

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Duke Energy Ohio, Inc., for an) Case No. 21-887-EL-AIR
Increase in Electric Distribution Rates.)

In the Matter of the Application of)
Duke Energy Ohio, Inc., for Tariff) Case No. 21-888-EL-ATA
Approval.)

In the Matter of the Application of)
Duke Energy Ohio, Inc., for Approval) Case No. 21-889-EL-AAM
to Change Accounting Methods.)

**MOTION OF DUKE ENERGY OHIO, INC.,
FOR A PROTECTIVE ORDER**

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves the 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 part of the application filed in the above-captioned proceedings. Specifically, the proprietary, trade-secret information that Duke Energy Ohio seeks to have protected is found in certain attachments to the testimonies of Amy B. Spiller, Bruce L. Sailors, and Jacob J. Stewart.

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 the confidential information under seal.

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 a Protective Order, as detailed herein.

Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio is engaged in the business of supplying electric distribution service to customers in southwestern Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of R.C. 4905.02 and an electric light company, as defined by R.C. 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, simultaneously with this motion, testimony in support of its application for an increase in distribution rates. Three witnesses' testimonies contain information, the public disclosure of which could damage Duke Energy Ohio's competitive position and business interests.

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.¹

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 information set forth in the Application includes the following six proprietary documents:

- Attachment ABS-2 CONF, attached to the testimony of witness Amy B. Spiller comprises the results of the Company's analysis of the trends in customer sentiment as expressed by its electric customers from 2018 to 2021, its "fastrack" score trends for the years 2020 and 2021, its customers' net satisfaction following calls for the years 2020 and 2021, and its "reflect web" feedback for those same years. These documents are proprietary customer surveys developed with substantial effort and cost. The data therein can be used internally with regard to business improvements. It may likewise be used by competitors to disparage or otherwise contrast Duke Energy Ohio's customer service with other entities. Thus, the information is closely held within the Company.
- Attachments BLS-4 CONF and BLS-5 CONF, attached to the testimony of Bruce L. Sailors, include the prices that the Company pays to wholesalers for certain lighting assets. This is information that, if disclosed, would prejudice Duke

¹ R.C. 1333.61(emphasis added).

Energy Ohio in its participation in the competitive market and would enable competitors to take actions that, in the absence of this information, they would not otherwise take. Furthermore, public disclosure of such information would violate existing agreements with vendors, thus compromising Duke Energy Ohio's position vis-à-vis current and prospective counterparties. Such public disclosure, therefore, would undermine the Company's current and future negotiations and competitive position, potentially to the significant detriment of customers. This information derives actual, independent economic value to the Company as a result of its not being generally known or readily ascertainable by other persons who could use it to affect the market prices and availability of commodities in the market. Public disclosure of this information could have a real effect on the financial position of Duke Energy Ohio. Duke Energy Ohio attempts to ensure that this market information remains secret, both internally and externally.

- Attachments JJS-3(a) CONF, (b) CONF, and (c) CONF to the testimony of Jacob J. Stewart provide copies of the Company's employee incentive plans. These attachments provide employee compensation and benefits documents, information that would provide competitors with tremendous insight into the Company's compensation philosophies, policies, and practices, potentially allowing them to plunder from the Company's talent pool. Taken together, these documents represent the accumulation of decades of "best practices" in human capital management. Duke Energy Ohio attempts to ensure that this market information remains secret, both internally and externally.

All of the information covered by the attachments referenced above is subject to reasonable efforts to maintain its security. The Company takes steps, internally, to ensure that

this information is not disclosed to anyone who does not have a business need to know the material. Externally, the Company does not disclose this information other than under the terms of appropriate protective devices, such as confidentiality agreements.

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 information, or otherwise confidential, under seal.² Duke Energy Ohio is filing the material under seal, together with this Motion and Memorandum in Support.

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 a trade secret under R. C. 1333.61.

² O.A.C. Rule 4901-1-24.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 15th day of October, 2021, upon the persons listed below.

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