

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

The Commission finds:

- (1) On various dates during the proceedings in the above-captioned cases, the parties have filed numerous documents along with motions for protective orders. In part, some of the documents or portions thereof, have been determined to constitute trade secrets, and have been granted protective status under a protective order. All such documents have been stamped with a Commission Bates number (page) for reference purposes.
- (2) On November 12, 2010, Duke Energy Ohio, Inc. (Duke) filed a motion to extend the protective order regarding documents filed June 22, 2009, and August 17, 2009.
- (3) By entry of November 18, 2010, Duke was directed to identify any page currently subject to the protective order in the above-captioned cases that it believed should remain subject to the protective order. Duke was also directed to explain for any page which contains a redaction, other than a customer account number, why that redacted information should continue to be treated as confidential under the Commission's protective order.
- (4) On November 30, 2010, Duke filed a list of pages that it requested be maintained under the Commission's protective order. On December 7, the Office of the Ohio Consumers' counsel (OCC) filed a memorandum contra Duke's motion to extend the protective order.

- (5) On December 29, 2010, Duke filed an amended list of pages that it requested be maintained under the Commission's protective order. On January 6, 2011, OCC filed additional comments on Duke's December 29, 2010 filing.
- (6) By attorney examiner entry of January 31, 2011, the motion of Duke for an extension of the protective order in these cases was granted, in part, and denied, in part. Pursuant to the entry, Duke's motion was granted with respect to pages 100, 135, 162, 317, 318, 319, 320, 321, 336, 352, 353, 369, 370, 371, 386, 400, 413, 426, 440, 454, 467, 480, 496, 497, 512, 525, 541, 558, 572, 586, 600, 613, 627, 643, 645, 646, 648, 796, 797, 1022, 1230, 1594, 1595, 1596, 1597, 1598, and 1599, which identified customer account numbers, and denied with respect to pages 641, 642, 773-775, 780, 786, 788-790, 793, 794, 1091, 1093, 1107, 1108, 2318, 2373, 2437, 2535, 2864, 2866, 2867, 2909, 2983, 3116, 3120, 3125, 3126, 3130, 3131, 3141, 3143, 3151, 3153, 3163, 3164-3167, 3169-3189, 3193, 3194, 3220, 3269, 3270, 3071, 3274, 3275, 3276, 3277, 3278, 3288, 3289, 3293, and 3306.
- (7) Rule 4901-1-15, Ohio Administrative Code (O.A.C.), provides that any party who is adversely affected thereby may take an immediate interlocutory appeal to the Commission from any ruling that denies a motion for a protective order.
- (8) Rule 4901-1-15(E), O.A.C., provides that upon consideration of an interlocutory appeal, the Commission may affirm, reverse, modify the ruling or dismiss the appeal.
- (9) On February 7, 2011, Duke filed a notice of interlocutory appeal of the January 31, 2011 entry. Duke claims that the information continues to possess independent economic value, actual or potential, from 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. Duke refers the Commission to its positions taken in its motions to continue the protective order set forth in pleadings it filed in this docket on November 12, 2010, November 30, 2010, and December 29, 2010. Duke further claims that, even though the information is dated, as recognized by the attorney

examiner, it is not just the raw numbers found within these documents that warrant protection. Duke maintains that it is what these numbers disclose about Duke's thought processes, models, and business-decision making that must be protected. According to Duke, the numbers reveal the methods by which Duke arrived at those numbers and the effects of the relationships between key numbers. For example, Duke points to one page and argues that the revelation of Duke Retail's analysis of the relationship between customer load efficiencies, the cost to serve those customers and the resultant range in prices found on that page, will continue to provide Duke's competitors with greater ability to predict the prices at which Duke Retail is currently willing to sell to its customers. Duke also asserts that revealing its historical capacity positions will permit its competitors to predict Duke's current capacity positions with greater precision. In addition, Duke contends that the manner in which it responded to certain capacity positions in the past is highly revelatory of the manner in which Duke might be expected to respond to similar capacity positions in the future.

- (10) We find insufficient cause to continue protective treatment of pages 641, 642, 773-775, 780, 786, 788-790, 793, 794, 1091, 1093, 1107, 1108, 2318, 2373, 2437, 2535, 2864, 2866, 2867, 2909, 2983, 3116, 3120, 3125, 3126, 3130, 3131, 3141, 3143, 3151, 3153, 3163, 3164-3167, 3169-3189, 3193, 3194, 3220, 3269, 3270, 3071, 3274, 3275, 3276, 3277, 3278, 3288, 3289, 3293, and 3306. Given that the economic, social, and business conditions are different now than at the time relevant to the numbers on the pages subject to the protective order, Duke has failed to provide sufficient rationale for how any competitor, knowing the information on these pages, some of which dates back to 2002, could more accurately predict Duke's actions in 2011 or in the future. Duke has failed to demonstrate that the models that were used to formulate the numbers on these pages are the same or would be the same or similar to models Duke currently uses or would use in the future. Duke has also failed to show that the business decisions made at the time relevant to the subject numbers or the persons responsible for making those decisions are the same now or would be the same in the future, or that the individuals responsible

for decisions relevant to these numbers would consider the same basis for making decisions in the future. In addition, Duke has failed to demonstrate that the conditions at the time this information was developed, the relevant prices, or the capacity positions taken by Duke are the same now or would be in the future, or that the conditions would be the same in the future. Further, Duke has failed to explain how any competitor with knowledge of this information could predict with greater accuracy Duke's fuel purchasing decisions or patterns, which suppliers it would select, what prices would be negotiated, or what contractual agreements Duke could consider entering into now or in the future. Having failed to make such showings or give such explanations, Duke's application for interlocutory appeal is denied. Therefore, pages 641, 642, 773-775, 780, 786, 788-790, 793, 794, 1091, 1093, 1107, 1108, 2318, 2373, 2437, 2535, 2864, 2866, 2867, 2909, 2983, 3116, 3120, 3125, 3126, 3130, 3131, 3141, 3143, 3151, 3153, 3163, 3164-3167, 3169-3189, 3193, 3194, 3220, 3269, 3270, 3071, 3274, 3275, 3276, 3277, 3278, 3288, 3289, 3293, and 3306 should no longer be subject to the Commission's protective order in these cases. Accordingly, on March 28, 2011, the Docketing Division should release to the public pages 641, 642, 773-775, 780, 786, 788-790, 793, 794, 1091, 1093, 1107, 1108, 2318, 2373, 2437, 2535, 2864, 2866, 2867, 2909, 2983, 3116, 3120, 3125, 3126, 3130, 3131, 3141, 3143, 3151, 3153, 3163, 3164-3167, 3169-3189, 3193, 3194, 3220, 3269, 3270, 3071, 3274, 3275, 3276, 3277, 3278, 3288, 3289, 3293, and 3306.

It is, therefore,

ORDERED, That Duke's application for interlocutory appeal is denied as set forth herein. It is, further,

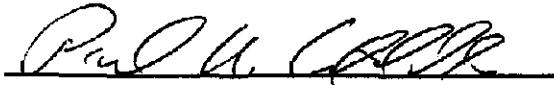
ORDERED, That, on March 28, 2011, the Docketing Division release to the public pages 641, 642, 773-775, 780, 786, 788-790, 793, 794, 1091, 1093, 1107, 1108, 2318, 2373, 2437, 2535, 2864, 2866, 2867, 2909, 2983, 3116, 3120, 3125, 3126, 3130, 3131, 3141, 3143, 3151, 3153, 3163, 3164-3167, 3169-3189, 3193, 3194, 3220, 3269, 3270, 3071, 3274, 3275, 3276, 3277, 3278, 3288, 3289, 3293, and 3306. It is, further,

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


THE PUBLIC UTILITIES COMMISSION OF OHIO



Steven D. Lesser, Chairman



Paul A. Centolella



Valerie A. Lemmie

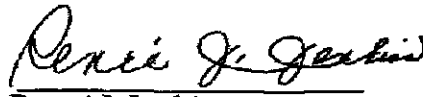


Cheryl L. Roberto

SEF/sc

Entered in the Journal

FEB 23 2011



Renee J. Jenkins
Secretary