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BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO PUCO

In the Matter of the Application of Duke Energy Ohio, ) Case No. 17-32-EL-AIR  
Inc., for an Increase in Electric Distribution Rates. )  
  
In the Matter of the Application of Duke Energy Ohio, ) Case No. 17-33-EL-ATA  
Inc., for Tariff Approval. )  
  
In the Matter of the Application of Duke Energy Ohio, ) Case No. 17-34-EL-AAM  
Inc., for Approval to Change Accounting Methods. )  
  
In the Matter of the Application of Duke Energy Ohio, ) Case No. 17-872-EL-RDR  
Inc., for Approval to Modify Rider PSR. )  
  
In the Matter of the Application of Duke Energy Ohio, ) Case No. 17-873-EL-ATA  
Inc., for Approval to Amend Rider PSR. )  
  
In the Matter of the Application of Duke Energy Ohio, ) Case No. 17-874-EL-AAM  
Inc., for Approval to Change Accounting Methods. )  
  
In the Matter of the Application of Duke Energy Ohio, ) Case No. 17-1263-EL-SSO  
Inc., for Authority to Establish a Standard Service Offer )  
Pursuant to Section 4928.143, Revised Code, in the Form )  
of an Electric Security Plan, Accounting Modifications and )  
Tariffs for Generation Service. )  
  
In the Matter of the Application of Duke Energy Ohio, ) Case No. 17-1264-EL-ATA  
Inc., for Authority to Amend its Certified Supplier Tariff, )  
P.U.C.O. No. 20. )  
  
In the Matter of the Application of Duke Energy Ohio, ) Case No. 17-1265-EL-AAM  
Inc., for Authority to Defer Vegetation Management Costs. )  
  
In the Matter of the Application of Duke Energy Ohio, ) Case No. 16-1602-EL-ESS  
Inc., to Establish Minimum Reliability Performance )  
Standards Pursuant to Chapter 4901:1-10, Ohio )  
Administrative Code.

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DUKE ENERGY OHIO'S MOTION FOR A PROTECTIVE ORDER

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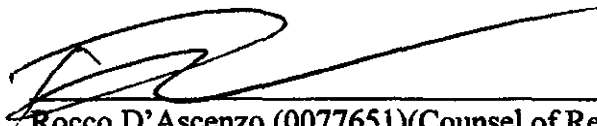
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Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves this honorable Public Utilities Commission of Ohio (Commission) for a protective order, pursuant to O.A.C. Rule 4901-1-24(D), covering certain confidential information that is included as a part of the direct testimony of Duke Energy Ohio witness Renee Metzler being filed in response to the Commission Staff Objections in the above-captioned proceedings. Specifically, the proprietary, trade secret, competitive business information that Duke Energy Ohio seeks to have protected is contained in the Direct Testimony of Duke Energy Ohio witness Renee Metzler (Duke Energy Ohio witness or Company witness Metzler).

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.

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 place of business in Cincinnati, Ohio. Duke Energy Ohio supplies electric power to customers in southwest Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of R. C. 4905.02 and R.C. 4905.03. Accordingly, 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.

The testimony of Duke Energy Ohio witness Renee Metzler contains information that is confidential, proprietary, trade secret, and/or competitive business information of Duke Energy Ohio and its witnesses and contractual counterparties. More specifically, the information for which protection is being requested provides intimate details on the nature, function, scope and operation of the Company's incentive compensation plans.

O.A.C. 4901-1-24(D) provides that the Commission or its attorney examiner 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 purpose 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, included 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, business information or plans and financial information 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 Direct Testimony of Company witness Metzler contains proprietary, confidential, and competitively sensitive information. Such information included in Confidential Attachments RM3 (a)- (c) include Duke Energy's: (a) 2017 Short-Term Incentive Plan and Union Employee Incentive Plans; (b) 2017 Restricted Stock Award Plans and (c) 2017 Executive Long-Term Incentive Plan. These Confidential Attachments RM-3(a) - RM-3(c) provide employee compensation and benefits documents information which would provide competitors with tremendous insight into the Company's compensation philosophies, policies and practices. Taken together, these documents represent the accumulation of decades of "best practices" in human capital management. Gaining access to this information would be extremely valuable to the Company's competitors who might desire to plunder from Duke Energy Ohio's talent pool. Moreover, it would impose a significant and material obstacle to the Company's efforts to continue to recruit and retain a skilled labor force. Moreover, to the extent that any of the compensation and benefit information could be used to identify the compensations and benefits paid to any individual employee, it would constitute an improper invasion of the employee's

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<sup>1</sup> R.C. 1336.61(emphasis added).

reasonable expectation of privacy.<sup>2</sup> Indeed, the Company takes steps to ensure that this information is not disclosed to anyone within or affiliated with its organization who does not have a business need to know the material and it does not externally disclose such confidential information absent the existence of appropriate protective devices. Further, The Commission has previously granted similar motion for confidential treatment of employee compensation and benefits information.<sup>3</sup>

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, or otherwise confidential information in a non-redacted form, under seal.<sup>4</sup> Duke Energy Ohio is filing the testimony in unredacted form, under seal, 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 redacted information is confidential, proprietary, and trade secret under R. C. 4901-16 and 1333.61.

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<sup>2</sup> Because the complete salary and other compensation data for the Company's chief executive officer is publicly disclosed each year in filings with the Securities and Exchange Commission; Duke Energy Ohio is not requesting protection from public disclosure of that information.

<sup>3</sup> See e.g., *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry at pg. 3 (April 13, 2012).

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

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Duke Energy Ohio's Motion for a Protective Order was served via electronic mail or ordinary mail on the following parties this 6<sup>th</sup> day of June, 2018.



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