearing and to seek approval for establishing a charge for capacity services, necessarily involved confidential and proprietary financial information. This information is valuable and not readily ascertainable within or outside Duke Energy Ohio. Indeed, very few individuals within the Company have access to the pertinent Confidential Information contained within these documents. The Confidential Information is closely guarded by the Company, as it contains personally identifiable and other economically valuable information. The Company has expended a significant amount of time and resources in developing the Confidential Information. Moreover, disclosure of the Confidential Information would harm the company's competitive position in the marketplace. Accordingly, the Confidential Information for which the Company seeks continued protective treatment is trade secret information.

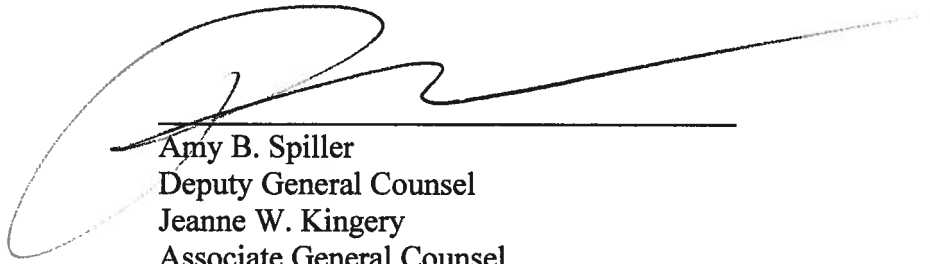
The protection of trade secret information from public disclosure is consistent with the purposes of R.C. Title 49. In the event the Commission or its Staff requires access to the information, it will continue to be available to them. The public, redacted version provides a comprehensive view of the issues discussed in the ESP proceedings. As such, granting continued protection of the Confidential Information will not impair the regulatory responsibilities incumbent upon the Commission or Staff.¹⁰

For the foregoing reason, Duke Energy Ohio respectfully requests that the Commission grant its Motion to Extend the Protective Order pursuant to O.A.C. 4901-1-24(F).

¹⁰ It should be noted that Duke Energy Ohio is no longer seeking confidential protection of the following information in these proceedings: Duke Ex. 1A, Duke Ex.7A, Duke Ex. 12A, Duke Ex. 35A, Staff Ex. 1A, FES Ex 1A, FES Ex. 21A, FES Ex. 27A, OCC Ex. 14A, OCC Ex. 15A, OCC Ex. 22A, OCC Ex. 25A, OCC Ex. 25B, OCC Ex. 25C, OCC Ex. 26A, OCC Ex. 27A, IEU Ex. 8, OEG Ex.1A, OEG Ex. 7A, OEG Ex. 8A, OEG Ex. 15A, OEG Ex. 16A, , Tr. V (May 3, 2013), Tr. VII (May 7, 2013), Tr. IX (May 9, 2013), and Reply Brief of the Ohio Energy Group (July 30, 2013).

Respectfully submitted,

DUKE ENERGY OHIO, INC.

A large, stylized handwritten signature in black ink, appearing to be 'Amy B. Spiller', is written over a horizontal line.

Amy B. Spiller
Deputy General Counsel
Jeanne W. Kingery
Associate General Counsel
Elizabeth H. Watts
Associate General Counsel
Rocco D' Ascenzo
Associate General Counsel
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, Ohio 45201-0960
Telephone: (513) 287-4320
Fax: (513) 287-4385
Email: rocco.d'ascenzo@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Extend Protective Order and Memorandum in Support was served on the following parties via ordinary mail delivery, postage prepaid, and/or electronic mail delivery on this 30th day of December, 2015.



Rocco D'Ascenzo

Kimberly W. Bojko Jonathan Allison Counsel for Kroger Co. Carpenter Lipps & Leland, LLP 280 North High Street, Suite 1300 Columbus, Ohio 43215 allison@carpenterlipps.com bojko@carpenterlipps.com	David F. Boehm, Esq. Michael L. Kurtz, Esq. Jody Kyler Cohn, Esq. Counsel for Ohio Energy Group Boehm, Kurtz & Lowry 36 East Seventh Street, Suite 1510 Cincinnati, Ohio 45202 dboehm@bkllawfirm.com mkurtz@bkllawfirm.com jkylercohn@bkllawfirm.com
David C. Rinebolt, Esq. Counsel for Ohio Partners for Affordable Energy 231 West Lima Street Findlay, OH 45840-3033 Drinebolt@ohiopartners.org	Colleen L. Mooney, Esq. Counsel for Ohio Partners for Affordable Energy 1431 Mulford Road Columbus, OH 43212-3404 cmooney@ohiopartners.org
Samuel C. Randazzo, Esq. Frank P. Darr Counsel for Industrial Energy Users-Ohio McNees Wallace & Nurick LLC 21 E. State Street, 17 th Floor Columbus, Ohio 43215 sam@mwncmh.com fdarr@mwncmh.com	Trent A. Dougherty, Counsel of Record Nolan Moser Ohio Environmental Council 1207 Grandview Avenue, Suite 201 Columbus, Ohio 43212-3449 trent@theoec.org nolan@theoec.org

Mark A. Hayden, Counsel of Record FirstEnergy Service Company 76 South Main Street Akron, Ohio 44308 haydenm@firstenergycorp.com	Douglas E. Hart Attorney for The Greater Cincinnati Health Council 441 Vine Street, Suite 4192 Cincinnati, OH 45202 dhart@douglasshart.com
David A. Kutik, Attorney for FirstEnergy Solutions Corp. Jones Day North Point 901 Lakeside Avenue Cleveland, Ohio 44114 dakutik@jonesday.com	M. Howard Petricoff Vorys, Sater, Seymour, and Pease, LLP 52 East Gay Street P.O.Box 1008 Columbus, Ohio 43216-1008 mhpetricoff@vorys.com
Allison E. Haedt Jones Day 325 John H. McConnell Blvd., Suite 600 Columbus, OH 43215-2673 aehaedt@jonesday.com	James F. Lang N. Trevor Alexander Calfee, Halter & Griswold LLP 1400 KeyBank Center 800 Superior Ave. Cleveland, OH 44114 jl原因@calfee.com talaxander@calfee.com
David I. Fein Vice President, Energy Policy- Midwest Constellation Energy Group, Inc. 550 West Washington Blvd, Ste 300 Chicago, IL 60661 David.fein@constellation.com	Cynthia Fonner Brady Senior Counsel Constellation Energy Resources, LLC 550 West Washington Blvd, Ste 300 Chicago, IL 60661 Cynthia.brady@constellation.com
Matthew Satterwhite Erin Miller American Electric Power Service Corporation 1 Riverside Plaza, 29 th Floor Columbus OH 43215 mjsatterwhite@aep.com ecmiller1@aep.com	Maureen Fleischer Environmental Law & Policy Center 1207 Grandview Ave., Suite 201 Columbus, Ohio 43212 mfleischer@elpc.com

<p>Steven Beeler John Jones Assistant Attorneys General Public Utilities Commission of Ohio 180 East Broad Street Columbus, Ohio 43215 steven.beeler@puc.state.oh.us john.jones@puc.state.oh.us</p>	<p>Maureen R. Grady Kyle L. Kern Assistant Consumer Counsel Office of the Ohio Consumers' Counsel 10 West Broad Street, Suite 1800 Columbus, Ohio 43215-3485 grady@occ.ohio.gov kern@occ.ohio.gov</p>
<p>Mary Christensen Christensen & Christensen, LLP 8760 Orion Place, Suite 300 Columbus, OH 43240 mchristensen@columbuslaw.org</p>	<p>Matthew W. Warnock Bricker & Eckler LLP 100 South Third Street Columbus, OH 43215 lmcalister@bricker.com mwarnock@bricker.com</p>
<p>Thomas J. O'Brien Bricker & Eckler LLP 100 South Third Street Columbus, OH 43215 tobrien@bricker.com</p>	<p>Gregory J. Poulos EnerNOC, Inc. 101 Federal Street, Suite 1100 Boston, MA 02110 gpoulos@enernoc.com</p>
<p>Anne M. Vogel American Electric Power Service Corporation 1 Riverside Plaza, 29th Floor Columbus, OH 43215 amvogel@aep.com</p>	<p>Joseph M. Clark Director of Regulatory Affairs and Corporate Counsel Vectren Retail, LLC D/B/A Vectren Source 6641 North High Street, Suite 200 Worthington, OH 43085 jmclark@vectren.com</p>
<p>M. Howard Petricoff Stephen M. Howard Vorys, Sater, Seymour, and Pease, LLP 52 East Gay Street P.O.Box 1008 Columbus, Ohio 43216-1008 mhpetricoff@vorys.com</p>	

Attachment A
Confidential Document List

Party/Document	Description	Date Filed or Submitted on the Record
Duke Ex. 36A	Rebuttal William Don Wathen	May 13, 2013
FES Ex. 4A	Discovery Item Case No. 10-2586-EL-SSO Dated November 17, 2010	May 22, 2013
FES Ex. 28A	Discovery Item	May 6, 2013
OCC Ex. 6A	Discovery Item	May 2, 2013
OCC Ex. 7A	Discovery Item Dated April 1, 2013	May 2, 2013
OCC Ex. 8A	Discovery Item	May 2, 2013
OCC Ex. 9A	Discovery Item Dated March 19, 2013	May 2, 2013
OCC Ex. 11A	Discovery Item	May 2, 2013 May 22, 2013
OCC Ex. 12A	Discovery Item Dated April 8, 2013	May 2, 2013
OCC Ex. 13A	Discovery Item Dated March 18, 2013	May 2, 2013
OEG Ex. 4A	Discovery Item Dated February 6, 2013	April 30, 2013
OEG Ex. 11A	Discovery Item Dated December 21, 2012	May 1, 2013 May 2, 2013
Tr. II		April 30, 2013
Tr. III		May 1, 2013
Tr. IV		May 2, 2013
Tr. VI		May 6, 2013
FES	Initial Brief	June 28, 2013
OCC	Initial Brief	June 28, 2013
OEG	Initial Brief	July 1, 2013
Duke	Reply Brief	July 30, 2013

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Case No(s). 12-2400-EL-UNC, 12-2401-EL-AAM, 12-2402-EL-ATA

Summary: Motion Motion of Duke Energy Ohio, Inc., to Extend Protective Order electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Rocco D'Ascenzo