

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF DUKE  
ENERGY OHIO, INC.'S ALTERNATIVE  
ENERGY RECOVERY RIDER.

CASE NO. 19-51-EL-RDR

### ENTRY

Entered in the Journal on October 1, 2019

{¶ 1} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined by R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 3} On December 19, 2018, the Commission approved a stipulation and recommendation filed by Duke and other parties that, among other things, included an ESP for the period June 1, 2018, through May 31, 2024. *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, et al., Opinion and Order (Dec. 19, 2018). In the Opinion and Order, the Commission continued Duke's Alternative Energy Recovery Rider (Rider AER-R). In accordance with the stipulation, through Rider AER-R, Duke may recover the costs it incurs in complying with the alternative energy portfolio standard requirements of R.C. 4928.64. Rider AER-R is filed quarterly and is subject to true-up and annual audits

{¶ 4} On January 23, 2019, the Commission issued an Entry directing Staff to issue a request for proposal to acquire audit services to assist the Commission with the review of Duke's Rider AER-R. Bidders were directed to demonstrate their understanding of the project and the work required by showing a clear understanding of the tasks to be

completed, the experience and qualifications of the personnel who will perform the work, and the anticipated breakdown of costs and timing.

{¶ 5} On March 27, 2019, the Commission issued an Entry selecting Larkin & Association, PLLC (Larkin) to perform the consulting activities for Duke's Rider AER-R and directed Duke to enter into a contract with Larkin for the purpose of providing payment for its auditing services. Thereafter, on August 28, 2019, Larkin submitted its audit report.

{¶ 6} The attorney examiner now finds it appropriate to invite interested stakeholders to file comments. The procedural schedule shall be as follows:

- (a) Motions to intervene shall be filed by November 1, 2019;
- (b) Comments shall be filed by November 1, 2019;
- (c) Reply comments shall be filed by November 15, 2019.

{¶ 7} As an additional matter, the Commission notes that Duke filed a motion for protective order on August 28, 2019.

{¶ 8} Under R.C. 4905.07, "all facts and information in the possession of the [Commission] shall be public \* \* \* [and] open to inspection by interested parties or their attorneys," except as provided in R.C. 149.43. R.C. 4905.07. In turn, R.C. 149.43 specifies that a record prohibited from release under state or federal law is not a "public record." R.C. 149.43(A)(1)(v). This exemption includes trade secrets. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 737 (2000) ("Trade secrets are exempt from disclosure under the 'state or federal law' exemption of R.C. 149.43.").

{¶ 9} Ohio law defines a "trade secret" as information that both "derives independent economic value \* \* \* from not being generally known to, and not being readily ascertainable by \* \* \* other persons who can obtain economic value from its disclosure or use" and "is the subject of efforts that are reasonable under the circumstances to maintain

its secrecy.” R.C. 1333.61(D). In analyzing whether a trade secret claim meets the statutory definition codified in R.C. 1333.61(D), one must consider: (1) the extent to which the information is known outside the business; (2) the extent to which it is known within the business; (3) the precautions taken by its holder to guard the secrecy of the information; (4) the savings effected and 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 it. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 10} Duke’s motion for a protective order is filed pursuant to Ohio Adm.Code 4901-1-24(D), which permits a party to request, and the Commission to issue, any order necessary to protect the confidentiality of any information contained within a document “to the extent that state or federal law prohibits the release of the information, including where the information is deemed \* \* \* to constitute a trade secret under Ohio law \* \* \*.” Ohio Adm.Code 4901-1-24(D). By its motion, Duke seeks to protect from public view certain information within the audit report. Duke identifies this designated material as specific purchase prices, vendor names, and internal procedural documentation. Duke states that it considers the information to be a confidential, proprietary trade secret. Duke submits that releasing the information to public view would result in a competitive disadvantage to both Duke and the third-party vendor, which would result in higher fees for Duke and, thus, its customers. Duke posits that upholding the confidentiality of the data would retain its independent economic value by shielding its competitively sensitive nature from the market. Duke also states that information is known only to itself and its vendor. Furthermore, the information is subject to a confidentiality agreement by which only employees with a legitimate business need to know and act are privy to it. No memoranda contra Duke’s motion for protective order were filed.

{¶ 11} Upon review of the information designated as confidential, Duke's arguments in support of retaining that confidentiality, and legal standards discussed above, the Commission concludes that the material portions of the audit report constitutes a trade secret. As such, release of the information is prohibited. The Commission further finds that the nondisclosure of information is not inconsistent with the purposes of R.C. Title 49. Accordingly, the Commission finds that Duke's August 28, 2019 motion for a protective order should be granted. Any party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date. Ohio Adm.Code 4901-1-24(F).

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the procedural schedule set forth in Paragraph 6 be adopted. It is, further,

{¶ 14} ORDERED, That the motion for protective order filed by Duke be granted. It is, further,

{¶ 15} ORDERED, That, for a period of 24 months, the Commission's docketing division maintain, under seal, certain information in the audit report, which was filed under seal in this docket on August 28, 2019. It is, further,

{¶ 16} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Nicholas J. Walstra

By: Nicholas J. Walstra  
Attorney Examiner

JRJ/hac

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

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**Case No(s). 19-0051-EL-RDR**

Summary: Attorney Examiner Entry setting forth procedural schedule, granting Duke's motion for protective order, and ordering docketing division to maintain information under seal electronically filed by Heather A Chilcote on behalf of Nicholas Walstra, Attorney Examiner, Public Utilities Commission