

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Application of Duke |) | |
| Energy Ohio, Inc., for Approval of the |) | Case No. 19-0151-EL-RDR |
| Annual Audit Report of Rider SCR, Rider |) | |
| RE, Rider RC and Rider ECF. |) | |

DUKE ENERGY OHIO, INC.'S MOTION FOR PROTECTIVE ORDER

Duke Energy Ohio, Inc., (Duke Energy Ohio) by its attorneys and pursuant to O.A.C 4901-1-24(D), moves for a protective order keeping confidential the designated information filed in the above-captioned matter relating to Duke Energy Ohio's application (Application) for an annual audit of certain riders, including the Supplier Cost Reconciliation Rider (Rider SCR), Rider RE (Retail Energy Rider), Rider RC (Retail Capacity Rider) and Rider Economic Competitiveness Fund (Rider ECF), filed contemporaneously herewith. The information designated as confidential in the Application is contained in Attachment A to the Application, and supports Duke Energy Ohio's Rider SCR, one of the subjects of this audit, as ordered in Case 17-1263-EL-SSO, *et al.* (Duke Energy Ohio's ESP IV case).¹

¹ *In the Matter of Application of Duke Energy Ohio, 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*, Case 17-1263-EL-SSO, *et al.*, Opinion and Order (December 19, 2018).

Respectfully submitted,

/s/ Elizabeth H. Watts

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MEMORANDUM IN SUPPORT

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) respectfully requests that the Public Utilities Commission of Ohio (Commission) grant its Motion for Protective Order.

Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio has the corporate power and authority, among other things, to engage, and it is engaged, in the business of supplying electric distribution service to the public in the state of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of that term as used in 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.

In its Opinion and Order (Order) dated December 19, 2018, the Commission approved and established Duke Energy Ohio's Standard Service Offer (SSO) for the period beginning June 1, 2018, through May 31, 2025.² The SSO is in the form of an electric security plan (ESP) in which the supply for competitive retail electric service for Duke Energy Ohio's SSO is procured through a competitive bidding process.³ The Company's SSO, as approved by the Commission, is implemented through several formulaic pricing components that are established as separate riders.⁴

The Commission's Order provided for a level of review of the Company's various pricing elements during the term of the ESP, including annual audits and true-ups of Duke

² *In the Matter of the Application of Duke Energy Ohio, 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*, Case No. 17-1263-EL-SSO, *et al.*, Opinion and Order (December 19, 2018).

³ *Id.*

⁴ *Id.*, pg. 34.

Energy Ohio's riders.⁵ The documentation supporting the calculation and adjustment of Rider SCR, contained in Attachment A to the Application, includes certain information that is confidential, proprietary, trade secret information. The information considered confidential in Attachment A relates to auction fees that are charged by a third-party vendor and that are subject to a confidentiality agreement.

Ohio Administrative Code Rule 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 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.⁶

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

⁵ *Id.*, pp. 33-35.

⁶ R.C. 1333.61.

who can obtain their own value from use of the information and if they also are the subject of reasonable efforts to maintain their secrecy.

The redacted information contained in Attachment A constitutes trade secret information in accordance with such standards. The confidential material described above, relating to the pricing of certain auction services, if disclosed, would allow the competitors access to information that is competitively sensitive and such information would impact the market. The confidentiality of this information allows it to retain its independent economic value. If this information were to become publicly known, Duke Energy Ohio and its vendor would be placed at a competitive disadvantage, potentially resulting in higher auction fees to be passed on to Duke Energy Ohio and its customers. The information for which Duke Energy Ohio is seeking confidential treatment is not known outside of Duke Energy Ohio and its vendor, and it is not disseminated within Duke Energy Ohio except to those employees with a legitimate business need to know and act upon the information.

The public interest will be served by granting this motion. By protecting the confidentiality of the information in Attachment A, the Commission will prevent undue harm to Duke Energy Ohio and its ratepayers, as well as ensuring a sound competitive marketplace.

With this filing, Duke Energy Ohio has filed a redacted version of the confidential material contained in Attachment A, as well as the unredacted version of the confidential material under seal.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(D), grant its Motion for Protective Order.

Respectfully submitted,

/s/ Elizabeth H. Watts

Rocco D'Ascenzo (0077651)

Deputy General Counsel

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Summary: Motion Motion for Protective Order electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Rocco D'Ascenzo and Watts, Elizabeth H.