

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|---------------------------------------|---|-------------------------|
| In the Matter of the Application of |) | |
| Duke Energy Ohio, Inc. to Adjust |) | Case No. 12-3111-EL-RDR |
| its Alternative Energy Recovery 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 extension of the order filed on February 24, 2016¹ extending the confidential treatment afforded specific information included in the document titled "Management/Performance and Financial Audit of the Alternative Energy Resources Recovery Rider of Duke Energy Ohio, Inc." (Audit Report), wherein it was ordered that certain information in the Audit Report be maintained under seal for a period of twenty-four months.² On January 5, 2018, a Motion to Extend Protective Order was filed but a ruling has not yet been made by the Commission. Duke Energy Ohio hereby moves to extend the protective order filed on February 24, 2016 to continue the confidential treatment of specific information included in the Audit Report.

¹ Opinion and Order (February 24, 2016).

² *Id.*

Respectfully submitted,

Elizabeth H. Watts

Rocco D'Ascenzo (0077651)

Deputy General Counsel

Elizabeth H. Watts (0031092)

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Duke Energy Business Services, LLC

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MEMORANDUM IN SUPPORT

Duke Energy Ohio, Inc., (Duke Energy Ohio) respectfully requests that the Public Utilities Commission of Ohio (Commission) extend the protection of the confidential information contained in the *Management/Performance and Financial Audit of the Alternative Energy Resource Recovery Rider of Duke Energy Ohio, Inc.*, (Audit Report). Protection was previously granted for this information on February 24, 2016. The information for which the Company seeks 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.³

The Confidential Information, which the attorney examiner found warranted protection, contains confidential trade secret information. Specifically, the Audit Report names Duke Energy Ohio's vendors, pinpoints the purchase price of Renewable Energy Credits (RECs) and contains internal procedural practices.

The confidential material described above, if disclosed, would enable competitors to ascertain the manner in which Duke Energy Ohio plans and manages its alternative energy compliance efforts and the cost associated therewith. Disclosure of such competitively sensitive information would be detrimental to Duke Energy Ohio's ability to effectively negotiate, on behalf of its customers, for future supplies of renewable energy certificates, potentially increasing compliance costs for our customers.

Such information, as reflected in the Report, 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 the Report. 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

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

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 the Audit Report. The public, redacted version provides a comprehensive view of the issues discussed in the report. The redacted information contained in the Audit Report constitutes trade secret information in accordance with Ohio's Uniform Trade Secret Act and relevant jurisprudence. 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 Audit Report 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 for a period of twenty-four months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties this 12th day of November 2019, via electronic transmission, hand delivery or regular U.S. Mail.

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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