

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 attorney examiner finds:

- (1) On various dates during the proceedings in the above-captioned cases, the parties filed numerous documents along with motions for protective orders. In part, some of the documents or portions thereof, have been determined to constitute a trade secret, 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) Most recently, on January 31, 2011, the Commission granted, in part, and denied, in part, Duke Energy Ohio Inc.'s (Duke) motion for protective order. The January 31, 2011, entry denied the motion for protective order with respect to information previously held confidential, that was deemed no longer a trade secret and ordered released due to its disclosure in other cases and due to the age of the information. The January 31, 2011, entry granted the motion for protective order with respect to customer account numbers listed on 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 and a tax identification number on page 317, as it was deemed to constitute a trade secret. The protective order was extended until July 21, 2012.

- (3) On June 4, 2012, Duke, Cinergy Corp, and Duke Energy Retail Sales, LLC (Duke Entities) filed a motion to extend the protective order for the information on 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 for a period of at least four years, beginning on July 21, 2012. The Duke Entities claim that the account numbers have independent economic value from not being generally known or readily ascertainable and that they have been and remain the subject of efforts that are reasonable to preserve their secrecy. The Duke Entities also contend that such information has traditionally been protected from public disclosure by the Commission. The Duke Entities similarly claim that the tax identification number redacted from page 317 is a vendor's tax identification number, and warrants similar protective status as that given to the customer account numbers.
- (4) 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*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (5) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), allows the Commission 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."
- (6) 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.

- (7) The attorney examiner finds that the motion for an extension of the protective order should be denied. The redacted information on page 317 consists solely of the tax identification number of Cinergy Corp, and not a vendor. This number has been identified and filed by Cinergy Corp. with the U.S. Securities and Exchange Commission in its Form 8-K and, therefore, this information is readily ascertainable by proper means. Accordingly, this information can no longer be considered a trade secret or warrant confidential treatment.
- (8) With respect to the customer account numbers on pages 100, 135, 162, 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, the attorney examiner also finds that this type of information is available in other venues where it is accessible by persons outside of the companies, therefore, it should no longer be considered a trade secret.
- (9) Rule 4901:1-39-05(F), O.A.C., permits a mercantile customer to file, either individually or jointly with an electric utility, an application to commit the customer's existing demand reduction, demand response, and energy efficiency programs for integration with the electric utility's programs. Applications filed under this rule, EL-EEC applications, include certain forms, certain of which include the identification of the involved mercantile customer's account number, and this information is filed in the Commission's public docket. Furthermore, in hundreds of EL-EEC applications, Duke requires the inclusion of the customer's account number on the forms it files with the Commission, and it does not treat these numbers as trade secrets and it does not file accompanying motions for protective orders. Specifically, Duke states in its form: "Currently active account numbers are required for an existing facility." As the customer account numbers identified on pages 100, 135, 162, 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, is the same type of information as what Duke has required to be identified and is regularly publicly filed by Duke in its EL-EEC applications, the redacted information on these pages should no longer be considered a trade secret.

- (10) Accordingly, 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 should no longer be subject to the Commission's protective order and this information should be released to the public on July 22, 2012.

It is, therefore,

ORDERED, That Duke Entities' motion for the continuation of the protective order for 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 is denied and these pages be released to the public on July 22, 2012, unless otherwise advised. It is, further,

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

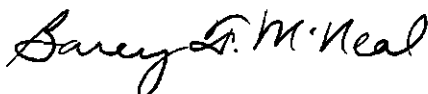
THE PUBLIC UTILITIES COMMISSION OF OHIO



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gfs/sc

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Barcy F. McNeal
Secretary