

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish and) Case No. 09-1946-EL-RDR
Adjust the Initial Level of its Distribution)
Reliability Rider.)

**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 portions of the Direct Testimony of Anthony J. Yankel. (Yankel Direct Testimony) submitted in the captioned proceeding. Said portions of Yankel Direct Testimony were orally afforded confidential treatment on May 18, 2010¹ and the confidential treatment was extended with the attorney examiner’s Entry of January 30, 2012.² Consistent with that Entry, the initial eighteen-month period for which confidential protection will be afforded would have expired on January 11, 2014.³ Subsequent Motions to Extend Protective Order were filed on November 26, 2013⁴, April 10, 2015⁵, August 11, 2016⁶ and December 2, 2017⁷. Duke Energy Ohio hereby moves to extend the protective order filed on December 21, 2017⁸ (Protective Order) to continue the confidential treatment of specific information included in Yankel Direct Testimony. Specifically, the proprietary, trade-secret information the Company seeks to

¹ Transcript, Vol. II, pg. 203.

² Entry, at pg. 4 (January 30, 2012).

³ *Id.*

⁴ Motion (November 26, 2013).

⁵ Motion (April 10, 2015).

⁶ Motion (August 11, 2016).

⁷ Motion (December 21, 2017).

⁸ *Id.*

continue to protect includes employee numbers, employee names, and specific description titles, as well as contractor names and telephone numbers or addresses that lead to the identification of contractors (collectively, the Confidential Information) that are included in Yankel Direct Testimony.

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 consistent 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 any period, be harmless to the Company, its employees, or its 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.

/s/Elizabeth H. Watts

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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 Yankel Direct Testimony filed in the proceeding hereunder. The information for which protection was orally granted on May 26, 2010, was extended by Entry on January 30, 2012, and protection was further requested by the Company on November 26, 2013, April 10, 2015, August 11, 2016 and December 21, 2017. The Company seeks an extension of that protection, which 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:

- (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.⁹

The Confidential Information, for which the attorney examiner found warranted protection, includes employee code numbers, vendor names; employee identifications, employee names, specific position description titles, contractor names, and any telephone number or address that would reference a contractor. Such information, as reflected in Yankel Direct Testimony, is valuable in that it is 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 Yankel Direct Testimony. 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 any party would need to access the confidential portions of Yankel Direct Testimony. The public, redacted version provides a comprehensive view of the issues discussed in his testimony. As such, granting continued protection of the Confidential

⁹ *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25, 1997-Ohio-75.

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 the Direct Testimony of Anthony J. Yankel is appropriate, 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.

/s/Elizabeth H. Watts

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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 6th day of May, 2019.

/s/ Elizabeth H. Watts
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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.