

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of a)
Market Rate Offer to Conduct a)
Competitive Bidding Process for a) Case No. 10-2586-EL-SSO
Standard Service Offer Electric)
Generation Supply, Accounting)
Modifications, and Tariffs for)
Generation Service.)

**MOTION OF DUKE ENERGY OHIO, INC.,
TO EXTEND PROTECTIVE ORDER**

Pursuant to O.A.C. 4901-1-24(F), Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves to extend the confidential treatment afforded certain information contained in the record of this proceeding, including written briefs. Such confidential treatment was initially afforded via an attorney examiner entry of January 12, 2011, and confirmed by the Public Utilities Commission of Ohio's (Commission) Opinion and Order of February 23, 2011 (collectively, the Protective Order). Thereafter, Duke Energy Ohio timely sought to extend the Protective Order on July 5, 2012, November 7, 2013, and March 3, 2015. As more fully described below, the confidential information, as defined herein, remains trade secret information and continues to merit protection. Thus through this Motion, the Company respectfully requests an Order continuing protection of the confidential information for another eighteen-month period, through February 2018.

Specifically, the proprietary, trade-secret information the Company seeks to continue to protect includes the confidential excerpts of the hearing transcript, Volumes II and III, filed January 13, 2011, and January 14, 2011, respectively, the unredacted copies of IEU-Ohio (IEU)

Exhibits 1 through 10 that were filed under seal on January 19, 2011, and sections of briefs filed by both IEU and Duke Energy Ohio¹, with the exception of specific confidential information on page 55 of Duke Energy Ohio's Reply Brief (hereinafter collectively referred to as Confidential Information). The previously ordered Confidential Information on page 55 of the Duke Energy Ohio Reply Brief is now deemed to be public information since the referenced case has been resolved at the Federal Energy Regulatory Commission (FERC).

Duke Energy Ohio sets forth, in the attached Memorandum in Support, the reasons why continued protective treatment of the Confidential Information is necessary. Ohio law prohibits the release of this Confidential Information and nondisclosure of the Confidential Information is not inconsistent with the purposes of Title 49 of the Revised Code. The Confidential Information is as sensitive and proprietary today as it was on the date of the attorney examiner's original ruling and it will continue to be extremely sensitive and confidential throughout its existence. Therefore, in the interest of administrative efficiency, and with the understanding that public disclosure of the Confidential Information will not, after a short time period, be harmless to the Company, its employees, or contractors, Duke Energy Ohio respectfully requests that the Commission extend the Protective Order through February 2018.

¹ The Confidential Information in said briefs has been redacted from the public versions, and with limited exception, it is that same information the Company seeks to continue to protect.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

Handwritten signature of Amy B. Spiller in blue ink, with the initials "10612" written at the end of the signature.

Amy B. Spiller
Deputy General Counsel (0047277)
Elizabeth H. Watts (0031092)
Associate General Counsel
Rocco D'Ascenzo (0077651)
Associate General Counsel
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, Ohio 45201-0960
Telephone: (513) 287-4359
Fax: (513) 287-4385
Email: amy.spiller@duke-energy.com
rocco.d'ascenzo@duke-energy.com
elizabeth.watts@duke-energy.com

MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission extend the protection of the Confidential Information as defined herein. The information for which protection was granted, and for which the Company seeks an extension of that protection, constitutes trade secret information and, therefore, requires continued protection from disclosure.

R.C. 1333.61(D) provides, in pertinent part:

“Trade secret” means information, including . . . 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. (Emphasis added).

Further, the Supreme Court of Ohio adopted six factors to be used in determining whether a trade secret claim meets the statutory definition:²

- (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 affected 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

² *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25, 1997-Ohio-75.

- (6) The amount of time and expense it would take for others to acquire and duplicate the information.

The Confidential Information that the attorney examiner held as confidential included information related to Duke Energy Ohio's internal deliberations and management analysis of various business scenarios related to its relationship with regional transmission authorities. Although the decision under discussion in these documents was temporal in nature, the Company's internal processes and analysis leading to its decision and the supporting documentation remain competitively sensitive as they included long-term business forecasts and modeling. These analyses include future projections of financial costs and business assumptions that remain relevant and sensitive to the Company today. Very few individuals, even within the Company, have access to the pertinent Confidential Information contained within protected material. The Confidential Information is closely guarded by the Company, as it contains personally identifiable and other economically valuable information including, but not limited to, market projections and how those may be interpreted by the Company in respect of strategic decisions. The Company has expended a significant amount of time and resources in developing the Confidential Information. Moreover, disclosure of the Confidential Information would harm the Company's competitive position in the marketplace. Accordingly, the Confidential Information for which the Company seeks continued protective treatment remains trade secret information.

The protection of trade secret information from public disclosure is consistent with the purposes of R.C. Title 49. In the event that the Commission or its Staff requires access to the information, it will continue to be available to them. Given the nature of the information, however, it is rather unlikely that any party would need to access the confidential information as

defined herein. As such, granting continued protection of the Confidential Information will not impair the regulatory responsibilities incumbent upon the Commission or Staff.

In view of these circumstances, continued confidential treatment of the Confidential Information as defined herein is appropriate and is required by Ohio law and the Commission's regulations. The Company seeks to continue to protect confidential, proprietary information that includes portions of Volumes II and III of the hearing transcript filed as Confidential excerpts on January 13, 2011, and January 14, 2011, respectively, the unredacted copies of IEU Exhibits 1 through 10 that were filed under seal on January 19, 2011, and sections of briefs filed by both IEU and Duke Energy Ohio, with the exception of specific confidential information on page 55 of Duke Energy Ohio's Reply Brief.

For the foregoing reasons, Duke Energy Ohio respectfully requests that the Commission grant its Motion to Extend the Protective Order pursuant to O.A.C. 4901-1-24(F), and extend the period of protection of the Confidential Information as defined herein for eighteen months or until February 2018.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

Handwritten signature of Amy B. Spiller in blue ink, with a horizontal line underneath.

Amy B. Spiller (0047277)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

Rocco D'Ascenzo (0077631)

Associate General Counsel

139 E. Fourth Street, 1303-Main

P.O. Box 961

Cincinnati, Ohio 45201-0960

Telephone: (513) 287-4359

Fax: (513) 287-4385

Email: amy.spiller@duke-energy.com

rocco.d'ascenzo@duke-energy.com

elizabeth.watts@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Extend Protective Order and Memorandum in Support was served on the following parties via ordinary mail delivery, postage prepaid, and/or electronic mail delivery on this 8th day of August, 2016.



Amy B. Spiller

Mark S. Yurick
Taft Stettinius & Hollister LLP
65 E. State Street, Suite 1000
Columbus, Ohio 43215
myurick@taftlaw.com

Counsel for the Kroger Company

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima St.
Findlay, OH 45839-1793
drinebolt@ohiopartners.org

Counsel for Ohio Partners for Affordable Energy

Samuel C. Randazzo
McNees Wallace & Nurick LLC
21 E. State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
Counsel for Industrial Energy Users-Ohio

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz, & Lowry
36 East Seventh St., Suite 1510
Cincinnati, OH 45202
dboehm@bklawfirm.com
mkurtz@bklawfirm.com

Counsel for Ohio Energy Group

Trent A. Dougherty
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
trent@theoec.org

Counsel for Ohio Environmental Council

Terry Etter
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Terry.etter@occ.ohio.gov

Counsel for the Office of the Ohio Consumers' Counsel

Mark A. Hayden
First Energy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

Counsel FirstEnergy Solutions Corp.

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasshart.com

**Attorney for The Greater Cincinnati
Health Council**

Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, OH 43216-1008
smhoward@vorys.com

**Counsel for Constellation Energy
Resources, LLC**

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
BarthRoyer@aol.com

**Counsel for Dominion Resources
Services, Inc.**

David A. Kutik
Jones Day North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Counsel for FirstEnergy Solutions Corp.

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasshart.com

Counsel for Eagle Energy, LLC

Cynthia Fonner Brady
Constellation Energy Resources, LLC
550 W. Washington St., Suite 300
Chicago, IL 60661
cynthia.brady@constellation.com

**Counsel for Constellation Energy
Resources, LLC**

Gary A. Jeffries
Senior Counsel
Dominion Resource Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
Gary.A.Jeffries@dom.com

**Counsel for Dominion Resources
Services, Inc.**

Steven Beeler
John Jones
Assistant Attorneys General
Public Utilities Commission of Ohio
30 East Broad Street 16th Floor
Columbus, Ohio 43215
Steven.beeler@ohioattorneygeneral.gov
John.jones@ohioattorneygeneral.gov

Colleen L. Mooney
Ohio Partners for Affordable Energy
1431 Mulford Road
Columbus, OH 43212-3404
cmooney@ohiopartners.org

**Counsel for Ohio Partners for
Affordable Energy**

Grant W. Garber
Jones Day
325 John H. McConnell Blvd., Suite 600
Columbus, Ohio 43215-2673
gwwgarber@jonesday.com

**Attorney for
FirstEnergy Solutions Corp.**

Michael D. Dortch
Kravitz, Brown & Dortch, LLC
65 East State Street, Ste 200
Columbus, OH 43215
mdortch@kravitzllc.com

Counsel for Duke Energy Retail, LLC

J. Thomas Siwo
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tsiwo@bricker.com

Counsel for the City of Cincinnati

Joel Sechler
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
sechler@carperterlipps.com

**Attorney for Ohio Manufacturers
Association**

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Summary: Motion Motion of Duke Energy Ohio, Inc. to Extend Protective Order electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H. and Rocco D'Ascenzo