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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs. ) Case No. 16-1106-GA-AAM

In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval. ) Case No. 16-1107-GA-UNC

DUKE ENERGY OHIO, INC.'S MOTION FOR A PROTECTIVE ORDER OF INFORMATION CONTAINED IN ITS REPLY COMMENTS

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company), pursuant to O.A.C. Rule 4901-1-24(D), hereby moves this honorable Public Utilities Commission of Ohio (Commission) for a protective order, covering certain confidential, proprietary, and trade secret information that is included as a part of its Reply Comments filed in the above-captioned proceedings.

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, two unredacted copies of the confidential information.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

Duke Energy Ohio is an Ohio corporation engaged in the business of providing natural gas service to approximately 422,000 customers in southwest Ohio and, as such, is a public utility as defined by R.C. 4905.02 and R.C. 4905.03.

Duke Energy Ohio is filing, simultaneously with this motion, its Reply Comments in response to the Comments of Commission Staff and intervenors, Ohio Partners for Affordable Energy, the Office of the Ohio Consumers' Counsel, and the Kroger Company regarding Duke Energy Ohio's Application for an extension of the recovery period applicable to costs incurred for environmental investigation and remediation, furtherance of its legal and societal obligations. Included within the Reply Comments is confidential, proprietary, and trade secret information that is subject to protection under Ohio law and Commission precedent. These references are discussed below, as is controlling authority.

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.<sup>1</sup>

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.

In its Reply Comments, Duke Energy Ohio addresses critical utility infrastructure, for which the Commission has previously afforded confidential treatment.<sup>2</sup> As the infrastructure is the same, the current references should similarly be afforded confidential treatment.<sup>3</sup> Additionally, in its reply comments, Duke Energy Ohio responds to comments from Staff that are predicated upon confidential material produced in another proceeding. Duke Energy Ohio questions the appropriateness of using such material in this proceeding given the procedural concerns invoked thereby and thus reserves all rights to challenge Staff's use of the material here. Notwithstanding this reservation and appreciating the need to respond, Duke Energy Ohio has included herein portions of the cited, confidential material. This material, reflected both in the Reply Comments and attachment thereto, is business proprietary and trade secret information subject to protection under Ohio law. This information derives 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 it is the subject of reasonable efforts to maintain its secrecy. It reflects actions occurring in a competitive marketplace and, as such, its public disclosure would significantly prejudice Duke Energy Ohio in respect of its contractual undertakings. It would also

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<sup>1</sup> R.C. 1333.61.

<sup>2</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.*, Opinion and Order at pp. 8-9 (November 13, 2013).


<sup>3</sup> See, e.g., 18 CFR 388.113(c)(providing definition of critical infrastructure).

have a chilling effect on bidding practices, with vendors reluctant to participate in competitive processes at the risk of exposing their confidential and proprietary information.

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.<sup>4</sup> Duke Energy Ohio is filing the information 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. 1333.61.

Respectfully submitted,

  
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<sup>4</sup> O.A.C. 4901-1-24.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery, on this the 2<sup>nd</sup> day of December 2016 to the parties listed below.

  
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