

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke	)	
Energy Ohio, Inc., for Recovery of	)	
Program Costs, Lost Distribution Revenue	)	Case No.17-781-EL-RDR
and Performance Incentives Related to its	)	
Energy Efficiency and Demand Response	)	
Programs.	)	

DUKE ENERGY OHIO'S MOTION FOR A PROTECTIVE ORDER

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves this honorable 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 a part of its Comments in the above-captioned proceedings. Specifically, the proprietary, trade secret, competitive business information that Duke Energy Ohio seeks to have protected is contained in the Attachment A to Duke Energy Ohio's Comments to the Staff's Review and Recommendation. The information contained in Attachment A includes Confidential discovery responses from Duke Energy Ohio's most recent distribution rate case, Case No. 17-32-EL AIR *et. al.*, (Distribution Rate Case) detailing Duke Energy Ohio's incentive compensation program documents that are considered to be confidential, proprietary trade secret information.

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, under seal, three unredacted copies of the confidential information.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



Rocco D'Ascenzo (0077651)

Deputy General Counsel

Elizabeth H. Watts (0031092) (Counsel of Record)

Associate General Counsel

139 E. Fourth Street

1303-Main

Cincinnati, Ohio 45202

(513) 287-4320 (telephone)

(513) 287-4385 (facsimile)

Elizabeth.watts@duke-energy.com

Rocco.d'ascenzo@duke-energy.com

MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its Motion for a Protective Order. 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 power to the public in the state of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of R. C. 4905.02 and 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, its comments to the Staff Review and Recommendations in regard to the Application for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to its Energy Efficiency and Demand Responses Programs filed by Duke Energy Ohio on March 31, 2017. These documents, being filed under seal as Attachment A contain information that is confidential, proprietary, trade secret, and/or competitive business information of Duke Energy Ohio. More specifically, the information for which protection is sought covers detailed structure of incentive compensation programs offered by Duke Energy Corporation to its employees, as eligible. These documents are highly confidential insofar as the programs are instrumental in allowing the Company to retain and attract highly qualified and talented employees.

O.A.C. 4901-1-24(D) provides that the Commission or its attorney examiner 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 purpose 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, included 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.

These confidential documents were provided in response to Staff’s eleventh set of Staff data requests in the Distribution Rate Case, and are being filed under seal as Attachment A in this proceeding. These documents contain proprietary, confidential, and competitively sensitive information. Such information includes data, such as the Company’s corporate incentive plans and performance awards available to qualifying employees, including intimate details on the nature, function, scope and operation of the Company’s incentive compensation plans. Publicly disclosing the compensation and benefits documents’ information which would provide competitors with tremendous insight into the Company’s compensation philosophies, policies

¹ R.C. 1336.61 (emphasis added).

and practices. Taken together, these documents represent the accumulation of decades of “best practices” in human capital management. Gaining access to this information would be extremely valuable to the Company’s competitors who might desire to plunder from Duke Energy Ohio’s talent pool. Moreover, it would impose a significant and material obstacle to the Company’s efforts to continue to recruit and retain a skilled labor force. Finally, to the extent that any of the compensation and benefit information could be used to identify the compensations and benefits paid to any individual employee, it would constitute an improper invasion of the employee’s reasonable expectation of privacy.

Indeed, the Company takes steps to ensure that this information is not disclosed to anyone within or affiliated with its organization who does not have a business need to know the material and it does not externally disclose such confidential information absent the existence of appropriate protective devices. Further, employee compensation plans have consistently been afforded confidential treatment by the Commission.²

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, or otherwise confidential information in a non-redacted form, under seal.³ Duke Energy Ohio is filing the testimony and related attachments in unredacted form, under seal, together with this Motion.

⁴ O.A.C. 4901-1-24.

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 trade secret under R. C. 4901-16 and 1333.61.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



Rocco D'Ascenzo (0077651)
Deputy General Counsel
Elizabeth H. Watts (0031092) (Counsel of Record)
Associate General Counsel
139 E. Fourth Street
1303-Main
Cincinnati, Ohio 45202
(513) 287-4320 (telephone)
(513) 287-4385 (facsimile)
Elizabeth.watts@duke-energy.com
Rocco.d'ascenzo@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 11th day of October, 2018, to the following:



Rocco D'Ascenzo

William Wright
Attorney General's Office
Public Utilities Commission of Ohio
30 East. Broad St., 16th Fl.
Columbus, Ohio 43215
William.wright@ohioattorneygeneral.gov

Attorney for Staff of the Public
Utilities Commission of Ohio

William J. Michael
Christopher Healey
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
William.michael@occ.ohio.gov
Christopher.healey@occ.ohio.gov

Attorneys for the Office of the Ohio
Consumers' Counsel