

In the Matter of the Review of Duke)
Energy Ohio, Inc.'s Alternative Energy) Case No. 15-1854-EL-RDR
Recovery Rider for the Period January 1,)
2016, through December 31, 2016.)

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves this honorable Public Utilities Commission of Ohio (Commission) for leave to file under seal certain information contained in the document titled “Management/Performance and Financial Audit of the Alternative Energy Recovery Rider of Duke Energy Ohio, Inc. Covering the Period January 1, 2016 through December 31, 2016” (Report). This Report was filed by the Staff of the Public Utilities Commission of Ohio (Staff) on May 2, 2017 under seal. Duke Energy Ohio has now reviewed the Report and sets forth in the attached Memorandum in Support its reasons why confidential treatment of certain information contained in this Report is necessary. For the reasons set forth in the Memorandum in Support, Duke Energy Ohio respectfully requests that the Commission grant this motion and provide confidential treatment as requested.

/s/ Elizabeth H. Watts

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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 January 13, 2016, an Entry was issued which directed the Staff to select Larkin & Associates, PLLC (Larkin) as the auditor in order to audit Duke Energy Ohio's Alternative Energy Recovery Rider (Rider AER-R or AER-R) application for the period of January 1, 2016 through December 31, 2016. It is the AER-R for the period of January 1, 2016 through December 31, 2016 that is the subject matter of the Report. This report contains confidential trade secret information. Specifically, the Report names Duke Energy Ohio's vendors, pinpoints the purchase price of RECs, and releases internal procedural documents.

This confidential trade secret information, if publicly disclosed, would give Duke Energy Ohio's competitors access to competitively sensitive, confidential information, which in turn could allow the named vendors and generators to make offers to sell RECS, etc. at higher prices than the competitors might offer in the absence of such information and to the detriment of Duke Energy Ohio and its customers.

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 seal.¹ This rule also establishes a procedure for presenting to the Commission that information which is confidential, and therefore should be protected.²

The Staff filed a redacted version of the Report on May 2, 2017. The Staff has also filed the requisite number of unredacted versions of the confidential material of the Report under seal. The redacted information contained in the Report 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

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

¹ O.A.C. 4901-1-24.

² *Id.*

³ R.C. 1333.61 (emphasis added).

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 ascertain the manner in which Duke Energy Ohio plans and manages its AER-R compliance efforts and the cost associated therewith. Disclosure of such competitively sensitive information would be detrimental to Duke Energy Ohio's ability to effectively negotiate, on behalf of its customers, for future supplies of renewable energy certificates, potentially increasing compliance costs for our 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 Report and its existing business plans regarding fuel purchases, purchased power, emission allowance information and contract information, 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. In addition, this information should be treated as confidential pursuant to R.C. 4901.16. 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

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

information contained in the document titled “Management/Performance and Financial Audit of the Alternative Energy Recovery Rider of Duke Energy Ohio, Inc. covering the period January 1, 2016 through December 31, 2016” by making a determination that the redacted information is confidential, proprietary, and a trade secret under R.C. 1333.61.

Respectfully submitted,

/s/ Elizabeth H. Watts
Amy B. Spiller (0047277)
Deputy General Counsel
Elizabeth H. Watts (0031092) (Counsel of Record)
Associate General Counsel
Duke Energy Business Services, LLC
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45202-0960
(614) 222-1331 (telephone)
(614) 222-1337 (facsimile)
Elizabeth.Watts@duke-energy.com (e-mail)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following party this 2nd day of May, 2017, by regular U.S. Mail, overnight delivery, or electronic delivery.

/s/ Elizabeth H. Watts
Elizabeth H. Watts

Michael DeWine
Attorney General
Steven L. Beeler
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
steven.beeler@puc.state.oh.us