

BEFORE

THE PUBLIC UTILITY COMMISSION OF OHIO

In the Matter of the Natural Gas	)	
Long-Term Forecast Report of	)	Case No.14-868-GA-FOR
Duke Energy Ohio	)	

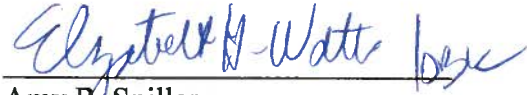
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**DUKE ENERGY OHIO'S  
MOTION FOR PROTECTIVE ORDER  
FOR PROPRIETARY AND CONFIDENTIAL  
INFORMATION CONTAINED IN ITS  
2014 GAS LONG-TERM FORECAST REPORT**

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Comes now Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) and hereby submits this amended motion for protective order relative to certain documents submitted to the Public Utilities Commission of Ohio (Commission) in connection with its 2014 Gas Long-Term Forecast Report (GLTFR). This motion serves to specifically identify the documents for which Duke Energy Ohio is seeking confidential treatment. Duke Energy Ohio tenders the following memorandum in support of its amended motion.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Elizabeth H. Watts" followed by a stylized flourish.

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## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION**

Pursuant to R.C. 4935.04 and O.A.C. 4901:5-7-03, Duke Energy Ohio filed its GLTFR, which includes a description of Duke Energy Ohio's natural gas demand forecast, source of supply forecast and transmission facilities. Significantly, OAC 4901:5-7-03 required submission of Duke Energy Ohio's existing transmission system and its ten-year resources plan that includes the Company's proposed and existing gas transmission systems. As demonstrated herein, this information constitutes proprietary "Critical Energy Infrastructure Information" (CEII) that should be treated as confidential information. As such, Duke Energy Ohio respectfully requests that this Commission issue an Order declaring the following documents to be confidential:

1. Appendix II to GLTFR (Existing Transmission Systems); and
2. Appendix III to GLTFR (Ten-Year Resource Plan).

Duke Energy Ohio further requests that, by virtue of the confidential designation, these documents be filed separately and under seal, with access to them restricted by Commission Order.

### **II. LAW AND ARGUMENT**

Generally speaking, the Ohio Public Records Act requires the disclosure of information that is maintained by any public office.<sup>1</sup> But this Act is not without exception. Revised Code 1333.61, *et seq.*, serves to preclude public access to and dissemination of trade secret

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<sup>1</sup> R.C. 149.43.

information.<sup>2</sup> As the Ohio Supreme Court has instructed, the following factors are relevant to determining whether information constitutes trade secrets under R.C. 1333.61(D):

(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.<sup>3</sup>

As the Supreme Court further confirmed, “documents...that are determined to be trade secrets are not public records and are exempt from disclosure.”<sup>4</sup>

The Commission’s Rules of Practice are consistent with the proposition that trade secret information is exempt from disclosure. Indeed, said rules empower the Commission, its legal director, deputy legal director, or attorney examiner to:

[I]ssue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, or the attorney examiner assigned to the case 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.<sup>5</sup>

Here, the information for which Duke Energy Ohio seeks trade secret designation is that information concerning its existing and proposed transmission systems, including its ten-year resource plan. Since September 11, 2001, information detailing transmission systems has been considered CEII, the disclosure of which would undeniably comprise Duke Energy Ohio’s ability

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<sup>2</sup> See, *State, ex rel. The Plain Dealer v. Ohio Department of Insurance*, 1997 Ohio 75, 80 Ohio St.3d 513, 524. See also, *State ex rel. Perrea v. Cincinnati Public Schools*, 2009 Ohio 4762, ¶ 33 (trade secrets are not public records).

<sup>3</sup> Id. at 524-525.

<sup>4</sup> Id. at 524.

<sup>5</sup> Ohio Admin. Code Ann. 4901-1-24(D) (Baldwin 2006).

to safely maintain its system. Significantly, the release of this CEII would place the gas transmission system in an unsafe and unreliable situation by creating security issues and inviting criminal or terrorist activity intended to threaten persons and property. Furthermore, those seeking to so disrupt the delivery of gas could use CEII to determine the most effective manner to disable Duke Energy Ohio's transmission facilities, thus rendering large parts of Duke Energy Ohio's service territory without gas service.

The CEII reflected in Appendices II and III of Duke Energy Ohio's GLTFR must be classified as trade secret information. Such information is not generally known outside of Duke Energy Ohio and its affiliated companies with a business reason to access such information. Internal to Duke Energy Ohio, the CEII again is known only to those employees with a business need to access it. Duke Energy Ohio deliberately acts to restrict access to the CEII and has expended significant cost in developing its existing and proposed system maps. Third parties desiring to replicate this information would undoubtedly incur substantial expense in their efforts. And with consideration to the compelling safety reasons for excepting this information from the public domain, it is readily apparent that Appendices II and III of Duke Energy Ohio's GLTFR must be deemed confidential and thus exempt from public disclosure. Further, any contemplated access to such records must be strictly controlled by order of this Commission so as to not jeopardize the confidential and proprietary nature of the information. Such a result is consistent with the Federal Energy Regulatory Commission's concern over the release of CEII.<sup>6</sup>

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<sup>6</sup> See *Critical energy Infrastructure Information*, 102 FERC ¶ 61,190 (February 21, 2003).

### III. CONCLUSION

For the reasons stated herein, Duke Energy Ohio requests that the Commission grant confidential treatment to the documents submitted under Appendices II and III of its Gas Long-Term Forecast Report as said documents constitute trade secrets and Critical Energy Infrastructure Information. Duke Energy Ohio further requests that this Commission maintain the confidential documents in sealed form and in a separate file, with access to them restricted.

DUKE ENERGY OHIO



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Summary: Motion Duke Energy Ohio's Motion for Protective Order for Proprietary and Confidential Information Contained in Its 2014 Gas Long-Term Forecast Report electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H.