

2014 MAY 29 PM 4:02

PUCO

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
 Energy Ohio for Authority to Establish a)
 Standard Service Offer Pursuant to Section)
 4928.143, Revised Code, in the Form of) Case No. 14-841-EL-SSO
 an Electric Security Plan, Accounting)
 Modifications and Tariffs for Generation)
 Service.)

In the Matter of the Application of Duke)
 Energy Ohio for Authority to Amend its) Case No. 14-842-EL-ATA
 Certified Supplier Tariff, P.U.C.O. No. 20.)

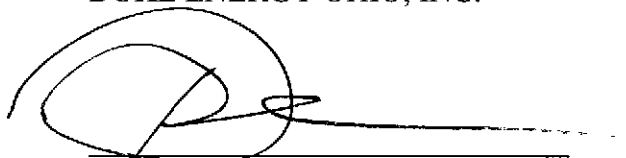
 DUKE ENERGY OHIO'S MOTION FOR A PROTECTIVE ORDER

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 proceeding. Specifically, the proprietary, trade-secret information that Duke Energy Ohio seeks to have protected is contained in the Direct Testimony of Mark W. Arnold and Attachments to Mr. Arnold's testimony labeled Attachment MWA-2, Attachment MWA-3, Attachment MWA- 4 and Attachment MWA-7.

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.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in black ink, appearing to be 'Amy B. Spiller', written over a horizontal line.

Amy B. Spiller (Counsel of Record)
Deputy General Counsel
Elizabeth H. Watts
Associate General Counsel
Rocco O. D'Ascenzo
Associate General Counsel
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, Ohio 45201-0960
(513) 287-4359 (telephone)
(513) 287-4385 (facsimile)
Amy.Spiller@duke-energy.com (e-mail)

MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its Motion for a Protective Order. 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 power 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 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, its Application for authority to establish a standard service offer in the form of an electric security plan (Application). 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 Direct Testimony and Attachments to Mr. Arnold’s testimony labeled Attachment MWA-2, Attachment MWA-3, and Attachment MWA-4 contain proprietary customer satisfaction surveys and reliability performance rankings for years 2013 and 2014. The surveys contained in MWA-2 and MWA-3 were performed by J.D. Power and Associates (J.D. Power) and are proprietary to J.D. Power and its subscribers. This information is available only through paid subscriptions. Duke Energy Ohio is required to keep this information confidential pursuant to terms of an agreement with J.D. Power. Similar, MWA-4 is a proprietary customer satisfaction survey performed by Duke Energy Corporation for its own use. Customer satisfaction surveys and reliability performance information are developed and utilized by the Company for a number of purposes.

¹ R.C. 1333.61(emphasis added).

The Direct Testimony and Attachment to Mr. Arnold's testimony labeled Attachment MWA-7 contains proprietary information regarding budgeting and forecasts of costs to be incurred in future years, that if disclosed publicly, such information could impair the Company's financing and resource procurement efforts, as well 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. The Company takes steps, internally to ensure that 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.

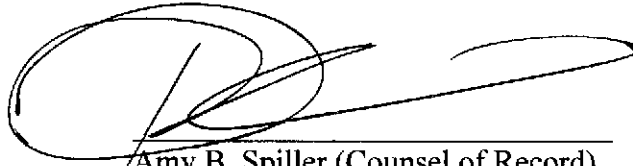
O.A.C. 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form, under seal.² Duke Energy Ohio is filing the testimony, related attachments, and work papers 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. 4901.16 and 1333.61.

² OHIO ADMIN. CODE § 4901-1-24 (2013)

Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in black ink, appearing to read 'Amy B. Spiller', written over a horizontal line.

Amy B. Spiller (Counsel of Record)

Deputy General Counsel

Elizabeth H. Watts

Associate General Counsel

Rocco O. D'Ascenzo

Associate General Counsel

139 E. Fourth Street, 1303-Main

P.O. Box 961

Cincinnati, Ohio 45201-0960

(513) 287-4359 (telephone)

(513) 287-4385 (facsimile)

Amy.Spiller@duke-energy.com (e-mail)