

BEFORE

THE PUBLIC UTILITY COMMISSION OF OHIO

In the Matter of the 2011 Long-Term)
Gas Forecast Report of) Case No.11-118-GA-FOR
Duke Energy Ohio and Related Matters)

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

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 confidential treatment afforded certain documents submitted to the Public Utilities Commission of Ohio (Commission) in connection with its 2011 Gas Long-Term Forecast Report (GLTFR). Said documents were afforded confidential treatment by Entry in this case dated September 19, 2011¹, and ordered that the initial eighteen-month period for which confidential protection will be afforded expires on March 19, 2013.² Duke Energy Ohio hereby moves to extend the protective order issued on September 19, 2011 (Protective Order) to continue the confidential treatment of specific information included in the following exhibits admitted into evidence:

1. Appendix II to GLTFR (Existing Transmission Systems); and
2. Appendix III to GLTFR (Ten-Year Resource Plan).

Duke Energy Ohio sets forth, in the attached Memorandum in Support, the reasons why protective treatment of the Confidential Information is necessary. Ohio law prohibits the release

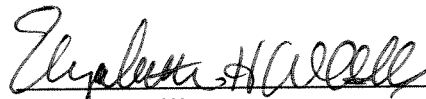
¹ *In the Matter of the 2011 Long-Term Gas Forecast Report of Duke Energy Ohio, Inc. and Related Matters*, Case No.11-118-GA-FOR, (September 19, 2011).

² *Id.*

of this Confidential Information and nondisclosure of the Confidential Information is not inconsistent with the purposes of Title 49 of the Revised Code. The Confidential Information is as sensitive and proprietary today as it was on the date of the attorney examiner's original ruling and it will continue to be extremely sensitive and confidential throughout its existence. Therefore, in the interest of administrative efficiency, and with the understanding that public disclosure of the Confidential Information will not, after a short time period, be harmless to the Company, its employees, or contractors, Duke Energy Ohio respectfully requests that the Public Utilities Commission of Ohio (Commission) extend the Protective Order for a period of ten years.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission extend the protection of the Confidential Information included in the Appendix II to GLTFR (Existing Transmission Systems) and Appendix III to GLTFR (Ten Year Resource Plan) constituting the Company's proposed and existing gas transmission systems. As demonstrated herein, this information constitutes proprietary "Critical Energy Infrastructure Information" (CEII). The information for which protection was granted by Entry on September 19, 2011, and for which the Company seeks an extension of that protection, constitutes trade secret information and, therefore, requires continued protection from disclosure.

R.C. 1333.61(D) provides, in pertinent part:

"Trade secret" means information, including . . . 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. [Emphasis added.]

Further, the Supreme Court of Ohio adopted six factors to be used in determining whether a trade secret claim meets the statutory definition:³

- (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 affected and the value to the holder in having the information as against competitors;

³ *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25, 1997-Ohio-75.

- (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.

The Confidential Information, for which the attorney examiner found warranted protection, included Duke Energy Ohio's existing transmission system and its ten-year resources plan that includes the Company's proposed gas transmission systems. This information which constitutes proprietary "Critical Energy Infrastructure Information" (CEII) is valuable and not readily ascertainable within or outside Duke Energy Ohio.


The information for which Duke Energy Ohio seeks continued protection has been regarded as CEII since September 2001, and the disclosure of this information would undeniably compromise Duke Energy Ohio's ability to safely maintain its system. The release of this CEII would place the gas transmission system in an unsafe and unreliable situation by creating security issues and inviting criminal or terrorist activity intended to threaten persons or property.

The CEII reflected in Appendices II and III of Duke Energy Ohio's GLTFR must be classified as trade secret information. Indeed, very few individuals within the Company have access to the pertinent Confidential Information contained within Duke Energy Ohio's existing transmission system and its ten-year resources plan that includes the Company's proposed and existing gas transmission systems. Third parties desiring to replicate the information would undoubtedly incur substantial expense in their efforts. Further, any contemplated access to such records must be strictly controlled by order of this Commission so as not to jeopardize the confidential and proprietary nature of the information. Such a result is consistent with the Federal Energy Regulatory Commission's concern over the release of CEII. .

The protection of trade secret information from public disclosure is consistent with the purposes of R.C. Title 49. In the event that the Commission or its Staff requires access to the information, it will continue to be available to them. Given the nature of the information, however, it is rather unlikely that either party would need to access the confidential portions of Duke Energy Ohio's existing transmission system and its proposed transmission system. The public, redacted version provides a comprehensive view of the issues discussed in his testimony. As such, granting continued protection of the Confidential Information will not impair the regulatory responsibilities incumbent upon the Commission or Staff.

In view of these circumstances, continued confidential treatment of the Confidential Information contained in Duke Energy Ohio's existing transmission system and its ten-year resources plan that includes the Company's proposed and existing gas transmission systems, and is required by Ohio law and the Commission's regulations. 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 to last ten years.

Respectfully submitted,
DUKE ENERGY OHIO, INC.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Extend Protective Order and Memorandum in Support was served on the following parties via ordinary mail delivery, postage prepaid, and/or electronic mail delivery on this 23rd day of January, 2013.



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