

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for the Establishment)
of a Charge Pursuant to Revised Code) Case No. 12-2400-EL-UNC
Section 4909.18.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to) Case No. 12-2401-EL-AAM
Change Accounting Methods.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for the Approval of a) Case No. 12-2402-EL-ATA
Tariff for a New Service.)

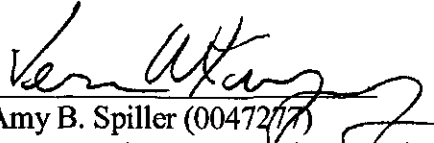
DUKE ENERGY OHIO, INC.'S MOTION FOR A PROTECTIVE ORDER

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves this honorable Public Utilities Commission of Ohio (Commission) for a protective order, pursuant to O.A.C. Rule 4901-1-24(D), covering certain confidential information that is included as a part of its Application in the above-captioned proceedings. Specifically, the proprietary, trade-secret information that Duke Energy Ohio seeks to have protected is contained in Attachments B and C to the Application.

Duke Energy Ohio sets forth, in the attached Memorandum in Support, its reasons why confidential treatment of this information is necessary. In compliance with the governing rule, Duke Energy Ohio is filing, under seal, three unredacted copies of the confidential information.

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MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its Motion for a Protective Order, as detailed herein.

Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio is engaged in the business of supplying electric generation, transmission, and distribution service to the public in the state of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of R.C. 4905.02 and an electric light company, as defined by R.C. 4905.03. As such, Duke Energy Ohio is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the state of Ohio.

Duke Energy Ohio is filing, simultaneously with this motion, an Application to establish a charge under Ohio's new state compensation mechanism in respect of the capacity services the Company provides consistent with its obligations as a Fixed Resource Requirement (FRR) entity. Duke Energy Ohio is further seeking, through the Application, approval to create a regulatory asset and to defer the difference between the amounts being recovered by Duke Energy Ohio for the provision of capacity services and Duke Energy Ohio's cost of providing such services, as well as approval of a mechanism for subsequent recovery of such deferred amounts. The Application contains certain information, the public disclosure of which could damage Duke Energy Ohio's competitive position and business interests. The information for which protection is sought covers projections and competitively sensitive information.

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.¹

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 set forth in Attachments B and C of the Application reflects, in part, proprietary forecasts for years 2012 through 2015. Forecasted information is developed and utilized by the Company for a number of purposes. If disclosed publicly, such information could impair the Company’s financing efforts, as well as having a negative impact on its activities in various aspects of the marketplace. Forecasts are generally not disclosed and are protected by the Commission in many types of proceedings.² The Company takes steps, internally to ensure that

¹ R.C. 1333.61(emphasis added).

² See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, *et al.*, Opinion and Order at page 5 (November 22, 2011); *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry at page 3 (April 13, 2012); and *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order at pages 9-10 (August 8, 2012).

this information is not disclosed to anyone who does not have a business need to know the material. Externally, the Company does not disclose this forecasted information other than under the terms of appropriate protective devices, such as confidentiality agreements.

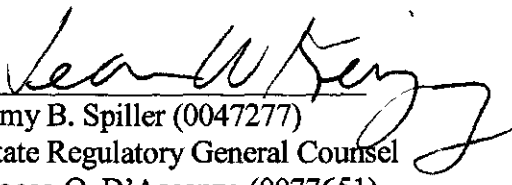
The confidential trade secret information in Attachments B and C also includes information concerning certain market positions of the Company. This information derives actual, independent economic value to the Company as a result of its not being generally known or readily ascertainable by other persons who could use it to affect the market prices and availability of commodities in the market. Public disclosure of this information could have a real effect on the financial position of Duke Energy Ohio. As with the forecast information, Duke Energy Ohio attempts to ensure that this market information remains secret, both internally and externally.

O.A.C. 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form, under seal.³ Duke Energy Ohio is filing the attachment in unredacted form, under seal, together with this Motion.

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. 1333.61.

³ Ohio Admin. Code Rule 4901-1-24.

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