

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Direct Energy Business, LLC,</b>	)	
	)	
<b>Complainant,</b>	)	<b>Case No. 14-1277-EL-CSS</b>
	)	
<b>v.</b>	)	
	)	
<b>Duke Energy Ohio</b>	)	
	)	
<b>Respondent.</b>	)	

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**MOTION OF DUKE ENERGY OHIO, INC.  
TO EXTEND PROTECTIVE ORDER**

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Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and pursuant to O.A.C. 4901-1-24(F), hereby respectfully requests an order extending the approval of the protective order initially ordered on April 10, 2019<sup>1</sup> which afforded protection to the specific information included in the documents titled “Confidential Proprietary Trade Secret - Direct Testimony of Timothy Abbott on Behalf of Duke Energy Ohio, Inc.” (Abbott Testimony), the confidential deposition exhibits of Robert Kennelly Exhibit 2; Teresa Ringenbach, Exhibit 5 and Andrew Vance, Exhibits 2, 3, 5 (Deposition Exhibits) and “Confidential Version - Merit Brief of Duke Energy Ohio, Inc.” (Merit Brief) and deemed that the protection should be granted. Duke Energy Ohio hereby moves to extend the protective order as ordered on April 10, 2019 to continue the confidential treatment of specific information included in the Abbott Testimony, the Deposition Exhibits, and the Merit Brief.

Respectfully submitted,

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<sup>1</sup> Opinion and Order (April 10, 2019).

/s/Larisa M. Vaysman

Rocco D'Ascenzo (0077651)

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## MEMORANDUM IN SUPPORT

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Duke Energy Ohio respectfully requests that the Public Utilities Commission of Ohio (Commission) extend the protection of the confidential information contained in the Direct Testimony of Tim Abbott – Confidential Version, Merit Brief of Duke Energy Ohio, Inc. – Confidential Version and the confidential deposition exhibits of Robert Kennelly Exhibit 2; Teresa Ringenbach, Exhibit 5 and Andrew Vance, Exhibits 2, 3, 5. Protection was granted for this confidential information in the Finding and Order filed on April 10, 2019.

The information for which the Company seeks protection for in each document is detailed below:

**Direct Testimony of Timothy Abbott (Confidential Version) – (April 14, 2015)**

The Abbott Direct Testimony contains certain information, the public disclosure of which could interfere with Duke Energy Ohio's business interests and its obligation, under Commission regulation,<sup>2</sup> to protect customer proprietary information. Indeed, the information for which protection is sought contains confidential and business proprietary information related to the infrastructure at one customer's facility, which is representative of a type of customer-specific information guarded by the Company, and the manner in which internal processes associated therewith were administered.

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

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<sup>2</sup> O.A.C. 4901:1-37-04(D)(1).

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.<sup>3</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 Abbott Direct Testimony includes information concerning the infrastructure at the facility of one customer and the internal processes implemented to accommodate same. The customer-specific information is proprietary, and it is Duke Energy Ohio’s position that such information cannot, under applicable law and regulation, be made public without permission from the customer. Further, the related Company-specific information concerns confidential business information and plans. Public disclosure of this information would run afoul of Commission regulation and jeopardize the ability of individual customers to maintain the confidential nature of

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<sup>3</sup> R.C. 1333.61(emphasis added).

the proprietary information related to services they receive, including the manner in which those services may be administered by a public utility.

**Confidential Deposition Exhibits of Robert Kennelly Exhibit 2; Teresa Ringenbach, Exhibit 5 and Andrew Vance, Exhibits 2, 3, 5 - (June 12, 2017)**

This confidential information was provided during the oral deposition of Direct Energy witnesses Andrew Vance, Teresa Ringenbach and Robert Kennelly filed in this case. Duke Energy Ohio filed a motion for protective order at the same time it filed the transcripts of Robert Kennelly, Teresa Ringenbach, and Andrew Vance. Duke Energy Ohio does not concede that the information in these transcripts is trade secret pursuant to RC. 1333.61(D) and further does not concede that the information is deserving of protection under Rule 4901-1-24(D) O.A.C. But as Direct Energy Business has characterized such material as confidential and subject to protection and the Commission has previously granted such protection, Duke Energy Ohio filed this motion as appropriate to initiate a process for this determination to be extended.

**Merit Brief of Duke Energy Ohio, Inc. (Confidential Version) (August 11, 2017)**

Duke Energy Ohio filed a motion for protective order at the same time it filed its Merit Brief of Duke Energy Ohio (Merit Brief). The Merit Brief contains certain information, the public disclosure of which could interfere with Duke Energy Ohio's business interests and its obligation, under Commission regulation,<sup>4</sup> to protect customer proprietary information. Indeed, the information for which protection is sought contains confidential and business proprietary information related to the infrastructure at one customer's facility, which is representative of a type of customer-specific information guarded by the Company, and the manner in which internal processes associated therewith were administered.

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<sup>4</sup> O.A.C. 4901:1-37-04(D)(1).

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.<sup>5</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 Merit Brief includes information concerning the infrastructure at the facility of one customer and the internal processes implemented to accommodate same. The customer-specific information is proprietary, and it is Duke Energy Ohio’s position that such information cannot, under applicable law and regulation, be made public without permission from the customer. Further, the related Company-specific information concerns confidential business information and

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<sup>5</sup> R.C. 1333.61(emphasis added).

plans. Public disclosure of this information would run afoul of Commission regulation and jeopardize the ability of individual customers to maintain the confidential nature of the proprietary information related to services they receive, including the manner in which those services may be administered by a public utility.

In view of these circumstances, continued confidential treatment of the Confidential Information contained in the Abbott Testimony and Merit Brief is appropriate, and is required by Ohio law and the Commission's regulations. Duke Energy Ohio also seeks continued confidential treatment of the Deposition Exhibits, although it reserves the right to amend, alter, or withdraw this request pending arguments from Direct Energy Business in respect of the confidential nature of such material. For the foregoing reasons, Duke Energy Ohio respectfully requests that the Commission grant its Motion to Extend the Protective Order pursuant to O.A.C. 4901-1-24(F) and extend the period of protection for a period of twenty-four months for the Abbott Testimony, Merit Brief, and Deposition Exhibits.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(F), grant its Motion to Extend Protective Order sought herein.

Respectfully submitted,

/s/ Larisa M. Vaysman

Rocco D'Ascenzo (0077651)

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Larisa M Vaysman (0090290)

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served on the following parties this 22nd day of February, 2021, via electronic transmission, hand delivery or regular U.S. Mail.

/s/ Larisa M. Vaysman  
Larisa M. Vaysman

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Summary: Motion Direct Energy Motion to Extend Protective Order electronically filed by Mrs. Tammy M Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Vaysman, Larisa