

FILE

FAX

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish and Adjust the) Case No. 09-1946-EL-RDR
Initial Level of its Distribution Reliability)
Rider.)

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**MOTION OF DUKE ENERGY OHIO, INC., FOR LEAVE TO FILE *INSTANTER*
MOTION TO EXTEND PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT**

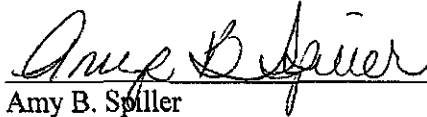
Pursuant to O.A.C. 4901-1-24(F), a party wishing to extend a protective order beyond eighteen months must file an appropriate motion at least forty-five days in advance of the expiration date of the existing order.

Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) hereby moves the Public Utilities Commission of Ohio for leave to file *instanter* its motion to extend the protective order covering certain portions of the Direct Testimony of Anthony J. Yankel granted by the attorney examiner in the hearing in this proceeding on May 26, 2010. The reasons supporting the Company's Motion for Leave to File *Instanter* are set forth in the attached memorandum in support.

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Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in cursive script, reading "Amy B. Spiller", written over a horizontal line.

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MEMORANDUM IN SUPPORT

On May 26, 2010, during the course of the hearing in this proceeding, the attorney examiner issued an oral ruling that granted, for a period of eighteen months, the Office of the Ohio Consumers' Counsel's (OCC) Motion for Protective Order concerning certain information contained in the Direct Testimony of Anthony J. Yankel. (Tr. Vol. II, p. 203).

Pursuant to O.A.C. 4901-1-24(F), a party wishing to extend a protective order beyond eighteen months must file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. Contemporaneously with this Motion, Duke Energy Ohio has filed a Motion to Extend the Protective Order granted on May 26, 2010; the Company did not, however, file the motion within the forty-five-day advance timeframe prescribed in O.A.C. 4901-1-24(F). Circumstances surrounding the ruling and the lack of its inclusion in the Commission order issued on January 11, 2011 (Order) led to some confusion regarding the appropriate deadline for extension of the protective order.

After granting the protective order over specific information in OCC witness Yankel's testimony in the course of the hearing on May 26, 2010, the attorney examiner noted the following:

"[T]he information that is under protection is subject to Rule 4901-1-24, which permits that this information is protected for a period of 18 months and if a party wishes to have that information extended for a longer period of time, they must file a request 45 days prior to the expiration of the protected period.

So we will reiterate this again in our order, but for now I just wanted to put that on the record and put the parties on notice."

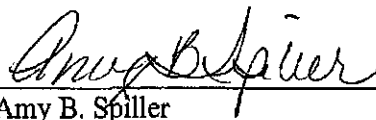
(Tr. Vol. II, pp. 202-03). Despite the anticipation, in May 2010, that the ruling on the protective order would be included in the Order, there was no mention of it. The Company believes that this was likely unintentional; however, the lack of inclusion in the January 2011 Order of the

ruling on the protective order led to some confusion, on the Company's part, over the appropriate timetables for filing an extension for confidential treatment of the protected information. If the eighteen-month period for confidential treatment commenced on May 26, 2010, and not on the date of the Order, said period would expire November 25, 2011. Duke Energy Ohio thus relies upon this earlier expiration date in seeking its request here to renew the confidential and proprietary status of its documents.

Given this circumstance, and the importance to the Company, its employees, and its contractors, of maintaining the confidential treatment of the trade secret information currently protected by the May 26, 2010 ruling, Duke Energy Ohio files this Motion for Leave to File *Instantly* its Motion to Extend the Protective Order. The Company asserts that no party will be negatively impacted if the Commission determines it is proper to grant its Motion for Leave to File *Instantly*, as interested parties may still file responsive pleadings. Accordingly, the Company respectfully requests that the Commission grant its Motion for Leave to File *Instantly* its Motion to Extend the Protective Order.

Respectfully submitted,

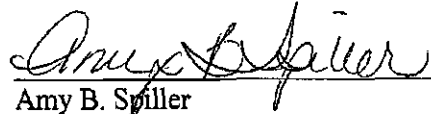
DUKE ENERGY OHIO, INC.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to File *Instanter* and Memorandum in Support was served on the following parties via ordinary mail delivery, postage prepaid, and/or electronic mail delivery on this, the 25th day of November 2011.


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