

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Consolidated Duke Energy Ohio, Inc., Rate)	Case Nos. 03-93-EL-ATA
Stabilization Plan Remand and Rider)	03-2079-EL-AAM
Adjustment Cases)	03-2081-EL-AAM
)	03-2080-EL-ATA
)	05-724-EL-UNC
)	05-725-EL-UNC
)	06-1068-EL-UNC
)	06-1069-EL-UNC
)	06-1085-EL-UNC

ENTRY ON REHEARING

The Commission finds:

- (1) On June 4, 2008, the Commission issued an entry concerning the redaction of trade secret information from numerous documents filed in these cases.
- (2) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal. Section 1.14, Revised Code, provides that, when the last day of a period within which an act may be done falls on a legal holiday, that act may be done on the next succeeding day that is not Sunday or a legal holiday. That same section also provides that, when a public office in which such an act is to be performed is closed to the public for the entire day that constitutes the last day for doing the act, such act may be performed on the next succeeding day that is not a Sunday or a legal holiday.
- (3) On July 4, 2008, the Commission's office was closed for the entire day for a legal holiday. On July 7, 2008, the office of the Ohio Consumers' Counsel (OCC); Industrial Energy Users - Ohio (IEU); and, jointly, Duke Energy Ohio, Inc.; Duke Energy Retail Sales, LLC; and Cinergy Corp. (collectively, Duke) filed applications for rehearing of the Commission's June 4, 2008, entry. On July 17, 2008, these same three parties also filed memoranda contra the applications for rehearing. In summary, OCC, IEU, and Duke submit that the entry incorrectly addressed certain trade secret issues and made other errors in the application of the Commission's prior order

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relating to the issue. Each party raises certain general issues and lists a number of specific claimed redaction errors. We will first address the general issues and then proceed to the lists of specific requested changes to the documents.

- (4) OCC raises four general assignments of error. In the first claimed error, OCC indicates that the Commission's proposed redactions cover information that has already been released to the public and that, consequently, should not be treated as trade secret material.

Neither Duke nor IEU responds to this assignment of error. Duke did, however, include in its memorandum contra a lengthy description of the reasons for its recommendation that the Commission "open a docket in which to explore alternative means to the processes employed in this case," with regard to redactions. Although this is not the appropriate docket in which to consider the merits of Duke's recommendation, the arguments made by Duke also respond to OCC's first assignment of error. Therefore, we will review that discussion in the context of this assignment of error.

Duke starts by asserting that Ohio's public records laws do not "mandate the general public disclosure of confidential information following an unauthorized, or even the merely inadvertent, disclosure of such information, particularly when the general public has not exhibited an actual awareness of the disclosed information." (Duke memorandum contra at 7.) Duke supports this conclusion by reference to a number of cases, none of which is decided by the Supreme Court of Ohio and, therefore, none of which is directly controlling with regard to the Commission's decisions.

State ex rel. Lundgren v. LaTourette, 85 Ohio App.3d 809 (Ohio Ct. App. 11th Dist. 1993), is a case in which the appellate court refused to order disclosure of confidential trial-preparation materials, where a prosecutor entered into a contract to write a book about a case she was actively prosecuting. The court found that the public use of the materials was closer to an "unauthorized leak than a voluntary disclosure by the governmental agency." *Lundgren* at 811. The court specifically noted that it did not appear that the requested materials had actually been used in writing the book. The court found that the exception for trial preparation materials had not been waived by disclosure. Although Duke cites this case for the proposition that "the exempt status of confidential information under the [Public Records Act] is not waived when the information is released to the

public without authorization from the holder of the information," the holding in the case is actually based on the fact that any disclosure of confidential information was expressly prohibited by the government office. We also note that the court specifically pointed out that the author apparently did not use any of the confidential materials in writing the book. Therefore, this is not a case in which confidential materials were actually disclosed but, rather, one in which they might have been used as part of the basis for a publication.

The next case cited by Duke is *Public Citizen Health Research Group v. Food and Drug Administration*, 953 F.Supp. 400 (D.C. 1996). Duke correctly points out that, in this federal case, certain confidential information that was inadvertently released was allowed to maintain its confidential status. However, the court distinguished the situation it was considering, where the government inadvertently disclosed the information, from other situations in which the party seeking to maintain the confidential status was also the one that had disclosed the information. Duke also correctly notes that, in this case, the confidentiality of the information had not actually been breached by its inclusion in the court records.

In *Florida House of Representatives v. U.S. Dept. of Commerce*, 961 F.2d 941 (11th Cir. 1992), the appellate court refused to find that confidentiality was waived where the disclosure in question was ordered by a court and was, therefore, involuntary.

Finally, Duke cites to *Gates Rubber Co. v. Bando Chemical Indus. Ltd.*, 9 F.3d 823 (10th Cir. 1993). In that case, as pointed out by Duke, the federal appellate court allowed the material to remain confidential on the grounds that there was "no evidence that competitor had access to or learned of the [trade secrets] during the period after the hearing and before the record was sealed."

Duke concludes with the statement that, in the present situation, "certain confidential information was inadvertently disclosed by the Duke Entities, just as was the [Freedom of Information Act] exempt information in *Florida House of Representatives*, *Public Citizen Health Research Group*, and *Gates Rubber Co.*" (Duke memorandum contra at 9.) The Commission disagrees with this conclusion as it applies to the present circumstance. As noted in our summary of the case holdings, the *Florida House of Representatives* decision was an involuntary disclosure, not an inadvertent one. The *Public Citizen*

Health Research Group decision was not based on a disclosure by the owner of the confidential information but, rather, by the government. The *Gates Rubber Co.* decision was one in which there was no actual public access to the confidential information during the time when it was not under seal. In the situation we are considering, the disclosure was not involuntary, was not by the government, and did allow for public access to the information in question. Therefore, the Commission agrees with OCC that information already released in the proceeding is not a trade secret. We will review each of OCC's specific claims in this regard in our review of specific redactions.

- (5) OCC's second issue relates to the categories of information to be protected. It points out that the order on remand determined the framework for such categories and contends that it could not be altered except through an application for rehearing. It then points out that the Commission's proposed redactions cover some financial information that was not within those categories.

In response, Duke asserts that the list of categories set forth in the Commission's order on remand was not intended to be exhaustive, as there is other information that should be regarded as a trade secret on its own merit.

While the Commission's delineation of categories was intended to be exhaustive, it was only exhaustive as it related to the side agreement issues. The Commission is also aware that, for example, certain types of financial information (such as projections and pricing methodologies) may generally and appropriately be treated as trade secrets. We do not find it unreasonable to allow such redactions, even though the information would not fall into one of the listed categories.

- (6) OCC next raises a small number of instances where documents appeared out of order. It asks that they be re-collated. Neither Duke nor IEU disagrees, although Duke contends that out-of-order pages are not unreasonable or unlawful. The Commission will alter the order of the pages as suggested by OCC and will renumber those pages appropriately.
- (7) Finally, OCC points out that the Commission must minimize the amount of information to be protected from public disclosure. It raises certain examples of information with regard to which Duke failed to meet its statutory burden to prove trade secret status, as well as other material that is now outdated.

Duke points out that Ohio law also requires the Commission to protect confidential information.

The Commission is aware of its competing obligations and will address these items individually, as they arise in the chart below.

- (8) IEU responds to OCC's application for rehearing only with regard to one specific page of the proposed redactions. The Commission will consider that concern in the chart below.
- (9) In its application for rehearing, IEU raises, first, the fact that the Commission did not redact customer names from certain locations in the documents. OCC responds with various arguments, including that certain customer names have already been released, that not all customer names are included within the Commission's categories of trade secrets, and that the amount of information held to be a trade secret should be minimized. The Commission will address each of the specific claims within the context of specific redactions.
- (10) IEU's second issue relates to names of employees. It notes that the Commission specifically found that employees' names are not trade secrets but did not allow those employees' names to be released if their release would identify a customer. While the Commission does not disagree with IEU's argument in theory, the specific instances it cites will be addressed below in discussions of specific redactions.
- (11) Duke asks the Commission to reconsider its finding that its employees' names are not protectable, where those employees did not appear as witnesses and are not attorneys representing Duke entities. Duke suggests that the Commission should redact their names on the ground that Duke's economic interests will be impaired if their employees believe they might be subject to public criticism for conduct in the best interests of Duke.

OCC responds on two grounds. First, it notes that this is a decision that was made in the order on remand and points out that Duke's argument is therefore a matter that should have been raised on rehearing of that order. In addition, OCC disagrees with the substance of Duke's position, pointing out that employees' responsibilities regarding these matters were far from tangential.

Duke is in error in this regard. The first factor the Commission must consider in making such an evaluation is the extent to which the information is known outside the business. That given individuals

are employed by Duke is a secret from no one. This is not trade secret information and will not be redacted.

- (12) Duke's next argument is that its economic forecasts on Commission pages 1111 through 1130 should be deemed a trade secret. It points out that these forecasts run through the year 2008 and reveal the existence of economic variables that are of continuing significance to various of the Duke entities, notwithstanding their being based on information that is not current. Further, Duke asserts that neither this type of information nor this specific information is generally known outside of Duke or within Duke other than as necessary. Finally, it indicates that great efforts were taken to protect information of this sort.

OCC points out that the factors to be relied upon in determining whether information is a trade secret include an analysis of whether it is outdated. These pages, according to OCC, contain projections that were filed in 2004 and are now of no further significance. In addition, OCC takes issue with Duke's statement that the documents are of significance to various Duke affiliates.

The Commission finds that this information remains sensitive to the Duke entities and should be maintained as confidential. While we reach this conclusion as to its current significance, we would underline the fact that financial projections will not remain confidential forever, regardless of the fact that outdated projections may give a competitor some idea of historical capacity, costs, and business operations.

- (13) Duke also asserts that four specific documents (pages 2318, 2372, 2437, and 2535) identify the names of "marquee customers" of an unregulated subsidiary of Duke Energy Corp. Customer identity, it suggests, is a classic example of confidential business information and should be redacted. If the information is to be released, Duke suggests that the Commission provide advance notice of that release to the customers in question.

OCC contends that this information has already been revealed to "the financial community."

The Commission notes that, according to an affidavit attached to Duke's motion for a protective order on this information, the credit rating analysts to whom Duke released this information had agreed

to keep it confidential. We find that, like other customers' names, the identification of these marquee customers is a trade secret.

- (14) Finally, Duke asks for rehearing of the Commission's conclusion that certain documents should be considered public records, even if they did not form the basis of a Commission opinion. Duke opines that this holding would mean that information offered in a case but not admitted, on the grounds that it is irrelevant, is nonetheless a public record for purposes of documenting the Commission's determination of irrelevancy.

OCC disagrees with Duke's reasoning, pointing out that the Commission is not entitled to disregard Ohio law regarding public records.

Duke has raised no new argument on rehearing of this issue that was not fully considered in our entry. This ground for rehearing is denied.

- (15) The Commission has prepared a grid, reflecting our responses to parties' specific claims of redaction errors. In the page/line column, we describe the location, if the item being addressed is not on a line. In the "party" column, the letter "O" means that OCC claims the error, the letter "I" means that IEU claims the error, and the letter "D" means that Duke claims the error. In the "result" column, the letter "G" means that the claim of error is granted and the letter "D" means that the claim of error is denied. In the "rationale" column, we refer to the following several bases for the Commission's ruling:
- (a) "Error." These are instances where the Commission simply made an inadvertent error. Where the error may not be clear, we will provide a brief explanation of its nature.
 - (b) "Identification." These are instances where a party has suggested that information be revealed, where it is currently proposed to be redacted. The Commission will deny these claimed errors where revealing the information would tend to identify a customer or a party to a side agreement.
 - (c) "Contract term." These are instances where a party has suggested that information be revealed on the basis that it is not a contract term, whether because it is just a term

of the rate stabilization plan or material deleted from a draft contract. These may also be instances where a party has suggested that information be redacted on the ground that it is a contract term. Where the information in question would disclose or tend to disclose trade secret contract terms that are otherwise being redacted, the Commission will maintain it as a trade secret.

- (d) "Customer 1." Duke, IEU, and OCC all claim that the Commission erred in proposing to release, in various identified places, a particular customer name and a particular rider name. These instances, however, were not unintentional and stem from Duke's prior release of this information, causing it not to qualify as a trade secret. In Duke's filing on January 23, 2008, Duke publicly disclosed the following:

OCC continues to complain that the agreement between [Duke Energy Retail Sales LLC (DERS)] and [customer 1] turns the RTC into a bypassable charge. The simple fact that DERS agreed to provide service to [customer 1] at a price based upon a discount measured by the RTC does not render the RTC bypassable. As the evidence shows, DE-Ohio continues to collect the full RTC from [customer 1]. Furthermore, Ohio law expressly authorizes payment of the RTC by one entity on behalf of another. . . . OCC and OMG contend that DERS' payment to [customer 1] calculated with reference to the RTC contravenes the non-discrimination section . . .

This section of the pleading in question includes citations to the OCC brief that was being discussed. OCC, in its brief, included citations to the customer side agreement, by Bates number. All of this information is already public. Thus, in that particular, referenced side agreement, identified by Bates number, neither the customer name nor the rider name can be considered trade secret information. We will therefore release the

customer name throughout that side agreement. In addition, on the specified page of that side agreement, we will release the reference to the reimbursement of the RTC.

- (e) "Customer 2." Duke and OCC assert that the Commission erred in proposing to release the name of another customer, and the name of its employee, in certain documents. These instances were intentional and stem from Duke's prior release of this information, making it no longer qualify as a trade secret. In its filing on January 23, 2008, Duke released a version of the transcript of a deposition, openly disclosing the name of the deponent and the deponent's employment information. The transcript, while redacting the name of the employer when discussing negotiations and the terms of the specific contracts, is littered with statements regarding the negotiation of the employer's side agreements. The deponent also discusses the fact that no other parties would have been present during their negotiations. A reader could come to no reasonable conclusion other than that the employer was the counterparty to the attached side agreements. The deponent's participation in side-agreement negotiations was also not redacted by Duke from the Duke reply brief. The Duke affiliates also failed to redact a section heading in a brief, identifying the succeeding single paragraph as being related to the employer's side agreements. As a result of the numerous references to this customer's involvement, we find that this information is no longer a trade secret. We will, therefore, not redact the customer's name anywhere in the transcript of that deposition or in the attached side agreements. In addition, since those side agreements show the parties' Bates-stamped page numbers, we will unredact the customer's name in those same documents, where the documents in question appear elsewhere in the record. In one other location, we will redact only Bates stamp numbers that would, without redaction, continue the chain of disclosures.
- (f) "Termination." Duke claims that termination dates of side agreements, or termination information, should be redacted. While the Commission's order on remand

allowed the redaction of such dates, this is another circumstance in which Duke has already publicly released this information, making it not qualify as a trade secret. In its filing on December 7, 2007, Duke redacted only portions of an e-mail, dated July 24, 2006, but did not redact other information, thereby revealing that the payments to parties with side agreements "will last through [redacted] at which point the ERRSP will terminate." The date on which the rate stabilization plan terminates is public knowledge. Therefore, Duke's own publicly filed document reveals termination date of the agreements.

- (g) "Volume." Duke also claims that the volume of generation covered by side agreements should be redacted. While the Commission's order on remand allowed redaction of the volume of generation covered by each side agreement, this is another circumstance in which Duke has already publicly released this information, making it not qualify as a trade secret. In its filing on December 7, 2007, Duke redacted only portions of an e-mail, dated July 24, 2006, thereby revealing that the parties with side agreements "are actually full-requirement customers of Duke Energy Ohio" Therefore, references in the side agreements to covering the full requirements of the customers are not trade secret and will not be redacted.
- (h) "Riders." Duke further claims that names of Riders should be redacted. While the Commission's order on remand allowed the redaction of the consideration in each such side agreement, which could certainly include the names of the riders, this is another circumstance in which Duke has already publicly released information, making it not qualify as a trade secret. In its filing on December 7, 2007, Duke redacted only portions of an e-mail, dated July 24, 2006, thereby revealing that "[g]enerally speaking, the contracts with each group specify that the customers belonging to that group will receive refunds of various RSP riders (e.g., Rider AAC, Rider FPP, Rider IMF, Rider SRT, etc.)." Therefore, we are not redacting discussions of the fact that the side agreements, in general, provided for the reimbursement

of riders. In the side agreements themselves, however, we continue to redact the specific terms for reimbursement, as the e-mail did not reveal that information.

- (i) "Payments." Duke claims that we erred in not redacting information relating to certain special payments called for by certain of the side agreements. Duke suggests that these are examples of contractual consideration that is trade secret information. Duke is incorrect. The consideration that we held to be trade secret is what is to be paid for the electric services that are the subject of those agreements. The payments that we have not redacted are entirely unrelated to electric service. As we noted in our last entry, we find that they are not trade secret information and, thus, should not be redacted.
- (j) "Inconsistency." In the thousands of pages at issue, there are numerous documents that appear multiple times and there are even more instances of contract language that appears multiple times. Those documents should be redacted consistently. Where a party has observed that the Commission's proposed redactions of such documents are inconsistent, the claimed error will be granted to make the items consistent. However, the Commission will not necessarily redact in the form requested by the party. Rather, the Commission will redact these areas appropriately, on the basis of the principles that guide all of the redactions being made in these proceedings.
- (k) "Public." As discussed previously, information that has already been publicly released will not be held under seal.
- (l) "Collation." OCC has noted several instances in which the Commission's Bates-stamped page numbers reflect incorrect collation of the pages. These will be corrected.
- (m) "Trade secret." As discussed previously, certain information should be held under seal due to the fact that it falls within the definition of a trade secret, even though it is not one of the Commission's categories relating to side agreements.

Page/ location	Party	Result	Rationale
40/3	O	G	Error. Not a term of a side agreement.
58/18	O	D	Contract term.
67/22	O	D	Identification.
67/24	O	D	Identification.
68/21	O	D	Identification.
69/5	O	D	Identification.
122/para. 2 & 7	I/D	G	Error.
124/para. 1	I/D	G	Error.
137	D	G/D	Regarding para. 2, error. Regarding para. 5, denied because the agreement only says party will comply with Commission order. Regarding para. 1, inconsistency in redacting 137 and 244. They will be made consistent.
143/para. 1	D	G	Inconsistency in redacting para. 1 and pages 279 and 348. They will be made consistent.
144/para. 5	D	G	Inconsistency in redacting para. 5 and page 279. They will be made consistent.
147	D	G	Inconsistency in redacting 147 and 526. They will be made consistent. Error regarding signature.
151	D	D	Although Duke stated that 151 and 536 were inconsistent, they were actually unrelated.
157/title in 1 st section	D	G	Inconsistency in redacting the titles. They will be made consistent.
180	D	G	Inconsistency in redacting 180 and 137. They will be made consistent.

Page/ location	Party	Result	Rationale
183/14-15	O	G	Error. Language after footnote will be unredacted.
186/16	O/D	G	Error. Customer name will be redacted.
189/footnote	D	D	Public. This footnote was fully disclosed, with no redactions, in Duke's January 23, 2008, filing.
201/1-2	O	D	Contract term.
211	D	G	Inconsistency in redacting 211 and 285. They will be made consistent.
215/chart	O	G	Error. The descriptor in the first row of the chart will be disclosed, but not the number and no individual customer names.
218-219/12, 1-4	O	G	Public. This information is disclosed in numerous other places in the documents.
228/footnote 102	O	G	Public.
229/6-8	O	G	Riders. This discussion does not relate to any individual customer.
236/12	D	D	This sentence merely states that certain parties supported the rehearing proposal.
244	D	G	Inconsistency in redacting 244 and 137. They will be made consistent.
250	D	G	Inconsistency in redacting 109 and 250. They will be made consistent.
251/para. 1	D	G	Inconsistency in redacting 110 and 251. They will be made consistent.
257/footnote & date	D	G	Inconsistency in redacting 257 and 116. They will be made consistent.

Page/ location	Party	Result	Rationale
258/para. 1	D	G	Inconsistency in redacting 117, 185, 258. They will be made consistent.
263/para. 5	D	G	Error. Customer name will be redacted.
266-272/throughout	O/D	D	Public/Customer 2 issue.
278/para. 1 & 2	D	G	Inconsistency in redacting 278 and 143. They will be made consistent.
279/para. 5	D	G	Inconsistency in redacting 279 and 144. They will be made consistent.
285/para. 7	D	G	Inconsistency in redacting 285 and 211. They will be made consistent.
290/footnote	D	G	Inconsistency in redacting 290 and 116. They will be made consistent.
300-307/throughout	O/D	D	Customer 2 issue/Public.
312/bubbles	O	D	Contract term.
326/para. G	D	G	Contract term.
328/sec. 6.2	D	G	Inconsistency in redacting 328 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
340/para. G	D	G	Contract term.
342/sec. 6.2	D	G	Inconsistency in redacting 342 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
354-369/throughout	I, O, D	D	Customer 1 issue/Public.
370-371/throughout	D	D	Entire page is already redacted.

Page/ location	Party	Result	Rationale
376/sec. 6.2	D	G	Inconsistency in redacting 376 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
460/sec. 6.2	D	G	Inconsistency in redacting 460 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
472/sec 6.2	D	G	Inconsistency in redacting 472 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
486/sec. 6.2	D	G	Inconsistency in redacting 486 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
489/top	O	G	Error. This information will be unredacted.
491/Ex. A, para. 2	D	G	Error. Customer name will be redacted.
503/sec. 6.2	D	G	Inconsistency in redacting 503 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
517/sec. 6.2	D	G	Inconsistency in redacting 517 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
530/sec. 6.2	D	G	Inconsistency in redacting 530 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
534	O	G	Collation.

Page/ location	Party	Result	Rationale
546/sec. 6.2	D	G	Inconsistency in redacting 546 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
559/top right	D	G	Error. Signature will be redacted.
563/sec. 6.2	D	G	Inconsistency in redacting 563 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
577/sec. 6.2	D	G	Inconsistency in redacting 577 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
591/sec. 6.2	D	G	Inconsistency in redacting 591 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
605/sec. 6.2	D	G	Inconsistency in redacting 605 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
618/sec. 6.2	D	G	Inconsistency in redacting 618 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
632/sec. 6.2	D	G	Inconsistency in redacting 632 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
641	O	G	Collation.

Page/ location	Party	Result	Rationale
644/top right	D	D	Public. This customer name was released by Duke in its January 23, 2008, filing.
646	O	G	Error. Account numbers will be redacted.
647/right column, at top	I	D	Public.
647/top	O	G	Public and not customer information. The name and telephone number will be unredacted.
648/top	D/I	G	Error. Customer name will be redacted.
649-662	O	G	Collation.
654	O	D	Trade secret.
685-686	O	D	Identification.
703-772, 799-824/throughout; 704-749, 751-762, 769-823/throughout	D O	D	Customer 2 issue/Public.
745	D	G	Error. Rate element will be redacted throughout the page.
746	D	G	Error. Rate element will be redacted throughout the page.
749/6-7	O	D	Contract terms.
768/23-24	O	D	Contract terms.
769/1, 3, 4, 5	O	D	Contract terms.
824	O	G	Collation.
884/14-15	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.

Page/ location	Party	Result	Rationale
886/1, 2, 12, 13	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
887/12	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
888/10, 12	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
890/20, 22, 23	O	G in part	Identification. However, we are making 890 consistent with 1834.
892	D	D	Named entities are not customers.
899/3	O	D	Identification.
901	D	D	Riders. General discussion only.
904/12-14	O	D	Identification.
919/9-18	O	D	Trade secret.
920/3-24	O	D	Trade secret.
921/1-20	O	D	Trade secret.
922/6	O	G	Error. The number will be unredacted.
924/18	O	D	Trade secret.
925/11-15	O	D	Trade secret.
926/2-3	O	D	Trade secret.
935/22, 24	D	G	Trade secret.
936/6-12	D	G in part	Trade secret as to amount and time period.

Page/ location	Party	Result	Rationale
943/2-3	O	D	Trade secret.
958/26-27	D	G	Inconsistency in redacting 958 and 109. They will be made consistent.
958-959/sec. 1	D	D	Not all of this information qualifies as trade secret.
973/sec. 7	D	D	Duke claimed an inconsistency between 211 and 973. These pages are unrelated. However, 974 and 211 will be made consistent.
990/para. 2, sec. 2	D	D	Regarding para. 2, no page number is given for "BEH ex. 13" so no changes will be made. Regarding lines 10 and 11 of section 2, there is no section 2 on this page.
991/bubbles	O	D	Contract terms.
997/para. 2, sec. 2	D	D/G	Regarding "para. 2, no page number is given for "BEH ex. 13" so no changes will be made. Regarding lines 10 and 11 of section 2, inconsistency in redacting pages 997 and 312. They will be made consistent.
1004/para. 1, 2	D	D	Regarding paragraph 1, Duke has not indicated what the claimed error is, so no change will be made. Regarding paragraph 2, inconsistency in redacting 143 and 1004. They will be made consistent.
1012/sec. 6.2	D	G	Inconsistency in redacting 1012 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.

Page/ location	Party	Result	Rationale
1024/footnote	D	G	Inconsistency in redacting 1024 and 116. They will be made consistent.
1033/para. 5	D	D	There is no paragraph 5 on page 1033.
1044/throughout page	O/D	D	Customer 2 issue/Public.
1050	O	D	Customer 2 issue/Public.
1051/throughout	D	D	Customer 2 issue/Public.
1051- 1058/throughout	O	D	Customer 2 issue/Public.
1059/throughout	D	D	Customer 2 issue/Public.
1059- 1066/throughout	O	D	Customer 2 issue/Public.
1091	O	D	Trade secret.
1092/throughout	D	G	Error. The customer name will be redacted throughout the page, as will the price of generation.
1093	D	D	Price of generation is already redacted.
1093	O	D	This CRES pricing information is trade secret.
1095-1106	O	D	Trade secret.
1097/top left of grid	I	G	The Commission had intended that the redaction would cover the BKWH figure, along with all other numbers in that column.
1107-1108	O	G/D	The group names will be unredacted, as they are not customer names. The remainder of the information is a trade secret.
1110	O	D	Trade secret.
1111-1130	D	G	Pages 1111 through 1130 will be redacted with regard to dollar amounts.
1172	D	G	Contract term.

Page/ location	Party	Result	Rationale
1199	D	D	Pages 1111-1130 have no direct connection with page 1199.
1206	D	D	Pages 1111-1130 have no direct connection with page 1206.
1212	D	D	Pages 1111-1130 have no direct connection with page 1212.
1217	D	D	Pages 1111-1130 have no direct connection with page 1217.
1244/footnote	D	D	Named entity is not a customer.
1249	D	D	This page lists parties to a public proceeding. This is not trade secret information.
1258	D	G	Identification. The nature of the businesses will be redacted, except where an association name that is public would already convey the same information.
1268-1273	D	D	This page lists parties to a public proceeding. This is not trade secret information.
1292	D	G	Identification. The nature of the businesses will be redacted, except where an association name that is public would already convey the same information.
1349/20, 24	D	D	Public. This date was released by Duke in its January 23, 2008, filing.
1350/2, 3, 6, 7	D	D	Public.
1431	O	G	Previously redacted information referenced a document that will now be public.
1532-1583	O	G	Public. As this information was previously filed publicly, it will be unredacted.

Page/ location	Party	Result	Rationale
1594-1599	O	G	Public. As this information was previously filed publicly, it will be unredacted.
1602-1605	O	G	Public. As this information was previously filed publicly, it will be unredacted.
1609/22-24	D	D	Public. The information being quoted on 1609 is not redacted in the actual agreement to which the discussion refers. The corresponding agreement page appears at 244.
1610/1-5, 24	D	D/G	Public. The information being quoted on 1610 is not redacted in the actual agreement to which the discussion refers. The corresponding agreement page appears at 244. Regarding line 24, the two quoted words will be redacted.
1613	O	G	Because Duke agrees with unredacting the names on pages 1614, this information will also be unredacted.
1614/1-19	O	G	Duke agrees that these names should be unredacted. However, as Duke noted, the name on line 23 will remain redacted.
1615/21	O	D	Identification.
1617-1619	O	D	Identification.
1621-1623	O	G	Public.
1624/4-5	O	G	Public.
1626/22	O	G	Public.
1627/10-16	D	D	This discussion merely relates to the Commission-approved standard service offer of Duke.

Page/ location	Party	Result	Rationale
1629/6-17	D	D	This discussion merely relates to the Commission-approved standard service offer of Duke.
1646/23	O	D	Identification.
1653/5	D	D	Public.
1658/21	D	G	<i>Error.</i> Customer name on line 21 will be redacted.
1661/bottom	D	D	Customer name on page 237, which this page 1661 is correcting, is not redacted.
1702/para. 1	D	D	The discussion relates to hypothetical CRES providers. It is not referring to any customer.
1722/4	O	D	Identification.
1724/para. 2	D	D	The identification of entities that signed a stipulation is public information.
1732/para.1, 2	D	D	Public. This discussion is based on public testimony, filed on February 28, 2007.
1733/para. 1	D	D	Public. This discussion is based on public testimony, filed on February 28, 2007.
1737/para. 2	D	D	Public. This discussion is based on public testimony, filed on February 28, 2007.
1749/footnote 117	O	D	Customer 2 issue/Public.
1751/1	O	D	Identification.
1762/para. 1	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.

Page/ location	Party	Result	Rationale
1766/para. 1	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
1772/quote	O	G	Inconsistency in redacting 1772 and 1194. The quote on page 1772 will be made consistent with the redaction of the document that is being quoted, found on page 1194.
1792/para. 2	D	D	Parties to stipulations are not a trade secret.
1800	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
1807/para. 1	D	D	Case names are not a trade secret.
1834-1835	O	G	Inconsistency in redacting 1834-1835 and 890. They will be made consistent.
1911	D	D	Public. This discussion is based on testimony publicly filed.
1920/footnote	D	D	Trade organization is not a customer.
1927/para. 1	D	D	There are no rate elements discussed in paragraph 1.
1932/footnote 134	O	G	Error. Party to case will be unredacted in footnote 134.
1975	O	G	Public.
1976/1	O	G	Public.
1982/footnote 133	O	D	Identification.
2078/11	O	D	Customer 1 issue/Public.
2078/footnote 73	I	D	Customer 1 issue/Public.

Page/ location	Party	Result	Rationale
2085/footnote 96	O	D	Identification.
2139-2829	O	D	Regarding compliance with rules, protective order granted based on 2004 motion. Regarding 2318, 2373, 2437, and 2535 (marquee customers' names), 5/6/04 affidavit confirms that credits rating analysts, etc., keep information confidential.
2835/6	O	G in part	OCC Ex. 12 from the original hearing in these proceedings is now included in these document as page 3358. The financial information in this document is a trade secret and has been redacted.
2871/"P. 103 line 24; P. 104 lines 7, 11, 23; P. 105 line 13)	D		Public.
2911-2948	D	D	No specificity. Denied.
2958/13-14	O	D	Contract terms.
2964/para. 1	D	D	No specificity. Denied.
3071-3113	O	D	The Commission finds that this information remains confidential.
3114-3116	O	D	The Commission finds that this information remains confidential.
3120	O	D	The Commission finds that this information remains confidential.

- (16) On July 17, 2008, Duke filed a motion for a protective order, covering certain information in the memorandum contra OCC's application for rehearing, which was also filed on that date. The unredacted version of the attachment to that memorandum contra is now paginated as Bates-stamp pages 3359-3362. The Commission has

reviewed the information that is proposed by Duke to be redacted and finds that it is already public. This same information was discussed other places in these documents, in unredacted form, with regard to which Duke did not seek rehearing (see, for example, pages 746 and 749).

- (17) On July 21, 2008, Duke filed a motion for continuation of prior protective orders in these proceedings. Duke notes, in its supporting memorandum, that the Commission's May 28, 2008, entry appears to address the extension of all such protective orders through January 1, 2011. However, Duke explains that, "in the event that any information in the possession of this Commission might be determined to fall outside the scope of . . . [that entry], the Duke Entities respectfully ask for the extension to January 1, 2011, of this Commission's protective orders" It was the Commission's intent, in our May 28, 2008, entry, to cover all protective orders previously granted in these proceedings, such that no motions for continuation of protective orders would need to be filed until just prior to that expiration date. Therefore, we find that this motion was unnecessary and moot.
- (18) We note, finally, that the confidentiality determinations made in these proceedings, both with regard to substance and length of confidential treatment, are applicable only in the specific factual situation before us. Such determinations should not be considered to have any precedential relevance to any other case.
- (19) The revised version of the Commission-redacted documents will be filed publicly in these dockets on September 5, 2008, unless an application for rehearing is filed under Section 4903.10, Revised Code. Parties to these proceedings may contact the attorney examiners in order to receive an electronic copy (on a computer disk) of the documents, with highlighting to indicate the Commission's revised redactions, which computer disk should be available no later than Monday, August 4, 2008. Parties will note that this disk includes every page on which any alteration of the redactions has been made. All new redactions appear in green. In addition, where a change was made on only one side of a two-sided document, an image of the unchanged side is also included. Recollated pages show the old page numbers struck through and corrected page numbers added.

- (20) The parties should understand that this copy of the information must be treated under the same confidentiality restrictions that apply to any previous copies or versions of the information that they have previously obtained, regardless of the medium in which, or the party from whom, such information was conveyed. Therefore, the disks, and the information thereon, are not to be copied or transmitted in any way to any other person or entity. As has been the case through the remand process with regard to those parties who have not entered into confidentiality agreements with Duke or its affiliates relating to this information, such information is also not to be shared by any counsel with his or her client or with any other person or entity.
- (21) If any party, after reviewing the Commission's revised redactions, chooses to file an application for rehearing, each asserted error should be specifically referenced and explained. For this purpose, the Commission-redacted documents have again been arranged on the disk in chronological order and all of the pages have been consecutively numbered at the top of the page. A table of contents, referencing Commission page numbers, has been prepared and will be included on the disk. Assignments of error should refer to such Commission page numbers and the specific text on such pages. Parties should not expect the Commission to locate additional similar instances of asserted errors. Assignments of error that do not use Commission page numbers or that are general in nature will be denied, as will assignments of error that relate to matters not determined in this entry on rehearing.

It is, therefore,

ORDERED, That the applications for rehearing by OCC, IEU, and Duke be granted in part and denied in part, as set forth herein. It is, further,

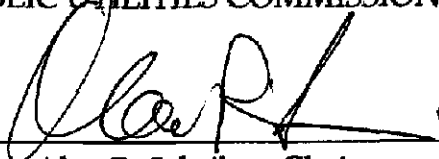
ORDERED, That Duke's July 17, 2008, motion for a protective order be denied. It is, further,

ORDERED, That Duke's July 21, 2008, motion for continuation of protective orders be denied as moot. It is, further,

ORDERED, That the parties comply with the requirements of this entry. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in these proceedings.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

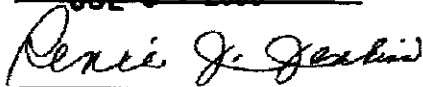


Cheryl L. Roberto

JWK /SEF:geb

Entered in the Journal

JUL 31 2008



Renee J. Jenkins
Secretary