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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its Fuel and) Case No. 07-974-EL-UNC
Purchased Power Component of its Market-)
Based Standard Service Office for the Period)
of July 1, 2007, through December 31, 2008.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its 2008) Case No. 07-975-EL-UNC
System Reliability Tracker of its Market-)
Based Standard Service Offer.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its Fuel and) Case No. 09-974-EL-FAC
Purchased Power Component of its Market-)
Based Standard Service Office for the Period)
of January 1, 2009 through December 31,)
2009.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its 2008) Case No. 09-975-EL-RDR
System Reliability Tracker of its Market-)
Based Standard Service Offer.)

**DUKE ENERGY OHIO, INC.'S MOTION FOR PROTECTIVE ORDER TO
PROTECT THE CONFIDENTIALITY OF INFORMATION CONTAINED IN
THE FILING OF THE MULTI-YEAR BOILER RECOVERY PLAN**

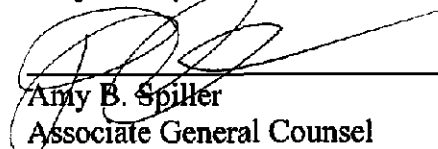
Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) hereby moves this Honorable Public Utilities Commission of Ohio (Commission) for leave to file under seal certain information contained in the document titled "Multi-year Boiler Recovery Plan" (Plan). This Plan was filed by Duke Energy Ohio in its Notice of Filing under seal. Duke Energy Ohio sets forth in the attached Memorandum in Support its reasons why confidential treatment of certain information contained in this Plan is necessary.

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The Plan contains estimated dates of outages and cost of repairs through 2019. Given the timing of the multi-year Plan and the sensitive nature of the information contained therein, Duke Energy Ohio asks that the confidential treatment be granted through 2019. To balance the interest of public review, Duke Energy Ohio proposes that as part of its annual Fuel and Purchased Power Rider (Rider PTC-FPP) and its System Reliability Tracker (Rider PTC-SRT) (or succeeding tariff) filing, the Company will release portions of the Plan that are completed from the prior audit period.

Respectfully submitted,



Amy B. Spiller

Associate General Counsel

Elizabeth Watts

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**DUKE ENERGY OHIO'S MEMORANDUM IN SUPPORT OF ITS MOTION
FOR PROTECTIVE ORDER TO PROTECT THE CONFIDENTIALITY OF
INFORMATION CONTAINED IN THE FILING OF THE MULTI-YEAR
BOILER RECOVERY PLAN**

Duke Energy Ohio respectfully requests that the Commission grant its Motion for Protective Order to Protect the Confidentiality of Information Contained in the Plan.

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 and competitive retail electric service to the public in the State of Ohio. Accordingly, Duke Energy Ohio is a public utility as defined by 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 filed its Plan in accord with the Stipulation and Recommendation approved in Case No. 07-974-EL-UNC *et al.*, which resolved all issues raised relative to establishing Duke Energy Ohio's Rider PTC-FPP and PTC SRT for the audit period of July 1, 2007, through December 31, 2008. Specifically, pursuant to paragraph 13 of the Stipulation, the Parties agreed that:

... Duke Energy Ohio shall "[f]ile a multi-year boiler recovery plan with the... Public Utilities Commission prior to the next audit." The prioritized plan shall address "[b]oiler related problems [that] are the major contributor to outages at Duke Energy Ohio's [generating] units." The

plan shall include projects and the coordination of boiler improvements,

“consistent with the projected outage schedules for generating units.”¹

Duke Energy Ohio’s Plan for its generating assets details the projects by generating unit through 2019. The Plan sets forth the priority of each project, outage duration and estimated cost per project.

The boiler recovery strategy contained in the Plan includes estimated cost of repairs. This confidential trade secret information, if publicly disclosed, would give Duke Energy Ohio’s competitors access to competitively sensitive, confidential information, including what the Company anticipates repairs to cost, which in turn could allow the competitors to make offers to sell parts or services, 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.

The Plan also includes sensitive outage information including times and duration of outages necessary to effectuate the Plan. The Plan forecasts planned outages by unit through 2019. This information would be of substantial value to any competitor or vendor to determine what Duke Energy Ohio’s energy or capacity needs will be. This information could be used to manipulate prices and offers for replacement power or capacity and give competitors an undue advantage that could ultimately harm Duke Energy Ohio’s 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 Plan that Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential,

¹ *In re Duke Energy Ohio FPP-SRT Audit*, Case Nos. 07-974-EL-UNC, et al., Final Report, Management/Performance Audit and Financial Audit, (*Recommendation 1, Chapter V, pg V-22*). (May 15, 2009) (“Final Audit Report”).

in a redacted and non-redacted form under seal.² This rule also establishes a procedure for presenting to the Commission that information which is confidential, and therefore should be protected.³ The redacted information contained in the Plan constitutes trade secret information in accordance with Ohio's Uniform Trade Secret Act and relevant jurisprudence.

The definition of Trade Secret contained in R.C. 1333.61(D) is 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.⁴

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 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

² OHIO ADMIN. CODE § 4901-1-24 (Anderson 2007)

³ *Id.*

⁴ Ohio Rev. Code Ann. § 133361(D) (Baldwin 2007).

expense it would take for others to acquire and duplicate the information.⁵

The confidential material described above, if disclosed, would enable competitors in the wholesale power market to ascertain the manner in which Duke Energy Ohio plans, manages and operates its generating facilities. If competitors are aware of the planned outages, they would then be able to determine the fuel purchasing strategy, the purchase power strategy, planned repairs, outage duration and the cost associated therewith, and thereby enabling them to ascertain Duke Energy Ohio's positions (long and short) with respect to electric generation capabilities. Further, the competitively sensitive information will provide power marketing competitors with knowledge that will allow them to potentially manipulate the marketplace so as to unnecessarily cause consumers to pay more for electricity than they otherwise would.

If this information becomes public, Duke Energy Ohio will be placed at a competitive disadvantage, in among other things, reducing its ability to negotiate contracts for fuel, replacement power and parts and other services. With the information contained in the Plan, a competitor could take actions that, in the absence of this information, it would not otherwise take. Such actions might include adjusting its prices, either to win contracts on which Duke Energy Ohio may also be bidding – business the competitors otherwise would not be in a position to win, or to set its prices artificially high to take advantage of an overall short market, the latter action obviously forcing consumers to pay higher prices for power.

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

⁵ *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 732 N.E.2d 373 (2000).

Ohio except to those employees with a legitimate business need to know and act upon the information.

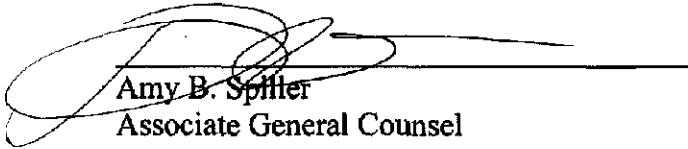
The public interest will be served by granting this Motion. By protecting the confidentiality of the Plan and its existing business plans regarding boiler recovery, planned outages, and estimated repair costs for the next several years, the Commission will prevent undue harm to Duke Energy Ohio and its ratepayers, as well as ensuring a sound competitive marketplace.

Duke Energy Ohio considers the Plan'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 versions of the Plan do not include the confidential material.

Since the current Plan contains estimated dates of outages and cost of repairs through 2019, Duke Energy Ohio asks that the confidential treatment be granted through 2019. The Company proposes that as part of its annual Rider PTC-FPP filing, the Company will release completed portions of the Plan from the prior audit period.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to Ohio Admin. Code Section 4901-1-24(D), grant its Motion for Protective Order to Protect the Confidentiality of Information Contained in the document titled Multi-Year Boiler Recovery Plan by making a determination that the Confidential Material is confidential, proprietary and a trade secret under R. C. 4901.16 and 1333.61.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy B. Spiller", is written over a horizontal line.

Amy B. Spiller

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties this 27th day of January 2010, by overnight delivery.


Rocco O. D'Ascenzo

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