

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUDIT OF DUKE
ENERGY OHIO, INC.'S RIDERS SUPPLIER
COST RECONCILIATION, RETAIL
CAPACITY, RETAIL ENERGY, LOAD
FACTOR ADJUSTMENT, ELECTRIC
SECURITY STABILIZATION CHARGE, AND
ECONOMIC COMPETITIVENESS FUND.

CASE NO. 16-2-EL-RDR

FINDING AND ORDER

Entered in the Journal on August 3, 2016

I. SUMMARY

{¶ 1} In this Finding and Order, the Commission finds Staff's recommendations regarding Duke Energy Ohio, Inc.'s Riders Supplier Cost Reconciliation, Retail Capacity, Retail Energy, Load Factor Adjustment, Electric Security Stabilization Charge, and Economic Competitiveness Fund should be adopted.

II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke) is an electric distribution utility (EDU) as defined by R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} By Opinion and Order issued November 22, 2011, the Commission, among other things, approved a stipulation between Duke and the parties, which provided for an electric security plan (ESP) pursuant to R.C. 4928.143. *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al. (*ESP 2 Case*).

{¶ 5} By Entry issued December 14, 2011, in the *ESP 2 Case*, the Commission set forth the process for review of Duke's various pricing terms and filings made during the term of the ESP and determined that future information filings arising out of the provisions of the stipulation approved in the *ESP 2 Case* should be made in *In re Application of Duke Energy Ohio Inc.*, Case No. 11-6001-EL-RDR. Informational filings are filings related to riders where quarterly reports and true-ups are necessary and audits are conducted at the discretion of the Commission but no Commission action is required to adjust the tariff rates. Additionally, the Commission noted its discretion to determine what action would be needed in relation to the informational filings. The Commission determined informational filings during the term of the ESP are necessary for the following riders: 1) Supplier Cost Reconciliation, 2) Retail Capacity, 3) Retail Energy, 4) Load Factor Adjustment, 5) Electric Security Stabilization Charge, and 6) Economic Competitiveness Fund (collectively, the Riders).

{¶ 6} On February 3, 2016, Duke filed an application for an audit of the Riders, along with the work papers and documents that support the calculations.

{¶ 7} On May 31, 2016, 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.

{¶ 8} Upon consideration of the application and Staff's review, the Commission finds that the recommendations set forth in Staff's May 31, 2016 filing should be adopted and Duke's application should be accepted as filed.

{¶ 9} As a final matter, the Commission notes that, on February 3, 2016, Duke filed a motion for a protective order seeking protection of certain information contained in one of the work papers, Attachment A, which supports the supplier cost reconciliation rider. 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 publicly 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.

{¶ 10} 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).

{¶ 11} 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."

{¶ 12} 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).

{¶ 13} 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 February 3, 2016, and should be granted. This protective order will automatically expire 24 months after the date of this Finding and Order. 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.

III. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That, in accordance with paragraph 8, Staff’s recommendations be adopted and Duke’s application be accepted as filed. It is, further,

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

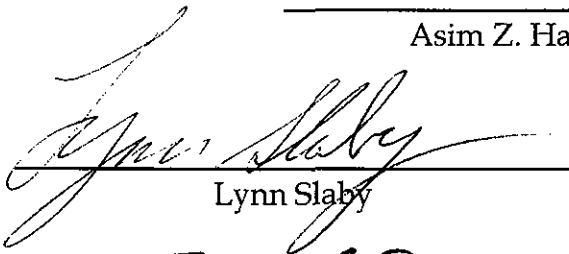
¹ See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 17} ORDERED, That the Commission's docketing division maintain, under seal, certain information in Attachment A, which was filed under seal in this docket on February 3, 2016, for a period of 24 months. It is, further,


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

THE PUBLIC UTILITIES COMMISSION OF OHIO

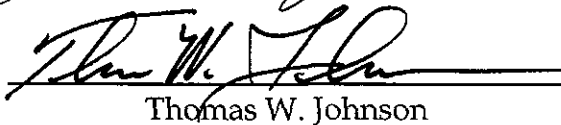
Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



Thomas W. Johnson

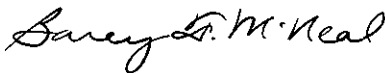


M. Howard Petricoff

NW/vrm

Entered in the Journal

AUG 03 2016



Barcy F. McNeal
Secretary