

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE 2014 LONG-TERM
GAS FORECAST REPORT OF DUKE
ENERGY OHIO, INC., AND RELATED
MATTERS.

CASE NO. 14-868-GA-FOR

ENTRY

Entered in the Journal on July 2, 2020

{¶ 1} On July 15, 2014, as supplemented on March 19, 2015, Duke Energy Ohio, Inc. (Duke) filed its 2014 gas long-term forecast report (LTFR), pursuant to R.C. 4935.04 and Ohio Adm.Code Chapter 4901:5-7.

{¶ 2} Also on July 15, 2014, Duke filed a motion for protective order seeking protection of certain information contained in its report. The motion was granted in a July 30, 2015 Entry, with the protective order in effect for 24 months, ending on July 30, 2017.

{¶ 3} Duke filed an additional motion for protective order on May 31, 2017, requesting that the Commission extend the period of protection for ten years. Duke explained that certain information in the LTFR is primarily security related and is unlikely to be appropriate for disclosure in the future. The attorney examiner agreed that, because Appendices II and III of the LTFR pertain to critical energy infrastructure information, an extension of the 24-month expiration date as set forth in Ohio Adm.Code 4901-1-24 was appropriate. The attorney examiner concluded, however, that a ten-year protective period would be too long, and granted protective treatment for 36 months, until July 31, 2020.

{¶ 4} On June 11, 2020, Duke filed a motion to extend the protective order. Duke explains that the information contained in Appendices II and III consists of personally identifiable and other economically valuable information, the disclosure of which would harm Duke in the marketplace. Further, Duke adds that the information concerns critical energy infrastructure and existing transmission systems, in addition to a ten-year resource plan for the systems. Duke submits that this information should continue to be protected, in accordance with R.C. 1333.61, as a trade secret that is not generally known outside of

Duke. Finally, Duke asserts that, because the information is primarily security related, it is unlikely to be appropriate for disclosure at any future time; therefore, Duke again requests that the Commission extend the period of protection to ten years.

{¶ 5} No memorandum contra was filed in response to the June 11, 2020 motion for protective order.

{¶ 6} 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 Ohio 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).

{¶ 7} Similarly, Ohio Adm.Code 4901-1-24 allows an attorney examiner 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

{¶ 8} 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).

{¶ 9} The attorney examiner 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 Ohio Supreme Court,¹ the attorney examiner finds that Appendices II and III contain trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Therefore, the attorney examiner finds that Duke's motion for protective order with regard to Appendix II and Appendix III, which were filed under seal in this docket on March 19, 2015, is reasonable and should be granted to the extent set forth in this Entry.

{¶ 10} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. However, Duke requests that the protective order be in effect for a ten-year period. Given that Appendices II and III pertain to critical energy infrastructure information, the attorney examiner again finds that, while extending the protective order longer than 24 months is appropriate, a ten-year period for the protective order is too long. Therefore, the attorney examiner finds that it is appropriate to grant protective treatment for a period of 36 months from the date of this Entry, or until July 2, 2023. Until that date, the docketing division should maintain, under seal, the information filed confidentially by Duke.

{¶ 11} Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Duke wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days prior to the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Duke.

{¶ 12} It is, therefore,

¹ 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).

{¶ 13} ORDERED, That the motion for protective order filed by Duke be granted to the extent set forth in this Entry. It is, further,

{¶ 14} ORDERED, That the Commission's docketing division maintain, under seal, Appendices II and III, for a period of 36 months, ending on July 2, 2023. It is, further,

{¶ 15} ORDERED, That a copy of this Entry be served upon Duke and any other interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/James Lynn

By: James M. Lynn
Attorney Examiner

SJP/hac

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/2/2020 9:09:24 AM

in

Case No(s). 14-0868-GA-FOR

Summary: Attorney Examiner Entry granting motion for protective order and that the Commission's docketing division maintain, under seal, Appendices II and III, for a period of 36 months, ending on July 2, 2023 electronically filed by Heather A Chilcote on behalf of James M. Lynn, Attorney Examiner, Public Utilities Commission