

MEMORANDUM IN SUPPORT

Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio has the corporate power and authority, among others, to engage, and it is engaged, in the business of supplying electric distribution service to customers in the state of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of that term as used in R. C. 4905.02 and 4905.03. As such, 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.

Duke Energy Ohio is filing, together with this motion and memorandum in support, testimony by Mr. Swez in support of its application in this proceeding. Mr. Swez includes, as attachments to his testimony, the following documents:

- Attachment JDS-1 is a copy of the internal operating procedures of OVEC. This document details and explains the internal functioning of OVEC, including the offer strategy. This is market information that would give any competitors an advantage. The result of making such information public would be economic harm to Duke Energy Ohio's customers.
- Attachment JDS-2 is a copy of the Daily Profit and Loss Report, prepared internally by Duke Energy Ohio, summarizing the projected energy market revenues from operation of the OVEC units in PJM, the variable costs to operate such units and the forecasted unit hourly loading, and the resulting hourly energy margin. Because it contains margin information for the operation of units, it must be maintained as confidential so that a competitor cannot start with publicly available revenues and use the margins to back into variable costs.
- Attachment JDS-3 is a copy of a Preliminary Margin Report prepared by Duke Energy Ohio, based on actual PJM Day-Ahead awards, and used to monitor

profitability of the OVEC units and the accuracy of information. Again, this document includes the Company's variable costs, a piece of market information that would, if public, allow competitors to gain an unfair advantage.

Ohio Administrative Code Section 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file the information contained in the attachments to Mr. Swez's testimony that Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form under seal.¹ This rule also establishes a procedure for presenting to the Commission that information which is confidential, and therefore should be protected.²

Duke Energy Ohio has filed a redacted version of the attachments described above. The redacted information constitutes trade secret information in accordance with Ohio's Uniform Trade Secret Act and relevant jurisprudence. Subsection (D) of R.C. 1333.61 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.³

¹ O.A.C. 4901-1-24.

² *Id.*

³ R.C. 1333.61 (emphasis added).

In analyzing a trade secret claim, the Ohio Supreme Court has adopted the following factors as relevant to determining whether a document constitutes a trade secret:

- (1) The extent to which the information is known outside the business;
- (2) the extent to which it is known to those inside the business, i.e., by the employees;
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;
- (4) the savings effected and the value to the holder in having the information as against competitors;
- (5) the amount of effort or money expended in obtaining and developing the information; and
- (6) the amount of time and expense it would take for others to acquire and duplicate the information.⁴

The confidential material described above, if disclosed, would enable competitors to gain an advantage, particularly in the PJM market. Disclosure of such competitively sensitive information would be detrimental to Duke Energy Ohio and its customers.

The information for which Duke Energy Ohio is seeking confidential treatment is not known outside of Duke Energy Ohio, and it is not disseminated within Duke Energy Ohio except to those employees with a legitimate business need to know and act upon the information.

The public interest will be served by granting this motion. By protecting the confidentiality of the attachments, the Commission will prevent undue harm to Duke Energy Ohio and its customers, as well as ensuring a sound competitive marketplace.

Duke Energy Ohio considers the confidential material to be proprietary, confidential, and trade secrets, as that term is used in R.C. 1333.61. The redacted version of the Report includes the confidential material blacked out for the public.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(D), grant its Motion for Protective Order to protect the confidentiality of information contained in the attachments described above by making a determination that the redacted information is confidential, proprietary, and a trade secret under R.C. 1333.61.

⁴ *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 732 N.E.2d 373 (2000).

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following party this 19th day of October, 2021, by regular U.S. Mail, overnight delivery, or electronic delivery.

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