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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of	)	
Jeffrey Pitzer,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 15-298-GE-CSS
	)	
Duke Energy Ohio, Inc.	)	
	)	
Respondent.	)	
	)	
	)	

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**DUKE ENERGY OHIO, INC.'S MOTION FOR PROTECTIVE ORDER  
REGARDING THE POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.**

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Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves this honorable Public Utilities Commission of Ohio (Commission) for a protective order, pursuant to O.A.C. Rule 4901-1-24(D), covering certain confidential information included in the Post Hearing Brief of Duke Energy Ohio, Inc.

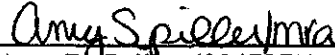
Duke Energy Ohio sets forth, in the attached Memorandum in Support, its reasons why confidential treatment of this information is necessary. In compliance with the governing rule, Duke Energy Ohio is filing, under seal, three unredacted copies of the confidential information.

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Respectfully submitted,

DUKE ENERGY OHIO, INC.



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## MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its Motion for a Protective Order. Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio is engaged in the business of supplying electric power to the public in the state of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of 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 is filing, simultaneously with this motion, the confidential version of the Post Hearing Brief of Duke Energy Ohio, Inc. (Brief). The Brief contains certain information, the public disclosure of which could damage Duke Energy Ohio's business interests. The information for which protection is sought contains processes and procedures confidential and proprietary to the Company.

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 Commission, therefore, generally refers to the requirements of R.C. 1333.61 for a determination of whether specific information should be released or treated confidentially. Subsection (D) of that section defines "trade secret" 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.<sup>1</sup>

Thus, internal processes and procedures 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 Brief includes information, among other things, concerning the Company's internal customer account system, specific customer transactions, and account detail. In addition, references made to the processes that the Company follows with regard to customer mailings, payments, notices, and termination of service. These internal processes and procedures relate to all customers, not just the customer at issue in the present proceeding. 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.<sup>2</sup> Similarly, the Commission has found that internal policies and procedures are subject to protection as trade secrets.<sup>3</sup>

The specific aspects of Duke Energy Ohio's policies and procedures for which the Company is seeking confidential treatment are not published or shared with customers. And

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<sup>1</sup> R.C. 1333.61 (emphasis added).

<sup>2</sup> *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 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").

<sup>3</sup> *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).

there are valid reasons for this approach – reasons that are intended to protect both the Company and its customers, including those for whom the OCC serves as the statutory representative, both those who pay their bills and the uncollectible expense riders and those who do not pay their bills and thereby cause increases in said riders.

The aspects of the Company's policies and procedures at issue concern certain for residential customers relevant to disconnection of service for nonpayment, as well as the Company's implementation of such criteria. These policies and procedures have been developed internally by Duke Energy Ohio and public disclosure to others would allow them to unfairly benefit from the Company's efforts.

Additionally, the Company seeks confidential treatment of internal records that memorialize events specific to one internal business unit and that, if publically divulged, would compromise the Company's internal procedures and its status as an entity that procures competitive contracts. These records also reflect interaction with counterparties and the publication of those events is likely to compromise existing and future contractual undertakings of the Company, with such adverse consequences borne by its customers.

Furthermore, the information for which a protective order is requested is not shared externally and internal access is limited to those with a business need for the information.

O.A.C. 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form, under seal.<sup>4</sup> Duke Energy Ohio is filing the Brief in unredacted form, under seal, together with this Motion.

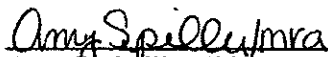
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<sup>4</sup> O.A.C. 4901-1-24.

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 in the Brief is confidential, proprietary, and a trade secret under R.C. 1333.61.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served on the following parties this 14<sup>th</sup> day of February, 2016, by regular U. S. Mail, overnight delivery, or electronic delivery.

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