

BEFORE

THE PUBLIC UTILITY COMMISSION OF OHIO

In the Matter of the 2011 Long-Term)
Gas Forecast Report of)
Duke Energy Ohio and Related Matters) Case No.11-118-GA-FOR

**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(F), hereby respectfully requests an order extending the confidential treatment afforded certain documents submitted to the Public Utilities Commission of Ohio (Commission) in connection with its 2011 Gas Long-Term Forecast Report (GLTFR). Said documents were afforded confidential treatment by Entry in this case dated September 19, 2011¹, and confidential treatment was extended by Entry dated February 13, 2013 for a three-year period until February 19, 2016² and was extended by Entry on January 13, 2016 for a three-year period until January 14, 2019.³ Duke Energy hereby moves to extend the protective order issued on September 19, 2011 (Protective Order) and extended on February 13, 2013 and January 13, 2016 to continue the confidential treatment of specific information included in the following exhibits admitted into evidence:

1. Appendix II to GLTFR (Existing Transmission Systems); and
2. Appendix III to GLTFR (Ten-Year Resource Plan).

¹ *In the Matter of the 2011 Long-Term Gas Forecast Report of Duke Energy Ohio, Inc. and Related Matters*, Case No.11-118-GA-FOR, (September 19, 2011).

² *Id.* (February 19, 2013).

³ *Id.* (January 13, 2016).

Specifically, the proprietary, trade-secret information the Company seeks to continue to protect includes existing gas transmission systems. As demonstrated herein, this information constitutes proprietary "Critical Energy Infrastructure Information" (CEII) that should be treated as confidential information.

Duke Energy Ohio sets forth, in the attached Memorandum in Support, the reasons why 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 Public Utilities Commission of Ohio (Commission) extend the Protective Order for a period of ten years.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission extend the protection of the Confidential Information included in the Appendix II to GLTFR (Existing Transmission Systems) and Appendix III to GLTFR (Ten Year Resource Plan) constituting the Company's proposed and existing gas transmission systems. As demonstrated herein, this information constitutes proprietary "Critical Energy Infrastructure Information" (CEII). The information for which protection was granted by Entry on September 19, 2011, 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:⁴

- (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 *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25, 1997-Ohio-75.

- (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.

The Confidential Information, for which the attorney examiner found warranted protection, included Duke Energy Ohio existing transmission system and its ten-year resource plan that includes the Company's proposed and existing gas transmission systems. This information which constitutes proprietary "Critical Energy Infrastructure Information" (CEII) is valuable and not readily ascertainable within or outside Duke Energy Ohio. Indeed, very few individuals within the Company have access to the pertinent Confidential Information contained within Duke Energy Ohio's existing transmission system and its ten-year resources plan that includes the Company's proposed and existing gas transmission systems. The Confidential Information is closely guarded by the Company, as it contains personally identifiable and other economically valuable information. 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 is 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 either party would need to access the confidential portions of Duke Energy Ohio's existing transmission system and its ten-year resources plan that includes

the Company's proposed and existing gas transmission systems. The public, redacted version provides a comprehensive view of the issues discussed in his testimony. As such, granting continued protection of the Confidential Information will not impair the regulatory responsibilities incumbent upon the Commission or Staff.

Because the information for which Duke Energy Ohio seeks protection is largely personal in nature, 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 it to file continuances, and for the Commission to issue orders, every eighteen months 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 contained in Duke Energy Ohio's existing transmission system and its ten-year resources plan that includes the Company's proposed and existing gas transmission systems, and is required by 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.



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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 21st day of November, 2018.


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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 Rocco D'Ascenzo and Watts, Elizabeth H.