

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and, pursuant to O.A.C. 4901-1-24(D) and (F), hereby respectfully requests an order extending the confidential treatment afforded certain confidential information that was included as a part of its Reply Comments and attachments thereto filed in the above-captioned proceedings. Related information was also included in the comments filed by Staff of the Commission. All of said information was also included in the comments filed by Staff of the Commission. All of said information was afforded confidential treatment for 24 months by the Finding and Order in this case dated December 21, 2016.¹ Duke Energy hereby moves to extend the protective order issued on December 21, 2016, (Protective Order) to continue the confidential treatment of specific confidential information included in the Comments and Reply Comments.

Specifically, the information the Company seeks to continue to protect comprises critical energy infrastructure information, for which the commission has previously afforded confidential treatment (Confidential Information).²

¹ *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, *et al.*, Finding and Order, pp. 4-7, 15 (December 21, 2016).

² *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, pp. 8-9 (November 13, 2013).

Duke Energy Ohio sets forth, in the attached Memorandum in Support, the reasons why protective treatment of the Confidential Information is necessary. Federal law prohibits the release of this Confidential Information and disclosure of the Confidential Information is as sensitive 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, Duke Energy Ohio respectfully requests that the Public Utilities Commission of Ohio (Commission) extend the Protective Order for a period of ten years.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/Elizabeth H. Watts
Rocco D'Ascenzo (0077651)
Deputy General Counsel
Elizabeth H. Watts (0031092)
Associate General Counsel
139 E. Fourth Street, 1303-Main
Cincinnati, Ohio 45202
Telephone: (513) 287-4320
Fax: (513) 287-4385
Email: 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 critical energy infrastructure information (CEII), which protection was previously granted by Entry on December 21, 2016.

The Commission's administrative rules allow for the issuance of an order to protect the confidentiality of information, "to the extent that state or federal law prohibits release of the information . . ." O.A.C. 4901-1-24(D).

Federal prohibits the release of the Confidential Information. Following the terrorist attacks of September 11, 2001, the Federal Energy Regulatory Commission (FERC) issued Order 662, thereby removing certain documents likely to contain CEII from ready public access. The release of CEII would place the gas transmission system in an unsafe and unreliable situation by creating security issues and inviting criminal or terrorist activity intended to threaten persons and property. Gas-related CEII such as is present here has previously been protected by the Commission. *See, e.g., In the Matter of the Natural Gas Long-Term Forecast Report of Duke Energy Ohio*, Case No. 14-868-GA-FOR, Entry (July 30, 2015) and Entry (August 3, 2017). Furthermore, in considering rule changes, the Commission has discussed the need to maintain protection for gas CEII. *See, e.g., In the Matter of the Review of Chapters 4901:5-1; 4901:5-3; 4901:5-5 and 4901:5-7, Ohio Administrative Code*, Case No. 05-1128-GE-ORD, Finding and Order, pg. 2 (June 14, 2006).

The Confidential Information, which the attorney examiner found warranted protection, constitutes confidential critical energy infrastructure information and is not readily ascertainable within or outside Duke Energy Ohio. Indeed, very few individuals within the Company have access to the pertinent Confidential Information.

State law also prohibits release of the Confidential Information. R.C. 1333.61(D) provides, in pertinent part:

“Trade secret” means information, including . . . any business information . . . 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.

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

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

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 1997-Ohio-75, 80 Ohio St.3d 513, pp. 18-19.

As noted above, the Commission has previously concluded that the Confidential Information is covered under these standards, making it protectable under Ohio law. The situation has not changed with regard to the importance of this information or the Company’s treatment of it.

Because the information for which Duke Energy Ohio seeks protection is CEII, it will not likely be appropriate for disclosure at any point in the future; thus, the Company anticipates that,

under the existing protective order renewal framework, it will be administratively burdensome for the Commission to issue continuances, every two years, to continue to protect the information at issue. The Company therefore respectfully requests that the Commission lengthen the period of protection for the Confidential Information to ten years.

In view of these circumstances, continued confidential treatment of the Confidential Information is required by Federal law, Ohio law, and the Commission's regulations. 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 to last ten years.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/Elizabeth H. Watts

Rocco D'Ascenzo (0077651)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

139 E. Fourth Street, 1303-Main

Cincinnati, Ohio 45202

Telephone: (513) 287-4320

Fax: (513) 287-4385

Email: 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 6th day of November, 2018.

/s/ Elizabeth H. Watts
Elizabeth H. Watts

Steven Beeler
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Steven.Beeler@ohioattorneygeneral.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/6/2018 2:41:48 PM

in

Case No(s). 16-1106-GA-AAM, 16-1107-GA-UNC

Summary: Motion Motion of Duke Energy Ohio, Inc., to Extend Protective Order electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O. Mr. and Watts, Elizabeth H