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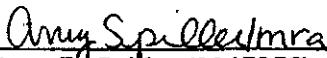
Case No. 15-298-GE-CSS

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Respectfully submitted,

DUKE ENERGY OHIO, INC.



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MEMORANDUM IN SUPPORT

I. Procedural Background

On December 30, 2015, Duke Energy Ohio filed the Direct Testimony of Mitchell A. Carmosino. The direct testimony included both a public version and a confidential version, given the subject matter addressed therein. Pursuant to O.A.C. 4901-1-24(D), Duke Energy Ohio moved for a protective order in respect of the confidential portions of Mr. Carmosino's direct testimony. The Office of the Ohio Consumers' Counsel (OCC) has filed memorandum contra said motion and, on January 20, 2016, the Company filed its reply.

On January 8, 2016, the OCC deposed Mr. Carmosino and promptly thereafter filed the transcript of this deposition. Duke Energy Ohio now submits its motion for a protective order concerning the limited portions of Mr. Carmosino's deposition transcript that reflect confidential, business proprietary, or trade secret information. In doing so, the Company incorporates by reference its arguments as set forth in its request for protective treatment of Mr. Carmosino's direct testimony and further states as follows.

II. Legal Argument

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 rule further provides that information constituting a trade secret under Ohio law is to be protected.

R.C. 1333.61(D) defines a "trade secret" as:

[I]nformation, 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.¹

The Ohio Supreme Court has provided further guidance on what qualifies as a trade secret under Ohio law, delineating those factors to be considered:

- (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) precautions taken by the holder of the trade secret to guard the secrecy of the of the information, (4) the savings effected and the value to the holder in having the information as against competition, (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 of others to acquire and duplicate information.²

Additionally, the Commission has imposed certain restrictions upon public utilities, precluding them from initiating the public dissemination of customer information.³

The deposition of Mr. Carmosino extended to confidential information – information that pertains to the Company’s internal policies and procedures. These policies and procedures, which are not mandated by the Commission, concern the internal workings of Duke Energy Ohio. They detail certain processes that the Company follows and when various steps may be taken in respect of all customers, not just the customer of record with regard to the utility account at issue in this proceeding. The system therefore reflects the processes and procedures for continuous, internal use by Duke Energy Ohio. As confirmed by the Ohio Supreme Court, under Ohio law, such system constitutes a trade secret.⁴

¹ R.C. 1333.61(emphasis added).

² *State ex. rel. The Plain Dealer v. Ohio Dept. of Insurance*, (1998), 80 Ohio St.3d 513,524-525, 687 N.E.2d 661.

³ See, generally, O.A.C. 4901:1-37-04(D); O.A.C. 4901:1-10-24(E).

⁴ *Valco Cincinnati, Inc. v. N&D Machining Service, Inc.*, (1986) 24 Ohio St. 3d 41, 44, 492 N.E.2d 814 (finding that a “trade secret” may relate to operations of a business, such as accounting methods or other management); See also, *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St. 3d 513, 673 1997-Ohio-75 (relying on the Restatement of the Law, Torts, Section 757, Comment b to explain that trade secret reflects “a process...for

The Commission has found that internal policies and procedures are subject to protection as trade secrets.⁵ Consistent with such a determination, deposition testimony that related to the Company's internal workings merits protection.

Further, the Company's processes and procedures, as reflected in its internal customer account system, were not developed for public dissemination. They are not shared externally and internal access is restricted to those having a business need for such information.

Duke Energy Ohio has expended resources to develop these internal procedures and public disclosure to others would allow them to unfairly benefit from the Company's efforts.

As required by O.A.C. 4901-1-24(D)(1), Duke Energy Ohio has redacted only that information in, or attached to, the deposition transcript that it believes constitutes trade secret information.

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

continuous use in the operation of the business"). See also, *State ex rel. Besser v. Ohio State University*, 89 Ohio St. 3d 396, 400-401, 2000-Ohio-207 (recognizing prior holding in *State ex rel. Plain Dealer* and further finding that the Uniform Trade Secrets Act, adopted in Ohio, provides an even broader definition of "trade secret").

⁵ *In the Matter of the Investigative Audit of Northeast Ohio Natural Gas Corporation, Orwell Natural Gas Company, and Brainard Gas Corporation*, Case No. 14-205-GA-COI, Entry, at ¶10 (August 4, 2015).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties this 22nd day of January 2016, by regular U. S. Mail, overnight delivery or electronic delivery.



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