

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for an Adjustment to)	Case No. 19-174-GA-RDR
Rider MGP Rates.)	

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Tariff Approval.)	Case No. 19-175-GA-ATA

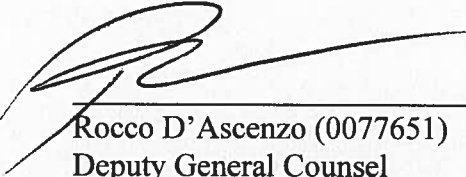
**DUKE ENERGY OHIO'S
MOTION FOR PROTECTIVE ORDER**

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 Application 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 Direct Testimony of Duke Energy Ohio witness Shawn F. Fiore.

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)

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) 287-4359 (telephone)

(513) 287-4385 (facsimile)

Rocco.d'ascenzo@duke-energy.com (e-mail)

Attorneys for Applicant

MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its Motion for a Protective Order. Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) is an Ohio corporation engaged in the business of providing natural gas service to customers in southwest Ohio and, as such, is a public utility as defined by R.C. 4905.02 and R.C. 4905.03. 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.

Duke Energy Ohio is filing, simultaneously with this motion, its Application for, *inter alia*, approval to adjust its Manufactured Gas Plant Rider (Rider MGP) to recover 2018 costs for investigation and remediation of manufactured gas plant (MGP) sites pursuant to Ohio and federal environmental laws. The testimony of Duke Energy Ohio witness Shawn F. Fiore 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 contains critical utility infrastructure information as well as business proprietary trade secret analysis and risk assessments.

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 Direct Testimony of Company witness Fiore contains information worth of protection in two different respects. The testimony and related attachments contain information regarding sensitive utility infrastructure, for which the Commission has previously afforded confidential treatment.² Additionally, Mr. Fiore’s testimony discusses analyses conducted by consultants for the Company as well as proprietary analyses conducted internally by Duke Energy. This information is not shared outside the Company and was used inside the Company

¹ R.C. 1336.61(emphasis added).

only by those with a need to know regarding the relevant projects. Allowing the information to be released to the public would give Duke Energy Ohio's competitors access to competitively sensitive, confidential information, which in turn could afford the named vendors and generators undue advantage in providing work similar to that which was discussed in the testimony along with the analyses in attachments.³ Moreover, the testimony and attachments have independent economic value that could be damaged by any disclosure.

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.⁴ Duke Energy Ohio is filing the testimony and related attachments 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. 4901-1-24(D) and 1333.61.

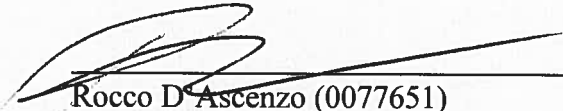
² *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.*, Opinion and Order at pp. 8-9 (November 13, 2013).

³ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust its Alternative Energy Recovery*, Case No. 12-3111-EL-RDR, Finding and Order (February 24, 2016); *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust its Alternative Energy Recovery*, Case No. 12-802-EL-RDR, Finding and Order (April 16, 2014).

⁴ O.A.C. 4901-1-24.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in black ink, appearing to be 'Rocco D'Ascenzo', is written over a horizontal line.

Rocco D'Ascenzo (0077651)

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 (e-mail)

Attorneys for Applicant

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/29/2019 4:02:55 PM

in

Case No(s). 19-0175-GA-ATA

Summary: Motion Duke Energy Ohio's Motion for 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