

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its Fuel and) Case No. 07-974-EL-UNC
Purchased Power Component of its Market-)
Based Standard Service Office for the Period)
of July 7, 2007 through December 31, 2008)

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its 2008) Case No. 07-975-EL-UNC
System Reliability Tracker of its Market-)
Based Standard Service Offer .)

**DUKE ENERGY OHIO, INC.'S
MOTION FOR CONTINUATION OF THE PROTECTIVE ORDER TO
PROTECT THE CONFIDENTIALITY OF INFORMATION CONTAINED IN
THE DOCUMENT TITLED "MANAGEMENT/PERFORMANCE AUDIT AND
FINANCIAL AUDIT DUKE ENERGY OHIO CASE No. 07-974-EL-UNC, et al."**

On September 4, 2007, Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) filed an Application to Establish Its Fuel, Economy Purchased Power Component of its Market-Based Standard Service Offer in Case No. 07-974-EL-UNC and its System Reliability Tracker in Case No. 07-975-EL-UNC (Application). Duke Energy Ohio requests that this Commission continue the Order issued on July 7, 2009 with respect to items contained in the "Management/Performance and Financial Audit of the Fuel and Purchased Power as Well as the System Reliability Tracker Riders of Duke Energy Ohio, Inc. (Report)." Specifically in this Motion, the Company requests to continue confidential treatment of the following information contained in the Report:

- Executive Summary, pages ES-5,6;
- Chapter I, pages I-4,5,10,11;

- Chapter II, pages II-8,9,10-13, 21; and
- Chapter III, pages III-4-11, 16-19

This data, filed under seal, should be maintained at the Commission in a separate file which has restricted access. The remainder of the information in the Report currently filed under seal no longer required confidential protection.

Respectfully submitted,



Amy B. Spiller (0047277)
Deputy General Counsel
Rocco D'Ascenzo (0077651)
Associate General Counsel
Elizabeth H. Watts (31092)
Associate General Counsel
139 Fourth Street, Room 1303 Main
Cincinnati, Ohio 45202
Phone (513) 287-4359
Fax (513) 287-4385
Email: elizabeth.watts@duke-energy.com

MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Public Utilities Commission of Ohio (Commission) grant its Motion for Protective Order to Protect the Confidentiality of Information Contained in the “Management/Performance and Financial Audit of the Fuel and Purchased Power as Well as the System Reliability Tracker Riders of Duke Energy Ohio, Inc.” (Report).¹

Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio has the corporate power and authority, among others, to engage, and it is engaged, in the business of supplying electric distribution service to the public in the State of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of that term as used in R. C. 4905.02 and 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.

On January 21, 2009, an Entry was issued in these proceedings selecting Liberty Consulting Group as the auditor for the FPP and SRT audits for the period of July 7, 2007 through December 31, 2008. It is the FPP and the SRT for the period of July 7, 2007 through December 31, 2008 that is the subject matter of the Report. This Report was initially filed in these proceedings, in redacted form, on May 15, 2009. On May 15, 2009, Duke Energy Ohio filed its Motion for Protective Order that was granted by the Commission on July 7, 2009.

¹ As the Public Utilities Commission of Ohio was closed due to an emergency on February 28, 2014, Duke Energy Ohio is filing this Motion on March 3, 2014.

Upon current review of the Report, Duke Energy Ohio has determined that most of the previously considered confidential information no longer requires such protection. As such Duke Energy Ohio is now only seeking continued protection for specific and limited information contained in the Report. The following pages in the Report contain information that still requires confidential treatment due to coal contract information and general business strategy.

- Executive Summary, pages ES-5,6;
- Chapter I, pages I-4,5,10,11;
- Chapter II, pages II-8,9,10-13, 21; and
- Chapter III, pages III-4-11, 16-19

Ohio Administrative Code Section 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information contained in or attached to the Report that Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form under seal.² This rule also establishes a procedure for presenting to the Commission that information which is confidential, and therefore should be protected.³

Duke Energy Ohio considers the aforementioned information in the Report to continue to be proprietary, confidential, and trade secrets, as that term is used in R. C. 1333.61. In addition, this information should be treated as confidential pursuant to R. C. 4901.16. The redacted version of the Report includes the confidential material blacked out for the public.

² OHIO ADMIN. CODE § 4901-1-24 (Anderson 2012)

³ *Id.*

The Report contains confidential trade secret information that describes Duke Energy Ohio's fuel procurement strategy, emission allowance strategy, coal contract information, purchased power information, generation information, and general business strategy. The confidential trade secret information contained in the Report, if publicly disclosed, would give Duke Energy Ohio's competitors access to competitively sensitive, confidential information, which in turn could allow the competitors to make offers to sell coal, etc. at higher prices than the competitors might offer in the absence of such information and to the detriment of Duke Energy Ohio and its customers.

The redacted information contained in the Report constitutes trade secret information in accordance with Ohio's Uniform Trade Secret Act and relevant jurisprudence.

The definition of trade secret contained in R.C. 1333.61(D) is 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.⁴

In analyzing a trade secret claim, the Ohio Supreme Court has adopted the following factors as relevant to determining whether a document constitutes a trade secret:

⁴ Ohio Rev. Code Ann. § 133361(D) (Baldwin 2007).

(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

The confidential material described above, if disclosed, would enable competitors in the wholesale power market to ascertain the manner in which Duke Energy Ohio plans, manages and operates their generating facilities, the fuel purchasing strategy, the purchase power strategy, the emission allowance strategy, the cost associated therewith, and would enable competitors to ascertain Duke Energy Ohio's positions (long and short) with respect to electric generation capabilities. Further, the competitively sensitive information will provide power marketing competitors with knowledge that will allow them to potentially manipulate the marketplace so as to unnecessarily cause consumers to pay more for electricity than they otherwise would.

If this information becomes public, Duke Energy Ohio will be placed at a competitive disadvantage, in among other things, reducing its ability to negotiate contracts for fuel. With the information contained in the Report, a competitor could take actions that, in the absence of this information, it would not otherwise take. Such actions might include adjusting its prices, either to win contracts on which Duke Energy Ohio may also be bidding – business the competitors otherwise would not be in a position to win, or to set its prices artificially high to take advantage of an overall short market, the latter action obviously forcing consumers to pay higher prices for power.

The information for which Duke Energy Ohio is seeking confidential treatment is not known outside of Duke Energy Ohio, and it is not disseminated within Duke Energy Ohio except to those employees with a legitimate business need to know and act upon the information.

The public interest will be served by granting this motion. By protecting the confidentiality of the Report and its existing business plans regarding fuel purchases, purchased power, emission allowance information and contract information, the Commission will prevent undue harm to Duke Energy Ohio and its ratepayers, as well as ensuring a sound competitive marketplace.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to Ohio Admin. Code Section 4901-1-24(D), grant its Motion for Protective Order to Protect the Confidentiality of Information contained in the revised Public document titled “Management/Performance and Financial Audit of the Fuel and Purchased Power as Well as the System Reliability Tracker Riders of Duke Energy Ohio, Inc.” by making a determination that the Confidential Material still redacted is confidential, proprietary and a trade secret under R. C. 4901.16 and 1333.61.

Respectfully submitted,

Elizabeth H. Watts _{ASIC}

Jeanne W. Kingery (0012172)

Associate General Counsel

Elizabeth A. Watts (003192)

Associate General Counsel

Rocco O. D'Ascenzo (0077651)

Associate Senior Counsel

Amy B. Spiller (0047277)

Deputy General Counsel

DUKE ENERGY OHIO, INC

139 East Fourth Street, 1301 Main

Cincinnati, Ohio 45202

Elizabeth.watts@duke-energy.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Protective Order was delivered by electronic means or first class US Mail to all parties of record listed below this 3rd day of March 2014.



Elizabeth H. Watts

TOBC

Thomas McNamee
John Jones
Attorney General Office
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, OH 43215
Thomas.mcnamee@puc.state.oh.us
John.jones@puc.state.oh.us

Office of the Ohio Consumers' Counsel
Terry L. Etter
Kyle Kern
10 W. Broad Street
Columbus, OH 43215-3485
etter@occ.state.oh.us
kern@occ.state.oh.us

Ohio Partners for Affordable Energy
David Rinebolt
Coleen Mooney
231 West Lima Street
Findlay, OH 45840
drinebolt@ohiopartners.org
cmooney2@columbus.rr.com

Ohio Energy Group
Michael L. Kurtz 36 E. Seventh Street
Suite 1510
Cincinnati, OH 45202
mkurtz@bkllaw.com

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Case No(s). 07-0974-EL-UNC, 07-0975-EL-UNC

Summary: Motion Duke Energy Ohio, Inc.'s Motion for Continuation of the Protective Order to Protect the Confidentiality of Information Contained in the Document titled "Management/ Performance Audit and Financial Audit Duke Energy Ohio Case No. 07-974-EL-UNC, et al." electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Rocco D'Ascenzo and Watts, Elizabeth H.