

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for a Certificate of) Case No. 20-1411-GA-BTX
Environmental Compatibility and Public)
Need for the Construction of the Bethel-
Batavia Pipeline.

**MOTION OF DUKE ENERGY OHIO, INC.,
FOR 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 for confidential treatment of a certain document contemporaneously submitted to the Ohio Power Siting Board (Board) in connection with its Application in the above-referenced proceeding. Duke Energy Ohio hereby moves for a protective order (Protective Order) for confidential treatment of specific information included in the “Bethel-Batavia Pipeline Project Preferred Route Management Summary/Status Report December 30, 2020” (Report). This Report was filed by the Company on January 14, 2021, with certain portions under seal.

Specifically, the proprietary, trade-secret information the Company seeks to protect includes a summary of an in-progress phase 1 cultural resource survey which specifically includes the location of certain cultural resources that, if publicly available, could risk the protection of artifacts or potential culturally significant areas that may be present. The Report also contains specific excavation site locations as well as artifacts that were discovered in those locations. Lastly, the Report shows the specific excavation site locations via maps and charts. The charts provide numerical data related to the excavation sites. As demonstrated herein, this

information constitutes sensitive and proprietary information that should be treated as confidential information (Confidential Information).

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 of this Confidential Information and nondisclosure of the Confidential Information is not inconsistent with the purposes of Title 49 of the Revised Code.

Respectfully submitted,
DUKE ENERGY OHIO, INC.

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MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant protection of the Confidential Information included in the Report constituting the location of certain cultural resources that, if exposed, could risk the protection of artifacts or potential culturally significant areas that may be present. As demonstrated herein, this information constitutes proprietary information. The information for which the Company seeks protection constitutes trade secret information and, therefore, requires 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:¹

- (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;
- (5) The amount of effort or money expended in obtaining and developing the information; and

¹ *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25, 1997-Ohio-75.

- (6) The amount of time and expense it would take for others to acquire and duplicate the information.

The Confidential Information includes the location of certain cultural resources that, if exposed publicly, could risk the protection of artifacts or potential culturally significant areas that may be present. The Report also contains specific excavation site locations as well as artifacts that were discovered in those locations. Lastly, the Report shows the specific excavation site locations via maps and charts. The charts provide numerical data related to the excavation sites. This information which constitutes proprietary information is valuable and not readily ascertainable within or outside Duke Energy Ohio. Indeed, very few individuals within the Company have access to the pertinent Confidential Information contained within the Report. The Confidential Information is closely guarded by the Company, as it contains sensitive and potentially economically valuable information including location of archeological sites and types of potential artifacts that may be present, which if released publicly, could result in third parties attempting to access these areas for personal gain and compromising the ability to properly treat and preserve such findings. The Company has expended a significant amount of time and resources in developing the Confidential Information. Accordingly, the Confidential Information for which the Company seeks protective treatment is trade secret information.

The protection of trade secret information from public disclosure is consistent with the purposes of R.C. Title 49. In the event that the Board or its Staff requires access to the information, it will continue to be available to them. As such, granting protection of the Confidential Information will not impair the regulatory responsibilities incumbent upon the Board or Staff.

Because the information for which Duke Energy Ohio seeks protection is largely security related, it will not likely be appropriate for disclosure at any point in the future; thus, the

Company anticipates that, under the existing protective order renewal framework, it will be administratively burdensome for it to file continuances, and for the Commission to issue orders, every eighteen months to continue to protect the information at issue. The Company therefore respectfully requests that the Commission lengthen the period of protection for the Confidential Information to 5 years.

In view of these circumstances, confidential treatment of the Confidential Information contained in the Report that includes the location of certain cultural resources that, if exposed, could risk the protection of artifacts or potential culturally significant areas that may be present, is required by Ohio law and the Board's regulations. For the foregoing reasons, Duke Energy Ohio respectfully requests that the Board grant its Motion for a Protective Order pursuant to O.A.C. 4901-1-24(F).

Respectfully submitted,
DUKE ENERGY OHIO, INC.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Duke Energy Ohio, Inc., for a 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 14th day of January, 2021.

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