

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its Fuel and)
Economy Purchased Power Component of its)
Market-Based Standard Service Offer for) Case No. 09-974-EL-FAC
2009.)
)

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its System)
Reliability Tracker of its Market-Based) Case No. 09-975-EL-RDR
Standard Service Offer for 2009.)
)

ENTRY

The attorney examiner finds:

- (1) By order issued October 24, 2007, in *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify Its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-EL-ATA, et al. (03-93), the Commission ordered Duke Energy Ohio, Inc. (Duke) to establish both a fuel and economy purchased power component (FPP) and a system reliability tracker component (SRT) of its market-based standard service offer. The FPP consists of fuel and purchased power expenses, a reconciliation adjustment, a system loss adjustment, and emission allowances. The SRT permits Duke to apply annually to the Commission to purchase power for peak and reserve capacity requirements on a dollar-for-dollar basis. Both riders FPP and SRT are subject to audit by the Commission.
- (2) By opinion and order issued December 17, 2008, in *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, et al., the Commission approved a stipulation submitted by the parties, as well as an annual audit process which would require Duke to file quarterly reports and to make a filing in the first quarter of each year regarding the audits for riders price-to-compare (PTC)-FPP and system resource adequacy (SRA)-SRT, formerly known as riders FPP and SRT.

- (3) On March 2, 2010, Duke filed its application for approval of the PTC-FPP and the SRA-SRT components of its market-based standard service offer.
- (4) On March 2, 2010, Duke filed a motion for a protective order regarding three attachments to its application. Specifically, Duke requests that the Commission declare the following documents confidential: Attachment SP-1 to the testimony of Salil Padhan; Attachment TJT-1 to the testimony of Timothy J. Thiemann; and Attachment WDW-2 to the testimony of William Don Wathen Jr. (collectively, attachments).
- (5) In support of its March 2, 2010, motion for a protective order, Duke explains that the attachments contain confidential information, including data describing Duke's capacity positions, coal inventory levels, and accounting adjustments at its Zimmer Generating Station (Zimmer). Additionally, Duke submits that the attachments contain estimates of power and capacity costs, allocations and reconciliations by retail rate group, Duke's capacity and generation portfolio position and resource plan which depicts the type and cost of various supply-side power purchase options, and Duke's coal inventory at Zimmer. If publicly disclosed, Duke argues that this information could give Duke's competitors access to competitively sensitive, confidential information, which could allow competitors to make offers to sell coal, capacity, and wholesale power at higher prices than might be offered in the absence of such information; thus, giving Duke a competitive disadvantage.
- (6) On November 18, 2009, the Commission issued RFP No. U09-FPP-1 in order to obtain qualified independent auditing services for the purposes described in the RFP. Potential bidders were directed to submit proposals to the Commission Staff by December 16, 2009. On January 7, 2010, the Commission selected Schumaker & Company (Schumaker) to perform the audit and directed that Schumaker file its audit report with the Commission by May 14, 2010.
- (7) On May 14, 2010, both a redacted and an unredacted version of Schumaker's Management/Performance Audit and Financial Audit of Duke's PTC-FPP and SRA-SRT for the period of January 1, 2009 to December 31, 2009, (audit) was filed in these dockets.

- (8) On May 17, 2010, Duke filed a motion for a protective order regarding certain information contained in the audit. Specifically, Duke argues that the audit contains confidential trade secret information, including Duke's fuel procurement strategy, emission allowance strategy, coal contract information, purchased power information, generation information, and general business strategy. Duke asserts that access to this information may lead its competitors to increase coal prices.
- (9) Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), permits the issuance of an order protecting the confidentiality of information contained in a document filed with the Commission's docketing division, to the extent that state or federal law prohibits release of the information, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.
- (10) The attorney examiner has examined the information covered by the motions for protective order filed by Duke, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in the attachments and the audit constitutes trade secret information. Release of these documents is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that the attachments and the audit have been reasonably redacted to remove the confidential information contained therein, and have been docketed as such. Therefore, the attorney examiner finds that Duke's March 2, 2010, and May 17, 2010, motions for protective order are reasonable and should be granted with regard to the confidential information contained in the attachments.
- (11) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until December 14, 2011. Until that date, the

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

docketing division should maintain, under seal, the information filed confidentially.

- (12) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. Therefore, if Duke wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the docketing division may release this information without prior notice to the Duke.
- (13) In accordance with the process adopted by the Commission in 03-93, the examiner finds that a hearing should be schedule in these cases on June 29, 2010, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, hearing room 11-B, Columbus, Ohio 43215.

It is, therefore,

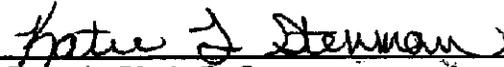
ORDERED, That the motions for protective order filed by Duke on March 2, 2010, and May 17, 2010, be granted in accordance with Finding (10). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted attachment 1 to the plan filed under seal in this docket on March 2, 2010, and the unredacted audit filed May 14, 2010, for a period of 18 months, ending on December 14, 2011. It is, further,

ORDERED, That a hearing in these cases should be held as set forth in finding (13). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

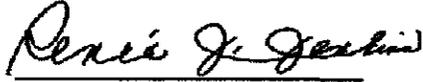


By: Katie L. Stenman
Attorney Examiner


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JUN 14 2010



Renee J. Jenkins
Secretary