

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Duke Energy)
Ohio, Inc.'s, Riders Supplier Cost)
Reconciliation, Retail Capacity, Retail) Case No. 14-81-EL-RDR
Energy, Load Factor Adjustment, Electric)
Security Stabilization Charge, and)
Economic Competitiveness Fund.)

FINDING AND ORDER

The Commission finds:

- (1) Duke Energy Ohio, Inc. (Duke), is a public utility as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.
- (2) By Entry issued December 14, 2011, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., (*Duke SSO Case*) the Commission, inter alia, determined that future information filings arising out of the provisions of the stipulation approved in the *Duke SSO Case* should be made in *In re Application of Duke Energy Ohio Inc.*, Case No. 11-6001-EL-RDR. In addition, the Entry further noted that the stipulation in the *Duke SSO Case* gave the Commission the discretion to determine that some action, including an audit, may be necessary for these types of riders and found that, in the event the Commission found it necessary to take action regarding one of these riders, the Commission will determine the appropriate process at that time and may require that filings be made in a separate docket. In accordance with the December 14, 2011 Entry, informational filings include filings related to riders where quarterly reports and true-ups are necessary and audits are conducted at the discretion of the Commission during the term of the electric security plan [*e.g.*, Riders Supplier Cost Reconciliation (SCR), Retail Capacity (RC), Retail Energy (RE), Load Factor Adjustment (LFA), and Electric Security Stabilization Charge (ESSC)].
- (3) On January 29, 2014, Duke filed an application for an audit of Riders SCR, RC, RE, LFA, ESSC, and Economic Competitiveness Fund (ECF) (collectively, the Riders), along

with the work papers and documents that support the calculation of the Riders.

- (4) On March 7, 2014, Staff filed its review and recommendations regarding the Riders. Staff reviewed Duke's application, including, but not limited to, the revenues, supplier payments, auction expenses, commercial activity taxes, and the revenues and expenses associated with Duke's percentage of income payment plan program. In addition, Staff verified that all applicable credits were verified and correctly calculated and applied. Staff states that the filing is both consistent with and in compliance with the Commission's orders.
- (5) Upon consideration of the application and Staff's review, the Commission finds that the recommendations set forth in Staff's March 7, 2014 filing should be adopted in their entirety.
- (6) As a final matter, the Commission notes that, on January 29, 2014, Duke filed a motion for a protective order seeking protection of certain information contained in one of the work papers, Attachment A, which supports Rider SCR. Specifically, Duke states that Attachment A contains third-party vendor information regarding auction fees that are charged by the vendor. According to Duke, if this information is publically disclosed, the vendor's competitors would have access to competitively sensitive, confidential information that, in turn, could allow the competitors to offer auction services at different prices than the competitors would offer in the absence of such information, thus, being able to significantly undermine the vendor's ability to compete. No one filed memoranda contra Duke's motion for protective order.
- (7) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of R.C. Title 49. R.C. 149.43 specifies that the term public records excludes information which, under state or federal law, may not be released. The 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).

- (8) Similarly, Ohio Adm.Code 4901-1-24 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.”
- (9) 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.” R.C. 1333.61(D).
- (10) The Commission 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 R.C. 1333.61(D), as well as the six-factor test set forth by the Supreme Court,¹ the Commission finds that portions of Attachment A contain trade secret information. Release of that information is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Therefore, the Commission finds that Duke’s motion for protective order is reasonable with respect to certain information in Attachment A, which was filed on January 29, 2014, and should be granted. This protective order will automatically expire 24 months after the date of this Finding and Order, or April 18, 2016. Any party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date, in accordance with Ohio Adm.Code 4901-1-24.

It is, therefore,

ORDERED, That Staff’s recommendations be adopted in their entirety. It is, further,

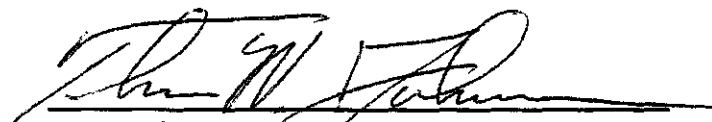
¹ See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).


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

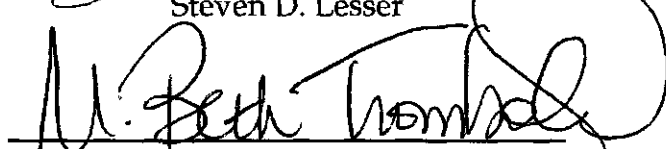
ORDERED, That the Commission's docketing division maintain, under seal, certain information in Attachment A, which was filed under seal in this docket on January 29, 2014, for a period of 24 months, ending on April 18, 2016. It is, further,

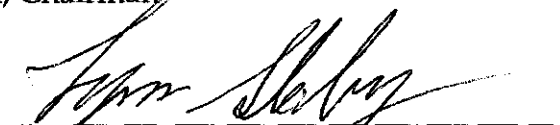
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

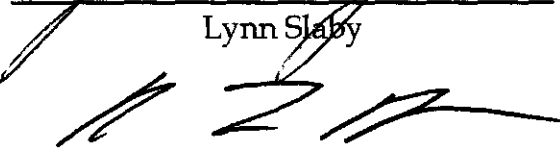
THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser

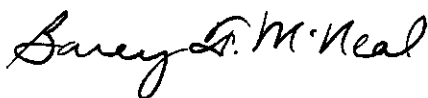

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