THE PUBLIC UTILITIES COMMISSION OF OHIO

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**
IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO, INC. FOR TARIFF APPROVAL.	**CASE NO. 16-1107-GA-UNC**

ENTRY

Entered in the Journal on March 20, 2019

{¶ 1} Duke Energy Ohio, Inc. (Duke or the Company) is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission, pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 2} R.C. 4905.13 authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts will be kept. Pursuant to Ohio Adm.Code 4901:1-13-13, the Commission adopted the Uniform System of Accounts (USOA), which was established by the Federal Energy Regulatory Commission, for gas and natural gas companies in Ohio, except to the extent that the provisions of the USOA are inconsistent with any outstanding orders of the Commission. Additionally, the Commission may require the creation and maintenance of such additional accounts as may be prescribed to cover the accounting procedures of gas or natural gas companies operating within the state.

{¶ 3} On November 12, 2009, the Commission authorized Duke to defer environmental investigation and remediation costs related to two former manufactured gas plant (MGP) sites in Ohio for potential recovery of reasonable and prudent costs in a future base rate proceeding. *In re Duke Energy Ohio, Inc.*, Case No. 09-712-GA-AAM, Finding and Order (Nov. 12, 2009) at 4.

{¶ 4} On November 13, 2013, the Commission authorized the recovery of such environmental investigation and remediation costs as had been incurred by the Company between 2008 and 2012. The Commission authorized Duke to recover and continue deferring environmental investigation and remediation costs. The Commission also established dates by which the deferral authority would end, absent the existence of exigent circumstances. Particularly, in respect to the costs applicable to the property designated as the East End site, the Commission determined that the Company could continue to defer and recover such reasonable and prudent costs through December 31, 2016. *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, et al. (*Duke Rate Case*), Opinion and Order (Nov. 13, 2013) at 70-74. On rehearing, the Commission stated that Duke would be permitted to file an application for an extension of its deferral and related recovery authority in the event of exigent circumstances. *Duke Rate Case*, Entry on Rehearing (Jan. 8, 2014) at 4.

{¶ 5} On May 16, 2016, Duke filed an application in the above-captioned proceedings, requesting Commission authorization to continue to defer environmental investigation and remediation costs in respect to the East End site subsequent to December 31, 2016, and seek recovery of those costs utilizing the same mechanism and process as provided in the *Duke Rate Case*.

{¶ 6} By Finding and Order issued December 21, 2016, the Commission granted Duke's application for an extension of its authority to defer environmental investigation and remediation costs incurred in regard to the East End site for an additional period of three years (Finding and Order). Additionally, the Commission granted Duke's and Staff's motions for protective orders regarding proprietary trade secret information and information designated as pertaining to critical utility infrastructure, noting that the subject redactions were consistent with prior safeguards and measures taken during the course of the *Duke Rate Case* to protect such information. Finding and Order at ¶¶ 20-22; *Duke Rate Case*, Opinion and Order (Nov. 13, 2013) at 8-9.

{¶ 7} On November 6, 2018, Duke filed a motion to extend the protective order granted by the Commission on December 21, 2016. Specifically, Duke contends that this information continues to be extremely sensitive and adds that, given the nature of this information, disclosure of this information would not likely be appropriate at any point in the future. Therefore, in furtherance of administrative efficiency, Duke requests that the Commission lengthen the period of protection for this information to ten years.

{¶ 8} No memoranda contra Duke's motion to extend the protective order were filed.

{¶ 9} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

{¶ 10} Similarly, Ohio Adm.Code 4901-1-24 allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

{¶ 11} Ohio law defines a trade secret as "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." R.C. 1333.61(D).

{¶ 12} The attorney examiner has reviewed the information included in Duke's motion for extended protective order, as well as the assertions set forth in the supportive memorandum. Duke is correct that the Commission has previously recognized the confidential nature of this information. Finding and Order at ¶¶ 20-22; *Duke Rate Case*, Opinion and Order (Nov. 13, 2013) at 8-9. It also appears, given the lack of any filings stating the contrary, the parties involved in these proceedings do not contest the need for continued protective treatment of this information. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Supreme Court of Ohio, the attorney examiner finds that the information identified in Duke's motion continues to constitute trade secret information. *See State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 687 N.E.2d 661 (1997). Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Therefore, the attorney examiner finds that Duke's motion for extension of the protective order is reasonable and should be granted with regard to the confidential information contained within the initial and reply comments submitted in these proceedings.

{¶ 13} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. However, Duke requests that the protective order be in effect for a ten-year period. Given that Duke's request for protective treatment pertains to critical utility infrastructure, the attorney examiner agrees that it is appropriate to extend the 24-month expiration date set forth in the rule; however, a ten-year period would be too long. Therefore, the attorney examiner finds that it would be appropriate to grant protective treatment for a period of 60 months from the date of this Entry, or until March 20, 2024. Until that date, the docketing division should maintain, under seal, the information filed confidentially in these proceedings on November 23, 2016, and December 2, 2016.

{¶ 14} Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. Should Duke wish to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Duke.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That Duke's unopposed motion for an extension of its protective order be granted, in part, as set forth in Paragraphs 12-14. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JRJ/mef

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/20/2019 1:19:15 PM

in

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

Summary: Attorney Examiner Entry granting in part the motion for extension of protective order electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio