

FILE

16
7

**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.)	
)	
)	
)	

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

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 that arose in the course of the hearing in the above-captioned proceeding.

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 copies of the confidential information.

This is to certify that the images appearing on this document are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician YX Date Processed 2/2/16

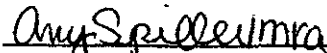
PUCO

2016 FEB 11 PM 4:51

RECEIVED-DOCKETING DIV

Respectfully submitted,

DUKE ENERGY OHIO, INC.



Amy B. Spiller (0047277)

Deputy General Counsel

Duke Energy Business Services, Inc.

139 Fourth Street, 1303-Main

P. O. Box 960

Cincinnati, Ohio 45202-0960

(513) 287-4359 (telephone)

(513) 287-4385 (facsimile)

Amy.Spiller@duke-energy.com (e-mail)

Robert A. McMahon (0064319)

Eberly McMahon Copetas LLC

2321 Kemper Lane, Suite 100

Cincinnati, Ohio 45206

(513) 533-3441 (telephone)

(513) 533-3554 (facsimile)

bcmahon@emclawyers.com (e-mail)

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 transcript of the hearing in this proceeding (Transcript). The Transcript 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.¹

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 Transcript includes information, among other things, concerning the Company's internal customer account system, specific customer transactions, and account detail. In addition, questions during witness examination related 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.² Similarly, the Commission has found that internal policies and procedures are subject to protection as trade secrets.³

¹ R.C. 1333.61 (emphasis added).

² *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").

³ *In the Matter of the Investigative Audit of Northeast Ohio Natural Gas Corporation, Orwell Natural Gas Company, and Brainerd Gas Corporation*, Case No. 14-205-GA-COI, Entry, at ¶10 (August 4, 2015).

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 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 the criteria for which residential customers are eligible for disconnection for nonpayment. If customers were given access to the specific criteria, they would be able to avoid them. And, in that instance, Duke Energy Ohio would be deprived of full payment for the services it has provided – services for which it is legally entitled to be paid. The ramifications of such a circumstance would likely include the need for more rate cases to account for the lost revenue, and, in a more immediate fashion, adjustments to the Company's internal policies and procedures.

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.

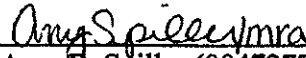
O.A.C. 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information Duke Energy Ohio considers to be proprietary trade secret information, or otherwise

confidential, under seal.⁴ Duke Energy Ohio is filing the confidential portion of the Transcript, together with this Motion.

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 information in the confidential portion of the Transcript is confidential, proprietary, and a trade secret under R.C. 1333.61.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



Amy B. Spiller (0047277)
Deputy General Counsel
Duke Energy Business Services, Inc.
139 Fourth Street, 1303-Main
P. O. Box 960
Cincinnati, Ohio 45202-0960
(513) 287-4359 (telephone)
(513) 287-4385 (facsimile)
Amy.Spiller@duke-energy.com (e-mail)

Robert A. McMahon (0064319)
Eberly McMahon Copetas LLC
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206
(513) 533-3441 (telephone)
(513) 533-3554 (facsimile)
bmcmahon@emclawyers.com (e-mail)

⁴ O.A.C. 4901-1-24.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties this 11th day of February, 2016, by regular U. S. Mail, overnight delivery, or electronic delivery.

Amy Spiller/mrc
Amy B. Spiller

Donald A. Lane
Droder & Miller Co., LPA
125 West Central Parkway
Cincinnati, Ohio 45202-1006
dlane@drodermiller.com

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 N. High Street
Columbus, Ohio 43215
bojko@carpenterlipps.com

Terry L. Etter
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
terry.etter@occ.ohio.gov