

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

- In the Matter of the Application of Duke Energy Ohio,) Case No. 17-32-EL-AIR
Inc., for an Increase in Electric Distribution Rates.)
- In the Matter of the Application of Duke Energy Ohio,) Case No. 17-33-EL-ATA
Inc., for Tariff Approval.)
- In the Matter of the Application of Duke Energy Ohio,) Case No. 17-34-EL-AAM
Inc., for Approval to Change Accounting Methods.)
- In the Matter of the Application of Duke Energy Ohio,) Case No. 17-872-EL-RDR
Inc., for Approval to Modify Rider PSR.)
- In the Matter of the Application of Duke Energy Ohio,) Case No. 17-873-EL-ATA
Inc., for Approval to Amend Rider PSR.)
- In the Matter of the Application of Duke Energy Ohio,) Case No. 17-874-EL-AAM
Inc., for Approval to Change Accounting Methods.)
- In the Matter of the Application of Duke Energy Ohio,) Case No. 17-1263-EL-SSO
Inc., for Authority to Establish a Standard Service Offer)
Pursuant to Section 4928.143, Revised Code, in the Form)
of an Electric Security Plan, Accounting Modifications and)
Tariffs for Generation Service.)
- In the Matter of the Application of Duke Energy Ohio,) Case No. 17-1264-EL-ATA
Inc., for Authority to Amend its Certified Supplier Tariff,)
P.U.C.O. No. 20.)
- In the Matter of the Application of Duke Energy Ohio,) Case No. 17-1265-EL-AAM
Inc., for Authority to Defer Vegetation Management Costs.)
- In the Matter of the Application of Duke Energy Ohio,) Case No. 16-1602-EL-ESS
Inc., to Establish Minimum Reliability Performance)
Standards Pursuant to Chapter 4901:1-10, Ohio)
Administrative Code.)

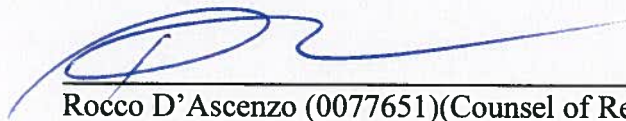
DUKE ENERGY OHIO'S MOTION FOR A PROTECTIVE ORDER

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves this honorable Public Utilities Commission of Ohio (Commission) for a protective order, pursuant to O.A.C. Rule 4901-1-24(D), covering certain confidential information that is included as a part of its testimony in support of the Stipulation in the above-captioned proceedings. Specifically, the proprietary, trade secret, competitive business information that Duke Energy Ohio seeks to have protected is contained in the Supplemental Testimony of Duke Energy Ohio witness Judah L. Rose.

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, three unredacted copies of the confidential information.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



Rocco D'Ascenzo (0077651)(Counsel of Record)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

139 E. Fourth Street

1303-Main

Cincinnati, Ohio 45202

(513) 287-4320 (telephone)

(513) 287-4385 (facsimile)

Rocco.d'ascenzo@duke-energy.com

Elizabeth.watts@duke-energy.com

Jeanne.kingery@duke-energy.com

Attorneys for Applicant

MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its Motion for a Protective Order. 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 R.C. 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.

The supplemental testimony of Duke Energy Ohio witness Rose contains information that is or may be deemed to be confidential, proprietary, trade secret, and/or competitive business information of Duke Energy Ohio and its witnesses and contractual counterparties. More specifically, the information for which protection is sought covers projections and competitively sensitive information, proprietary modeling and databases underlying same.

O.A.C. 4901-1-24(D) provides that the Commission or its attorney examiner 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 purpose 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, included 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.¹

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 Supplemental Testimony of Company witness Rose contains proprietary, confidential, and competitively sensitive information. Such information includes data derived from proprietary modeling tools, such as forecasts of energy and capacity prices and natural gas, coal, and CO₂ prices. Additionally, the information for which confidential protection is necessary includes forecasts related to power plants that participate in the competitive wholesale market. These forecasts and the associated, underlying assumptions and data, must remain confidential so that Company witness Rose's role, and that of his company, as a power consultant, is not compromised or disadvantaged and the generators and related counterparties discussed in his testimony are not harmed vis-à-vis their competitors. The information is treated as confidential, and protected, by Company witness Rose, his company, and Duke Energy Ohio. Indeed, the Company takes steps to ensure that this information is not disclosed to anyone within or affiliated with its organization who does not have a business need to know the material and it does not externally disclose such confidential information absent the existence of appropriate protective devices. Further, forecasts of competitive markets as well as projected operating and

¹ R.C. 1336.61(emphasis added).

maintenance costs of competitive generating stations have consistently been afforded confidential treatment by the Commission.²

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, or otherwise confidential information in a non-redacted form, under seal.³ Duke Energy Ohio is filing the testimony 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 trade secret under R. C. 4901-16 and 1333.61.

² See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, *et al.*, Opinion and Order at pgs. 5-6 (November 22, 2011); *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 14-841-EL-SSO, *et al.*, Entry at pgs. 10-11 (April 2, 2015); and *In the Matter of the Application of Ohio Edison Company, The Cleveland Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Entry at pg. 10 (December 1, 2014).

³ O.A.C. 4901-1-24.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



Rocco D'Ascenzo (0077651)(Counsel of Record)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

139 E. Fourth Street

1303-Main

Cincinnati, Ohio 45202

(513) 287-4320 (telephone)

(513) 287-4385 (facsimile)

Rocco.d'ascenzo@duke-energy.com

Elizabeth.watts@duke-energy.com

Jeanne.kingery@duke-energy.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Duke Energy Ohio's Motion for a Protective Order was served via electronic mail or ordinary mail on the following parties this 6th day of June, 2018.



Rocco D'Ascenzo

William.wright@ohioattorneygeneral.gov
Thomas.lindgren@ohioattorneygeneral.gov
Steven.beeler@ohioattorneygeneral.gov
Robert.eubanks@ohioattorneygeneral.gov
mdortch@kravitzllc.com
William.michael@occ.ohio.gov
kevin.moore@occ.ohio.gov
Terry.etter@occ.ohio.gov
Christopher.healey@occ.ohio.gov
Ricks@ohanet.org
dborchers@bricker.com
dparram@bricker.com
joliker@igsenergy.com
mnugent@igsenergy.com
charris@spilmanlaw.com
dwilliamson@spilmanlaw.com
lbrandfass@spilmanlaw.com
mjsettineri@vorys.com
glpetrucci@vorys.com
jlang@calfee.com
slessor@calfee.com
talexander@calfee.com
mkeaney@calfee.com

cmooney@ohiopartners.org
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylersohn@BKLawfirm.com
swilliams@nrdc.org
fdarr@mwncmh.com
mpritchard@mwncmh.com
Bojko@carpenterlipps.com
paul@carpenterlipps.com
whitt@whitt-sturtevant.com
Campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com
rsahli@columbus.rr.com
mleppla@theoec.org
tdougherty@theoec.org
mfleisher@elpc.org
Tony.mendoza@sierraclub.org
eakhbari@bricker.com
nhewell@bricker.com
daltman@environlaw.com
rdove@attorneydove.com
jweber@environlaw.com

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Summary: Motion Duke Energy Ohio's Motion for Protective Order - Judah Rose electronically filed by Mrs. Adele M. Frisch on behalf of Duke Energy Ohio, Inc. and D'Ascenzo, Rocco O and Kingery, Jeanne W and Watts, Elizabeth H