

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for an Energy)
Efficiency Cost Recovery Mechanism) Case No. 11-4393-EL-RDR
and for Approval of Additional)
Programs for Inclusion in its Existing)
Portfolio.)

ENTRY

The attorney examiner finds:

- (1) On July 20, 2011, Duke Energy Ohio, Inc. (Duke) filed an application, and supporting testimony, proposing the creation of an energy efficiency/peak demand reduction rider (Rider EE/PDR) to supplant its save-a-watt rider (Rider SAW) at its expiration on December 31, 2011. As proposed, Rider EE/PDR will recover the cost of Duke's energy efficiency compliance programs and portfolio of energy efficiency and peak demand reduction programs. According to Duke, Rider EE/PDR will recover program costs associated with each program.
- (2) Duke also proposes the following three additional programs to be added to its portfolio of programs approved in *In the Matter of the Report of Duke Energy Ohio, Inc. Concerning its Energy Efficiency and Peak-Demand Reduction Programs and Portfolio Planning*, Case No. 09-1999-EL-POR (09-1999): Appliance Recycling Program, Low Income Neighborhood Program, and Home Energy Solutions. Duke does not propose any modifications to any existing programs.
- (3) On July 20, 2011, Duke filed a motion for protective order regarding certain information contained in attachments 5 and 6 (collectively, attachments) to the testimony of Duke witness Ossege, which contains the cost data for the portfolio programs proposed by Duke for years 2012 through 2016.
- (4) In support of its July 20, 2011, motion for a protective order, Duke explains that the pricing information along with participant numbers contained in the attachments is highly sensitive, in that it provides per participant prices which would be of interest to competitors seeking to submit bids to supply the services that comprise the programs in question and would compromise Duke's

position in future negotiations to obtain the supply of these services.

- (5) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term “public records” excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.
- (6) Similarly, Rule 4901-1-24, Ohio Administrative Code, allows the attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”
- (7) Ohio law defines a trade secret as “information . . . 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.” Section 1333.61(D), Revised Code.
- (8) The attorney examiner has examined the information contained in the attachments, 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 redacted from the attachments does not constitute trade secret information merely because it provides the cost of the programs such that the costs can be calculated on a per participant basis and does not meet the definition of trade secret. Moreover, it appears that Duke has previously disclosed similar data in Commission

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

filings in 09-1999, which leads the attorney examiner to question whether this information can be defined as a trade secret. Accordingly, state law does not prohibit the release of the information regarding program costs and participant numbers contained in the attachments. Therefore, the attorney examiner finds that the Duke's motion for protective order should be denied.

- (9) Accordingly, on October 13, 2011, the docketing division of the Commission should release the unredacted spreadsheet, which was filed under seal in this docket on July 20, 2011.

It is, therefore,

ORDERED, That the motion for protective order filed by Duke be denied in accordance with Finding (8). It is, further,

ORDERED, That, on October 13, 2011, the Commission's docketing division release the unredacted spreadsheet, which was filed under seal in this docket on July 20, 2011. 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

JLJ
/dah

Entered in the Journal

OCT 03 2011

Betty McCauley

Betty McCauley
Secretary