



BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Duke )  
Energy Ohio, Inc. to Revise its Energy ) Case No. 11-4393-EL-RDR  
Efficiency Rider and for Approval of New )  
Energy Efficiency Programs )

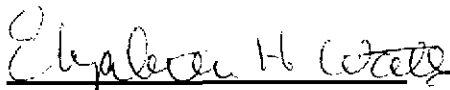
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**MOTION OF DUKE ENERGY OHIO, INC. FOR PROTECTIVE ORDER**

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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 Duke Energy Ohio, Inc.'s, (Duke Energy Ohio) Application to Revise its Energy Efficiency Rider and for Approval of New Energy Efficiency Programs. Reasons for this motion are set forth more fully in the attached Memorandum in Support.

Respectfully submitted,



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## **MEMORANDUM IN SUPPORT**

Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) is submitting herein its Application to Revise its Energy Efficiency Rider and for Approval of New Energy Efficiency Programs. The filing consists of the Application and the prefiled testimony of five Duke Energy Ohio witnesses. Filed with the testimony of Duke Energy Ohio witness Ashlie J. Ossege are six attachments, two of which (Attachments AJO 5 and 6) contain confidential trade secret information. It is limited portions of these documents which the Company requests that the Commission protect and keep confidential.

In this case, the Company is proposing a new rider cost recovery mechanism for energy efficiency and peak demand reduction. As supporting information for its programs, Duke Energy Ohio witness Ashlie J. Ossege has provided a table which includes program names, number of participants and utility costs. The Company seeks to have protected the cost data shown in Attachments AJO 5 and AJO 6. The information contained within these tables is highly sensitive in that it provides per participant prices which would be of interest to competitors seeking to submit bids to the Company to supply the goods and services that comprise the programs in question. 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 that information which could be used by competitors in the market place to determine per customer prices.

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.

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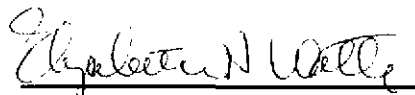
<sup>1</sup> R.C. 1333.61(emphasis added).

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 businesses with Duke Energy Ohio, Inc. 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 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. 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 a sound competitive marketplace. 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,



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