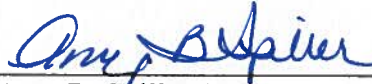




Respectfully submitted,

DUKE ENERGY OHIO, INC.



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Amy B. Spiller (0047277)

Counsel of Record

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

139 E. Fourth Street, 1303-Main

P.O. Box 961

Cincinnati, Ohio 45201-0960

(513) 287-4359 (telephone)

(513) 287-4385 (facsimile)

Amy.Spiller@duke-energy.com (e-mail)

## MEMORANDUM IN SUPPORT

Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio is engaged in the business of supplying electric power to the public in the state of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of R. C. 4905.02 and 4905.03. As such, Duke Energy Ohio is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the state of Ohio.

Duke Energy Ohio has been named as the respondent in this complaint proceeding, a proceeding initiated by Direct Energy Business, LLC (Direct Energy). Through the complaint, Direct Energy is alleging certain improper conduct on the part of Duke Energy Ohio in respect of one customer in the Duke Energy Ohio service territory. Relevant to these allegations, as asserted by Direct Energy, is proprietary customer information<sup>1</sup> and the internal processes used by Duke Energy Ohio.

Pursuant to agreement by the parties, Duke Energy Ohio is filing, contemporaneous herewith, the Merit Brief of Duke Energy Ohio (Merit Brief). The Merit Brief contains certain information, the public disclosure of which could interfere with Duke Energy Ohio's business interests and its obligation, under Commission regulation,<sup>2</sup> to protect customer proprietary information. Indeed, the information for which protection is sought contains confidential and business proprietary information related to the infrastructure at one customer's facility, which is representative of a type of customer-specific information guarded by the Company, and the manner in which internal processes associated therewith were administered.

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<sup>1</sup> See, e.g., Direct Energy Complaint, at Para. 8 and 10.

<sup>2</sup> O.A.C. 4901:1-37-04(D)(1).

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>3</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.

The Merit Brief includes information concerning the infrastructure at the facility of one customer and the internal processes implemented to accommodate same. The customer-specific information is proprietary and it is Duke Energy Ohio’s position that

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<sup>3</sup> R.C. 1333.61(emphasis added).

such information cannot, under applicable law and regulation, be made public without permission from the customer. Further, the related Company-specific information concerns confidential business information and plans. Public disclosure of this information would run afoul of Commission regulation and jeopardize the ability of individual customers to maintain the confidential nature of the proprietary information related to services they receive, including the manner in which those services may be administered by a public utility.

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 testimony, related attachments, and work papers 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. 4901.16 and 1333.61.

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

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Protective Order was served on the following parties this 11<sup>th</sup> day of August, 2017 by regular U. S. Mail, overnight delivery or electronic delivery.

  
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Amy B. Spiller

Mark Whitt  
Rebekah J. Glover  
Whitt Sturtevant LLP  
88 E. Broad Street, Suite 1590  
Columbus, Ohio 43215  
[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[glover@whitt-sturtevant.com](mailto:glover@whitt-sturtevant.com)

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Summary: Motion Duke Energy Ohio, Inc.'s Motion for Protective Order electronically filed by Mrs. Adele M. Frisch on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B and Watts, Elizabeth H