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BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Duke Energy Ohio, Inc., to Adjust )  
Rider DR-IM and Rider AU for )  
2010 SmartGrid Costs and Mid- )  
Deployment Review. )

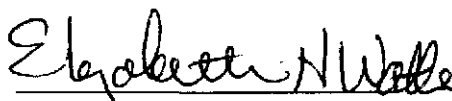
Case No. 10-2326-GE-RDR

MOTION OF DUKE ENERGY OHIO FOR PROTECTIVE ORDER

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Now comes Duke Energy Ohio, Inc., and submits this motion for a protective order to protect the confidentiality of a very limited amount of information contained in its Application to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review. Reasons for this motion are set forth more fully in the attached Memorandum in Support.

Respectfully submitted,  
DUKE ENERGY OHIO, INC.



Amy B. Spiller (0047277)  
Deputy General Counsel  
Elizabeth H. Watts (0031092) (Counsel of Record)  
Associate General Counsel  
155 East Broad Street, 21st Floor  
Columbus, Ohio 43215  
Phone: 614-222-1330  
Fax: 614-222-1337  
[Elizabeth.Watts@duke-energy.com](mailto:Elizabeth.Watts@duke-energy.com)

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## **MEMORANDUM IN SUPPORT**

Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) is submitting herein its annually filed Application to adjust Rider DR-IM and Rider AU for 2010 SmartGrid Cost Recovery and for its Mid-Deployment Review. The filing consists of the Application and the direct testimony of six Duke Energy Ohio witnesses. Attached to the testimony of Duke Energy Ohio witness Mark D. Wyatt is an updated version of the Company's analysis of the costs and benefits associated with deployment of SmartGrid. It is portions of this document that the Company requests that the Commission protect and keep confidential.

Duke Energy Ohio submitted its first request for approval to deploy SmartGrid in its service territory as part of a gas rate case, Case No. 07-589-GA-AIR. In that case, the Company provided the testimony of Christopher D. Kiergan regarding the details of the Company's cost/benefit model. The Company sought, and was granted, a protective order for Mr. Kiergan's testimony and for the model itself. Subsequently, in its Electric Security Plan (ESP) proceeding, Case No. 08-920-EL-SSO, *et al.*, the Company again filed Mr. Kiergan's testimony and attachments under seal. However, in the ESP case, the testimony of Mr. Kiergan and the cost/benefit model were later provided publicly, due to inadvertent release of the information outside of Ohio.

In this case, the Company has revised its cost/benefit model and is including it as an attachment to the testimony of Mark D. Wyatt. The information contained within the document is highly sensitive in that it provides per-unit prices for many items that the Company uses in deployment of its SmartGrid. These prices are derived from current contract information and are "up to the minute" data. Duke Energy Ohio actively solicits bids for these products and services

and they are provided by a robustly competitive market. In order to ensure that customers receive the best value for the product for which they ultimately pay, Duke Energy Ohio seeks to drive a hard bargain on their behalf. Releasing the information regarding current prices for products and services such as these would have a damaging effect on the Company's ability to continue to negotiate for the best price. Thus, the Company has redacted only the information that could be used by competitors in the marketplace to determine per-unit prices. Names of vendors and the existence of particular contracts with particular vendors remain public. Further, it is noteworthy that the contract between the Company and the provider of these products and services requires Duke Energy Ohio to keep the prices confidential.

The 2007 data, previously provided under seal, is now stale and is being provided in the open record. While it is conceivable that this information could also provide some marginal competitive advantage, the Company recognizes this data is now four years old and is no longer acutely relevant in today's market.

O.A.C. 4901-1-24(D) provides that the Commission or its Attorney Examiners may issue a protective order to assure the confidentiality of information contained in filed documents, to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The Commission, therefore, generally refers to the requirements of R.C. 1333.61 for a determination of whether specific information should be released or treated confidentially. Subsection (D) of that section defines "trade secret" 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.<sup>1</sup>

Thus, business information or plans and financial information are trade secrets if they derive independent economic value from not being generally known to or ascertainable by others who can obtain their own value from use of the information and they are the subject of reasonable efforts to maintain their secrecy.

The information provided under seal in this case derives economic value from not being generally know to or readily ascertainable and certainly others can obtain economic value from its disclosure. The vendors competing to do business with Duke Energy Ohio clamor to submit competitive bids or otherwise enter into favorable contracts. If given access to the terms contained in existing Company contracts, the vendors would thereby gain a competitive advantage and the Company would not be in a position to negotiate as effectively on behalf of its customers. The Company does not disclose, and has maintained as secret, the terms of its existing contracts with its vendors. Even internally, the Company does not disclose this information to persons who do not have a legitimate, business need for the data. This information meets the definition of trade secret as set forth in the statute.

The public interest is served by granting this motion. Protecting the confidentiality of the information will prevent undue harm to Duke Energy Ohio and its customers, as well as ensuring

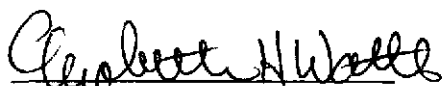
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<sup>1</sup> R.C. 1333.61(emphasis added).

the ability of the Company to negotiate the most reasonable prices possible. Moreover, the information redacted is minimal.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(D), grant its Motion for Protective Order by making a determination that the redacted information is confidential, proprietary, and a trade secret under R. C. 4901.16 and 1333.61.

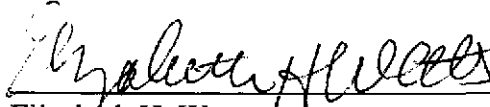
Respectfully submitted,  
DUKE ENERGY OHIO, INC.



Amy B. Spiller (0047277)  
Deputy General Counsel  
Elizabeth H. Watts (0031092) (Counsel of Record)  
Associate General Counsel  
155 East Broad Street, 21st Floor  
Columbus, Ohio 43215  
Phone: 614-222-1330  
Fax: 614-222-1337  
[Elizabeth.Watts@duke-energy.com](mailto:Elizabeth.Watts@duke-energy.com)

**Certificate of Service**

I hereby certify that a true and accurate copy of the foregoing has been served upon the following parties via electronic mail, regular mail, or hand delivery on this, the 29th day of June, 2011.

  
Elizabeth H. Watts

William Wright  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street  
Columbus, OH 43215-3793  
[william.wright@puc.state.oh.us](mailto:william.wright@puc.state.oh.us)

Jeffrey L. Small  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, Ohio 45839-1793  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)