

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) During the evidentiary hearing in this case, which commenced on May 25, 2010, certain documents admitted into the record were afforded confidential treatment. Specifically, the documents that were afforded confidential treatment are the Ohio Consumers' Counsel's (OCC) Exhibits 11-14 and Duke Energy Ohio, Inc.'s (Duke) Exhibits 8 and 10. Confidential treatment of these exhibits was orally granted on May 26, 2010.
- (2) By entry issued January 30, 2012, the attorney examiner clarified that protective treatment of OCC's Exhibits 11-14 and Duke's Exhibits 8 and 10 expires July 11, 2012.
- (3) On May 30, 2012, Duke filed a motion seeking to further extend the protective order for these documents for 10 years. In support of its request, Duke explains that OCC's Exhibits 11-14 and Duke's Exhibits 8 and 10 contain proprietary trade secrets, including employee names and employee numbers, vendor names, specific description titles, contractor names, and telephone numbers and addresses that lead to the identification of contractors. Duke asserts that this information is valuable in that it is not readily ascertainable within or outside its own company; furthermore, very few individuals within Duke have access to the confidential information contained in these exhibits. Duke maintains that the information in both the OCC exhibits and Duke exhibits is personally identifiable and economically valuable and, if the information were released to the public, it would harm Duke's competitive position in the marketplace.

Duke asserts that the designated information must be continued to be protected due to the fact that it constitutes a trade secret pursuant to Section 1333.61(D), Revised Code.

Duke contends that protection of trade secret information from public disclosure is consistent with the purposes of Title 49, Revised Code, inasmuch as the Commission and its Staff have access to the information and, as in this case, the parties may have access under an appropriate protective agreement.

- (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 an 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.”
- (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 has reviewed the information included in Duke’s motion for protective order, 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, the attorney examiner finds that the information contained in

OCC's Exhibits 11-14 and Duke's Exhibits 8 and 10 contains trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Duke's motion for protective order is reasonable with regard to OCC's Exhibits 11-14 and Duke's Exhibits 8 and 10, and should be granted.

- (8) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. While Duke has requested a longer time period for protection of these documents, the attorney examiner finds that, consistent with the Commission's rules, confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until September 26, 2014. Until that date, the docketing division should maintain, under seal, the information filed confidentially.
- (9) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Duke wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Duke.

It is, therefore,

ORDERED, That the motion for protective order filed by Duke be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, OCC's Exhibits 11-14 and Duke's Exhibits 8 and 10 for a period of 18 months, ending on September 26, 2014. It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Christine M.T. Pirik

By: Christine M.T. Pirik  
Attorney Examiner

jrj/vrm

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**in**

**Case No(s). 09-1946-EL-RDR**

Summary: Attorney Examiner Entry granting the motion for protective order, electronically filed by Vesta R Miller on behalf of Christine M.T. Pirik, Attorney Examiner, Public Utilities Commission of Ohio