

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

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MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its motion for protective order to protect the confidentiality of information contained in the Report.

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 owns, operates, manages and controls plants, properties and equipment used and useful in supplying electric distribution service to over 624,000 customers in southwestern Ohio.

On April 8, 2020, an Entry was issued which directed the Staff to select London Economics International LLC (LEI) as the auditor in order to audit Duke Energy Ohio's Price Stabilization Rider (Rider PSR) application for the period of January 1, 2019, through December 31, 2019. It is the Rider PSR for the period of January 1, 2019, through December 31, 2019 that is the subject matter of the Report. This report contains confidential trade secret information. Specifically, the Report portrays Duke Energy Ohio's critical infrastructure photographically and through description, its competitive bidding information, including but not limited to forecasts, offer curves, analysis, coal procurement targets and strategy, and discusses internal procedures and procedural documents.

This confidential trade secret information, if publicly disclosed, would give competitive bidders access to competitively sensitive, confidential bidding information, which in turn could work

to the detriment of Duke Energy Ohio and its customers. Furthermore, disclosure of information related to the Company's critical infrastructure could pose a security hazard.

Ohio Administrative Code Section 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information contained in or attached to the Report that Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form under seal¹ This rule also establishes a procedure for moving to extend the confidential treatment beyond the initial period.²

The redacted information contained in the Report constituted 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

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)

¹ O.A.C. 4901-1-24.

² *Id.*

³ R.C. 1333.61 (emphasis added).

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 ascertain the manner in which Duke Energy Ohio plans and manages its Rider PSR compliance efforts and the cost associated therewith. Disclosure of such competitively sensitive information would be detrimental to Duke Energy Ohio now and for the next 24 months, just as it was when it was filed.

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 continuing to protect the confidentiality of the Report, 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 Report's confidential material to be proprietary, confidential, and trade secrets, as that term is used in R.C. 1333.61.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(D), grant its Motion for Continuation of Protective Order to protect the confidentiality of information contained in the document titled "Audit of the Price Stabilization Rider of Duke Energy Ohio" by making a determination that the redacted information continues to be 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,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following party this 7th day of October 2022, by regular U.S. Mail, overnight delivery, or electronic delivery.

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