

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio, Inc. for Approval of a	)	
Market Rate Offer to Conduct a	)	
Competitive Bidding Process for a	)	Case No. 10-2586-EL-SSO
Standard Service Offer Electric	)	
Generation Supply, Accounting	)	
Modifications, and Tariffs for	)	
Generation Service.	)	

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**MOTION OF DUKE ENERGY OHIO, INC.,  
TO EXTEND PROTECTIVE ORDER**

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In connection with the Attorney Examiner’s ruling granting the Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) motion for protective order (Protective Order) at the hearing in this proceeding on January 12, 2011, and in its Opinion and Order of February 23, 2011, and pursuant to O.A.C. 4901-1-24(F), Duke Energy Ohio hereby moves to extend the Protective Order to continue the confidential treatment of specific information presented on the record and in brief. Duke Energy Ohio filed its first Motion to Extend Protective Order (Motion) on July 5, 2012 and subsequent Motions were filed on November 13, 2013, August 8, 2016 and December 21, 2017 but a ruling has not yet been made by the Commission. As more fully described below, this confidential information remains trade secret information and continues to merit protection. Thus through this Motion, the Company is seeking an Order continuing protection of the confidential material described herein for another eighteen-month period, through approximately September 2020.

Specifically, the proprietary, trade-secret information the Company seeks to continue to protect includes portions of Volumes II and III of the hearing transcript, the unredacted copies of IEU-Ohio (IEU) Exhibits 1 through 10 that were filed under seal on January 19, 2011, and sections of briefs filed by both IEU and Duke Energy Ohio (Confidential Information).

Duke Energy Ohio sets forth, in the attached Memorandum in Support, the reasons why continued 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.

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 portions of Volumes II and III of the hearing transcript, the unredacted copies of IEU-Ohio (IEU) Exhibits 1 through 10 that were filed under seal on January 19, 2011, and sections of briefs filed by both IEU and Duke Energy Ohio. The information for which protection was granted, 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:

- (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.

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

The Confidential Information that the attorney examiner held as confidential included information related to Duke Energy Ohio's internal deliberations and management analysis of various business scenarios related to its relationship with regional transmission authorities. Although the decision under discussion in these documents was temporal in nature, the Company's internal processes and analysis leading to its decision and the supporting documentation remains competitively sensitive as it included long-term business forecasts and modeling. These analyses included future projections of financial costs and business assumptions that remain relevant and sensitive to the Company today. Very few individuals, even within the Company, have access to the pertinent Confidential Information contained within protected material. The Confidential Information is closely guarded by the Company, as it contains personally identifiable and other economically valuable information including, but not limited to, future market projections. 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 remains 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 Volumes II and III of the hearing transcript, the unredacted copies of IEU-Ohio (IEU) Exhibits 1 through 10 that were filed under seal on January 19, 2011, and sections of briefs filed by both IEU and Duke Energy Ohio. As such, granting continued protection of the Confidential Information will not impair the regulatory responsibilities incumbent upon the Commission or Staff.

In view of these circumstances, continued confidential treatment of the Confidential Information contained in the Volumes II and III of the hearing transcript, the unredacted copies of IEU-Ohio (IEU) Exhibits 1 through 10 that were filed under seal on January 19, 2011, and sections of briefs filed by both IEU and Duke Energy Ohio 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.

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 6<sup>th</sup> day of May, 2019.

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/6/2019 3:14:36 PM**

**in**

**Case No(s). 10-2586-EL-SSO**

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.