

BEFORE

THE PUBLIC UTILITY COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for Establishment of a Change Pursuant to Revised Code Section 4909.18.)
)
) Case No. 12-2400-EL-UNC
)

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)
) Case No. 12-2401-EL-AAM
)

In the Matter of the Application of Duke Energy Ohio, Inc., for the Approval of a Tariff for a New Service.)
) Case No. 12-2402-EL-ATA
)

**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 documents submitted to the Public Utilities Commission of Ohio (Commission) in connection with its Case Nos. 12-2400-EL-UNC, *et al.*, (Capacity case). Said documents were afforded confidential treatment by the Opinion and Order in this case dated February 13, 2014.¹ Wherein it was ordered that the initial twenty-four month period for which confidential protection will be afforded would expire on February 16, 2016.² On December 30, 2015 and November 15, 2017, a Motion to Extend Protective Order was filed but a ruling has not yet been made by the Commission. Duke Energy hereby moves to extend the confidential protection ordered on February 13, 2014 (Protective Order) and to continue the confidential treatment of

¹ *In the Matter of the Application of Duke Energy Ohio for Establishment of a Change Pursuant to Revised Code Section 4909.18 and Related Matters*, Case No. 12-2400-EL-UNC, *et al.*, (February 13, 2014).

² *Id.*

certain and specific information included in the exhibits admitted into evidence and subsequent briefs as listed on the following Attachment A – Confidential Document List (Confidential Information). Specifically, the proprietary, trade-secret information the Company seeks to continue to protect includes sensitive and proprietary financial information and analysis and certain information, the public disclosure of which could damage Duke Energy Ohio's competitive position and business interests. As demonstrated herein, this information constitutes proprietary and competitively sensitive work product that should be treated as Confidential Information.

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 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 for at least the next twenty-four months.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Rocco D'Ascenzo

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MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission extend the protection of certain Confidential Information admitted as evidence in the Company's Capacity case proceedings. Specifically, the Company requests continued protection of the Confidential Information included in the exhibits admitted into evidence and subsequent briefs listed on Attachment A hereto.

As demonstrated in the Company's Capacity case proceedings as reasserted herein, this information constitutes proprietary trade secret information related to the Company's financial analysis and planning and certain information, the public disclosure of which could damage Duke Energy Ohio's competitive position and business interests. The information for which protection was granted by Opinion and Order on February 13, 2014, and for which the Company seeks an extension of that protection, constitutes trade secret information and, therefore, requires continued protection from disclosure.

The Commission, therefore, generally refers to the requirements of R.C. 1333.61 for a determination of whether specific information should be release or treated confidentially. Subsection (D) of the section defines "trade secret" as follows:

"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:³

- (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.

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 Confidential Information as listed in Attachment A meets the aforementioned definition.

Specifically, the Confidential Information set forth in Exhibit FES 4A is considered still confidential by Duke Energy Ohio as it contains forward financial projections and forecasted information that extends into future years. Forecasted information is developed and utilized by the Company for a number of purposes. If disclosed publicly, such information could impair the Company's financing efforts, as well as having a negative impact on its activities in various aspects of the marketplace. Forecasts are generally not disclosed and are protected by the

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

Commission in many types of proceedings.⁴ Additionally, information contained in the confidential portions of the Post-Hearing Brief of The Ohio Energy Group⁵, the Reply Brief of Duke Energy Ohio⁶ and the information contained in the confidential portions of the hearing transcripts Volumes II and III reflects discussion of the Confidential Information contained in the exhibit for which Duke Energy Ohio is seeking continued protection⁷. For that reason, Duke Energy Ohio requests continued protection for the Confidential Information discussed in these documents.

The Confidential Information in the referenced exhibits and briefs listed in Attachment A – Confidential Document List also includes information concerning certain market positions of the Company for which the Attorney Examiner found warranted protection. Portions of the analysis undertaken by the Company in preparing for hearing and to seek approval for establishing a charge for capacity services, necessarily involved confidential and proprietary financial information. This information is valuable and 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 these documents. 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.

⁴ See, e.g., *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. 11-3549-EL-SSO, et al., Opinion and Order at page 5.

⁵ Post-Hearing Brief of The Ohio Energy Group (July 1, 2013).

⁶ Reply Brief of Duke Energy Ohio, Inc. (July 30, 2013).

⁷ Tr. II (April 30, 2013) and Tr. III (May 1, 2013).

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 the Commission or its Staff requires access to the information, it will continue to be available to them. The public, redacted version provides a comprehensive view of the issues discussed in the ESP proceedings. As such, granting continued protection of the Confidential Information will not impair the regulatory responsibilities incumbent upon the Commission or Staff.⁸

For the foregoing reason, 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).

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/Rocco D'Ascenzo

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⁸ It should be noted that Duke Energy Ohio is no longer seeking confidential protection of the following information in these proceedings: Duke Ex. 36A, FES Ex. 28A, OCC Ex. 6A OCC Ex. 7A, OCC Ex. 8A, OCC Ex 9A, OCC Ex. 11A, OCC Ex. 12A, OCC Ex. 13A, OEG Ex. 4A, OEG Ex. 11A, Tr. II(April 30, 2013), Tr. III(May 1, 2013), Tr. IV (May 2, 2013), Tr.VI (May 6, 2013), FES Initial Brief (June 28, 2013), and OCC Initial Brief (June 28, 2013).

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 26th day of September 2019.

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Attachment A
Confidential Document List

Party/Document	Description	Date Filed or Submitted on the Record
FES Ex. 4A	Discovery Item Case No. 10-2586-EL-SSO Dated November 17, 2010	May 22, 2013
Tr. Vol. II		April 30, 2013
Tr. Vol. III		May 1, 2013
OEG	Initial Brief	July 1, 2013
Duke	Reply Brief	July 30, 2013

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Case No(s). 12-2400-EL-UNC, 12-2401-EL-AAM, 12-2402-EL-ATA

Summary: Motion Motion of Duke Energy Ohio, Inc., To Extend Protective Order electronically filed by Mrs. Tammy M Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Watts, Elizabeth and Kinergy, Jean