

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the 2010 Electric Long-  
Term Forecast Report of Duke Energy  
Ohio, Inc.

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Case No. 10-503-EL-FOR

ENTRY

The attorney examiner finds:

- (1) On March 25, 2010, the Commission initiated this case, involving the electric long-term forecast report (LTFR) of Duke Energy Ohio, Inc. (Duke).
- (2) On June 15, 2010, as amended October 7, 2010, Duke filed its 2010 electric LTFR in this docket.
- (3) By entry issued August 12, 2010, the attorney examiner, *inter alia*, set the following procedural schedule in this case:
  - (a) Duke shall file its testimony by October 22, 2010.
  - (b) Staff and intervenors shall file testimony by October 29, 2010.
  - (c) The evidentiary hearing will commence on November 8, 2010.
- (4) On October 7, 2010, Duke filed a motion for a continuance of the procedural schedule in this case. In support of its motion, Duke asserts that it is expecting to file its next standard service offer (SSO) with the Commission prior to the end of 2010. Duke states that its SSO filing will significantly impact the consideration of the instant case; therefore, due the interaction of the SSO application and this filing, Duke requests a delay in the procedural schedule until early 2011.
- (5) On October 15, 2010, the Natural Resources Defense Council, the Ohio Consumers' Counsel, the Environmental Law and Policy Center, and the Sierra Club (collectively, joint movants) filed a joint memorandum contra Duke's motion to continue the procedural schedule in this case. In their response, joint movants agree that a continuance of the procedural schedule should be granted due to

the need for time to consider Duke's amended filing; however, joint movants suggest that such a continuance should be limited to a three-month extension. On October 15, 2010, the Ohio Environmental Council filed a memorandum contra Duke's request for a continuance of the procedural schedule, and agreed with the joint movants that a limited continuance for approximately three months is appropriate.

- (6) In considering Duke's request for a continuance of the procedural schedule, the attorney examiner is mindful that Duke filed its amended LTFR on October 7, 2010. Therefore, the parties need time to examine the amended filing and conduct additional discovery. Accordingly, Duke's motion for a continuance of the procedural schedule should be granted and the parties should adhere to the following procedural schedule:
  - (a) Duke shall file its testimony by January 25, 2011.
  - (b) Staff and intervenors shall file testimony by February 1, 2011.
  - (c) The evidentiary hearing will commence on February 8, 2011, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11<sup>th</sup> floor, Hearing Room 11-A, Columbus, Ohio 43215.
- (7) On October 7, 2010, as revised on October 21, 2010, Duke filed an amended motion for a protective order regarding confidential versions of its LTFR, as filed June 15, 2010, and amended October 7, 2010. In support of its motion, Duke states that the LTFR contains information regarding plant retirements, contracts with third parties, and competitively sensitive materials. Duke avers that, if disclosed, information regarding plant retirements may affect the market for the sale of generation and is sensitive with regard to Duke's employees. Duke states that, if disclosed, information regarding contracts with third parties could disadvantage Duke in its dealings with its contractual counterparts. Duke also states that disclosure of certain competitively sensitive material could jeopardize Duke's business and strategic relationships in the generation markets. Duke confirms that it has redacted the minimum amount of information from its LTFR and amended LTFR and has already filed redacted copies with the Commission.

- (8) 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.
- (9) The attorney examiner has examined the information covered by the motion 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,<sup>1</sup> the attorney examiner finds that certain information contained in the LTFR and amended LTFR constitutes trade secret information. Release of this information 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 LTFR and amended LTFR 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 October 7, 2010, motion for a protective order is reasonable and should be granted with regard to the confidential information contained in the LTFR and amended LTFR.
- (10) 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 April 21, 2012. Until that date, the docketing division should maintain, under seal, the information filed confidentially.
- (11) 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

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

to extend confidential treatment is filed, the docketing division may release this information without prior notice to the Duke.

- (12) On October 15, 2010, joint movants also filed a motion for a prehearing conference on discovery. In their motion, joint movants assert that Duke is not being responsive to various discovery requests in compliance with Rules 4901-1-19 and 4901-1-20, O.A.C. Therefore, movants request a prehearing conference for the purpose of resolving outstanding discovery difficulties.
- (13) In considering the joint movants' request for a discovery conference, the attorney examiner is mindful that Rules 4901-1-19 and 4901-1-20, O.A.C., provide a 20-day time period for responses to discovery requests. Should Duke fail to comply with the time period prescribed by the Commission's rules, parties may file a motion to compel in accordance with Rule 4901-1-23, O.A.C. However, the attorney examiner notes that Rule 4901-1-23, O.A.C., provides that, "[n]o motion to compel discovery shall be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought." Therefore, if the parties have exhausted all means to resolve their discovery differences and they are still unable to negotiate their discovery difficulties, a motion to compel should be filed. Accordingly, the joint movants' motion for a discovery conference is denied.

It is, therefore,

ORDERED, That Duke's motion for a continuance of the procedural schedule be granted. It is, further,

ORDERED, That the procedural schedule set forth in Finding (6) be observed. It is, further,

ORDERED, That the motion for a protective order filed by Duke on October 7, 2010, as revised on October 21, 2010, be granted in accordance with Finding (9). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted LTFR filed under seal in this docket on October 7, 2010, for a period of 18 months, ending on April 21, 2012. It is, further,

ORDERED, That joint movants' motion for a discovery conference be denied. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Katie L. Stenman

By: Katie L. Stenman  
Attorney Examiner

/dah <sup>PSD</sup>

Entered in the Journal

OCT 21 2010

Renee J. Jenkins

Renee J. Jenkins  
Secretary