

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio, Inc., to Adjust its Alternative ) Case No. 12-3111-EL-RDR  
Energy Recovery Rider. )

FINDING AND ORDER

The Commission finds:

- (1) Duke Energy Ohio, Inc. (Duke) is an electric distribution utility (EDU) as defined by R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.
- (2) R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.
- (3) On November 22, 2011, the Commission approved a stipulation that, among other things, provided for the implementation by Duke of an Alternative Energy Recovery Rider (Rider AER-R). *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (Nov. 22, 2011).

In accordance with the stipulation, through Rider AER-R, Duke may recover the costs it incurs in complying with the alternative energy portfolio standard requirements of R.C. 4928.64, et seq. Rider AER-R is filed quarterly and is subject to true-up and annual audits.

- (4) On November 30, 2012, Duke initiated this case (2013 AER-R Audit Case) for the purpose of updating its Rider AER-R tariff, in accordance with the filing requirements established in the Duke SSO Case.
- (5) By Entry issued May 22, 2013, in *In re Duke Energy Ohio, Inc.*, Case No. 12-802-EL-RDR (2012 AER-R Audit Case), the

Commission selected Baker Tilly Virchow Krause, LLP (Baker Tilly) to perform an audit in two cycles, Audit 1 and Audit 2. In accordance with the process initiated in the May 22, 2013 Entry in the *2012 AER-R Audit Case*, Audit 2 is to review Rider AER-R in place during the 2013 calendar year, and will be conducted in the *2013 AER-R Audit Case*.

- (6) On July 7, 2014, Baker Tilly filed the final management/performance and financial audit report on Duke's Rider AER-R (Audit Report). The following is a summary of the Audit Report and is not intended to supplant or supersede the Audit Report. The Audit Report concluded that Duke should:
  - (a) Consider using competitive solicitations to purchase renewable energy credits (RECs) to improve available prices.
  - (b) Consider purchasing RECs from a larger number of providers and in smaller blocks to help mitigate risk from default by a single provider or unexpected changes in REC prices.
  - (c) Consider knowledge of new renewable projects being developed in forecasting.
  - (d) Consider performing the AER-R calculations and applying the new AER monthly, rather than quarterly, in future alternative energy portfolio standard (AEPS) filings, in order to help ensure more accurate projections and more equitable recovery from customers.
  - (e) Develop policies and procedures with internal controls that specifically relate to AEPS, in order to help reduce the number of errors in the program.
- (7) By Entry issued December 8, 2014, comments and reply comments on the Audit Report were to be filed by January 16, 2015, and January 30, 2015, respectively. Staff filed comments on January 16, 2015.
- (8) On January 16, 2015, Staff filed comments regarding the recommendations in the Audit Report. As to the report's

recommendation that Duke use competitive solicitations to purchase RECs, Staff asserts that competitive solicitations may have benefits, but may not always be the best course of action. Staff suggests that Duke should document its reasoning when it does not pursue competitive solicitations. Regarding the Audit Report's recommendation that AER-R calculations be done monthly instead of quarterly, Staff states quarterly updates are in line with previous Commission rulings and that monthly updates would create unnecessary administrative burdens. Staff states that it agrees with the audit's other recommendations.

- (9) Upon consideration of the recommendations in the Audit Report, and the comments filed by Staff, the Commission finds that the recommendations set forth in the Audit Report should be adopted, with modifications. The Commission agrees with Staff that quarterly AER-R calculations are more prudent and in line with prior rulings. Further, the Commission also agrees with Staff that competitive solicitations of RECs may not always be pragmatic. Instead, when Duke believes a competitive solicitation is not the best course of action, it should consider documenting its rationale.
- (10) As a final matter, the Commission notes that, on July 21, 2014, Duke filed a motion for a protective order seeking protection of certain information contained in the Audit Report. Specifically, Duke states that the Audit Report names Duke's vendors, pinpoints the purchase prices of RECs, and releases internal procedural documents. According to Duke, if this information is publically disclosed, Duke's competitors would have access to competitively sensitive, confidential information that, in turn, could allow the named vendors and generators to make offers to sell RECs, etc., at higher prices than the competitors might offer in the absence of such information. Duke asserts this would be detrimental to Duke and its customers. No one filed memoranda contra Duke's motion for protective order.
- (11) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of R.C. Title 49. R.C. 149.43 specifies that the term public records excludes information which, under state or federal law, may not be released. The Supreme Court has clarified that the state

or federal law exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

- (12) Similarly, Ohio Adm.Code 4901-1-24 allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (13) Ohio law defines a trade secret as "information . . . 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." R.C. 1333.61(D).
- (14) The Commission has reviewed the information included in Duke's motion for protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Supreme Court,<sup>1</sup> the Commission finds that portions of the Audit Report, as outlined by Duke, contain trade secret information. Release of that information is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Therefore, the Commission finds that Duke's motion for protective order is reasonable with respect to certain information in the Audit Report, which was filed on July 21, 2014, and should be granted. This protective order will automatically expire 24 months after the date of this Finding and Order. Any party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date, in accordance with Ohio Adm.Code 4901-1-24.

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<sup>1</sup> See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

It is, therefore,

ORDERED, That the recommendations in the Audit Report be adopted, with modifications, as discussed in Finding (9). It is, further,

ORDERED, That the motion for protective order filed by Duke is granted. It is, further,

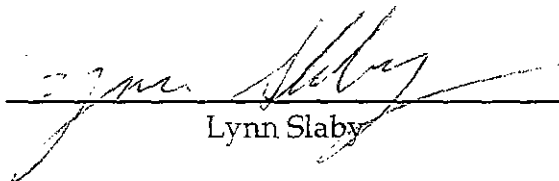
ORDERED, That the Commission's docketing division maintain, under seal, certain information in the Audit Report, which was filed under seal in this docket on July 21, 2014, for a period of 24 months. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

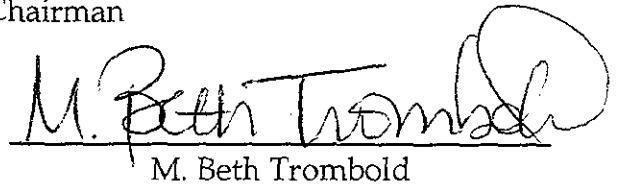
THE PUBLIC UTILITIES COMMISSION OF OHIO



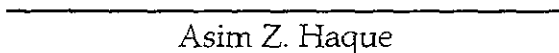
Andre T. Porter, Chairman



Lynn Slaby



M. Beth Trombold



Asim Z. Haque

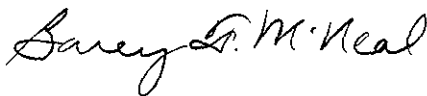


Thomas W. Johnson

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Barcy F. McNeal  
Secretary