

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF DUKE  
ENERGY OHIO, INC.'S ALTERNATIVE  
ENERGY RECOVERY RIDER FOR THE  
PERIOD JANUARY 1, 2016, THROUGH  
DECEMBER 31, 2016.

CASE NO. 15-1854-EL-RDR

### FINDING AND ORDER

Entered in the Journal on January 24, 2018

#### I. SUMMARY

{¶ 1} The Commission adopts the recommendations found in the audit report of Duke Energy Ohio, Inc.'s Alternative Energy Recovery Rider.

#### II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) 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.

{¶ 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. The rider was continued, without modifications, in *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, et al., Opinion and Order (April 2, 2015).

{¶ 4} On November 18, 2015, the Commission directed Staff to issue a request for proposal for auditing services associated with Rider AER-R. On January 13, 2016, the Commission selected Larkin & Associates PLLC (Larkin) to perform the auditing services. The auditing services consists of a two-audit cycle. The first audit reviewed the Rider

AER-R in place during January 1, 2014, through December 31, 2015. The second audit reviewed the Rider AER-R in place during January 1, 2016, through December 31, 2016.

{¶ 5} Thereafter, on December 21, 2016, the Commission issued a Finding and Order that adopted the findings outlined in the audit report filed on May 16, 2016, with modifications. Additionally, the Commission established a timeline for the second audit, and set April 17, 2017, as the date that the final audit report should be filed. On April 11, 2017, the attorney examiner granted Staff's motion to extend the deadline for filing the audit report to May 2, 2017.

#### **A. Audit Report**

{¶ 6} On May 2, 2017, Larkin filed the management/performance and financial audit report on Duke's Rider AER-R for the period of January 1, 2016 through December 31, 2016. The report examined Duke's compliance with Rider AER-R, as it was originally implemented, as well as Commission-adopted recommendations and modifications from Rider AER-R audits completed in 2012, 2013, and 2014/2015. *In re Duke Energy Ohio, Inc.*, Case No. 12-802-EL-RDR (2012 Audit), *In re Duke Energy Ohio, Inc.*, Case No. 12-3111-EL-RDR (2013 Audit), and *In re Duke Energy Ohio, Inc.*, Case No. 15-1854-EL-RDR (2014/2015 Audit) respectively.

{¶ 7} By Entry on July 13, 2017, the attorney examiner invited interested stakeholders to file comments regarding the content of the audit report by August 10, 2017. Staff filed comments on August 10, 2017. Additionally, Duke filed a letter on August 10, 2017, indicating the Company had no comments but reserved the right to file reply comments, if needed.

#### **1. COMPLIANCE WITH RECOMMENDATIONS OF PREVIOUS AUDITS**

{¶ 8} In reviewing Duke's observance of previous audit recommendations, the auditor found the Company, overall, has been compliant. In the 2014-2015 Audit, it was recommended that Duke continue to keep responsibility for program management and

Renewable Energy Credit (REC) purchasing separated for Ohio renewable portfolio standard (RPS) compliance and the Company's GoGreen Pricing Program, to avoid the potential for cross-subsidization and/or double counting of RECs between the two programs. The report states Duke maintained separation by making REC purchases for each program on different days as well as having the counterparty retire the RECs used in the GoGreen Power Program. The auditor also states the *2014-2015 Audit* recommended that Duke prepare its REC summary reports every month to ensure that it has adequate solar and non-solar RECs in inventory to be in compliance with Ohio renewables requirements. The report states Duke was compliant and REC position reports were provided for each month of 2016.

{¶ 9} The *2014-2015 Audit* additionally recommended the Company's Contacting Principles, Guidelines, and Strategy document include a description and illustrative calculation for the 3 percent cost cap in a manner that is consistent with the methodology adopted by the Commission in Case No. 11-5201-EL-RDR. According to the report, Duke complied with the recommendation in manner consistent with the methodology adopted by the Commission. The auditor further states the *2014-2015 Audit* recommended that solar RECs purchased from Bruce S. Alt be reduced from ten to six and that the Company confirmed it made this change in an entry booked on April 21, 2016.

{¶ 10} In the *2014-2015 Audit*, it was also recommended that Duke be diligent when performing accounting procedures to ensure that errors involving the timely recognition of costs are minimized and/or eliminated. The report states that the general ledger detail indicates that the payment of a subscription fee was incorrectly booked and that a correcting entry was made in February 2016. The auditor notes that the correcting entry was made prior to the issuance date of Larkin's recommendation in its report for the 2014-2015 review period and that although the correcting entry was made in February 2016, the fee was included in Rider AER-R in December 2015. Lastly, the auditor asserts Duke complied with the *2014-2015 Audit* recommendation that the Company determine the projected weighted average cost of inventory (WACI) in all of its quarterly Rider AER-R filings by using the

WACI that is calculated on its REC inventory worksheets. Accordingly, in sum, the auditor asserts Duke was largely compliant with the recommendations from the *2014-2015 Audit*.

## 2. MANAGEMENT/PERFORMANCE AUDIT RECOMMENDATIONS

{¶ 11} Upon its review of Duke's management, the auditor offered three recommendations. Below is a summary of the recommendations, and is not intended to supersede the report. The report concluded Duke should:

- (a) Maintain a written record which memorializes all departmental meetings and/or conference calls in which discussions are held and decisions are made pertaining to things such as Ohio legislation and prevailing market conditions as it relates to the purchase of solar and non-solar RECs for Ohio renewable compliance.
- (b) Include a passage in the Company's Contracting Principles, Guidelines, and Strategy document that contains language to the effect of what is stated in the previous management recommendation.
- (c) Maintain a written memo for REC purchases that briefly summarize the reason for the purchase and the information available and considered at that time.

{¶ 12} In its comments, Staff agrees with the report's recommendations regarding the management/performance audit.

## 3. FINANCIAL AUDIT RECOMMENDATIONS

{¶ 13} Upon its review of Duke's finances, the auditor offered four recommendations. Below is a summary of the recommendations, and is not intended to supersede the report. The report concluded Duke should:

- (a) Reduce the \$34,026 that Duke included in Rider AER-R in June 2016, as it relates to the audit fees for the 2016 review period, by \$7,026 to reflect the \$27,000 that Larkin billed and was paid for that review.
- (b) Remove the six solar RECs that were double-counted from the Company's solar REC inventory. Duke has indicated it will make this correction.
- (c) Remove solar RECs from the Company's inventory if it is revealed through investigation that Duke will not be receiving the solar RECs association with a specific transaction.
- (d) Update its system so that the "Start" and "End" dates related to these transactions coincide with the dates the RECs were actually received. Duke has indicated it will make these changes.

{¶ 14} Regarding the financial audit, Staff agrees with the report's recommendations.

**B. Conclusion**

{¶ 15} Upon review, the Commission adopts the findings outlined in the audit report regarding the previous audits. In doing so, we find Duke should continue to consider the recommendations adopted in previous Commission orders from the 2012, 2013, and 2014-2015 Audits on an ongoing basis and should continue to document its rationale.

{¶ 16} As to the auditor's recommendations, upon consideration of the audit report and the comments, the Commission finds the recommendations set forth in the audit report should be adopted in their entirety.

**C. Motion for protective order**

{¶ 17} As a final matter, the Commission notes that, on May 02, 2017, 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.

{¶ 18} 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).

{¶ 19} 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."

{¶ 20} 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).

{¶ 21} 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 May 02, 2017, 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.

### III. ORDER

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That the recommendations in the audit report be adopted as discussed herein. It is, further,

{¶ 24} ORDERED, That the motion for protective order filed by Duke be granted. It is, further,

{¶ 25} 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 May 02, 2017, for a period of 24 months. It is, further,

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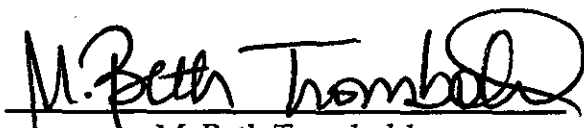
<sup>1</sup> See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



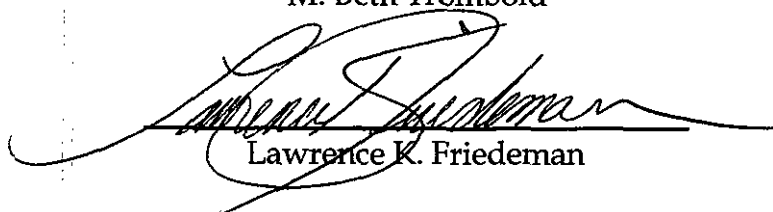
Asim Z. Haque, Chairman



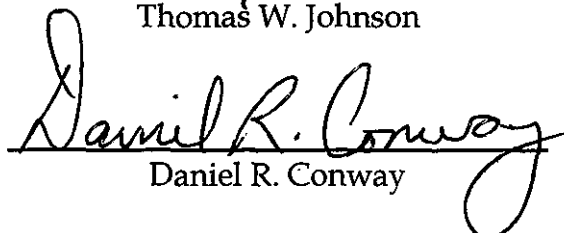
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