

**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.	)	

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

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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 Ohio<sup>1</sup>, 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.

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<sup>1</sup> 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 a horizontal line underneath.

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## 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:<sup>2</sup>

- (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

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<sup>2</sup> *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.



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## 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 8<sup>th</sup> day of August, 2016.

  
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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