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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke
Energy Ohio, Inc., for an Adjustment to
Rider MGP Rates.

) Case No. 20-0053-GA-RDR, et. al.)

DUKE ENERGY OHIO, INC.'S
MOTION FOR PROTECTIVE ORDER

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves this honorable Public Utilities Commission of Ohio (Commission) for leave to file under seal certain information contained in the documents referenced in the Direct Testimony of Todd Bachand entitled; "TLB-4 Redacted Confidential Attachment", "TLB-5 Redacted Confidential Attachment", "TLB-6 Redacted Confidential Attachment", "TLB-7 Redacted Confidential Attachment", "TLB-9 Redacted Confidential Attachment" and "TLB-10 Redacted Confidential Attachment" (Confidential Attachments) being filed concurrently with Mr. Bachand's direct testimony on March 31, 2020. For the reasons set forth in the Memorandum in Support, Duke Energy Ohio respectfully requests that the Commission grant this motion and provide confidential treatment as requested.

Respectfully submitted,

/s/ Rocco D'Ascenzo

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MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its motion for protective order to protect the confidentiality of information contained in the Attachments to the Direct Testimony of Todd L. Bachand accompanying the Company's Application in these proceedings.

Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio has the corporate power and authority, among others, to engage, and it is engaged, in the business of supplying electric distribution service to customers in the State of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of that term as used in R. C. 4905.02 and 4905.03. As such, Duke Energy Ohio is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Ohio.

Duke Energy Ohio owns, operates, manages and controls plants, properties and equipment used and useful in supplying electric distribution service to over 624,000 customers in southwestern Ohio.

These confidential attachments contain confidential trade secret information. Specifically, the Confidential Attachments to Mr. Bachand's direct testimony names Duke Energy Ohio's vendors and their detailed competitive pricing information, including unitized costs and hourly rates for specific employees, as well as confidential wire transfer and company tax identification information.

This confidential trade secret information, if publicly disclosed, would give Duke Energy Ohio's competitors access to competitively sensitive, confidential information, which in turn could allow competitors to make offers to supply labor and other services at higher prices than the competitors might offer in the absence of such information and to the detriment of Duke Energy Ohio and its customers. Moreover, the sensitive information being redacted in the Confidential

version of these filings include banking and tax identification that should not be provided in a public docket.

Ohio Administrative Code Section 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information contained in or attached to the Confidential Attachments that Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form under seal.¹ This rule also establishes a procedure for presenting to the Commission that information which is confidential, and therefore should be protected.²

The Company has filed the requisite number of unredacted versions of the confidential material in the Confidential Attachments from Mr. Bachand's direct testimony under seal. The redacted information contained in the Confidential Attachments constitutes trade secret information in accordance with Ohio's Uniform Trade Secret Act and relevant jurisprudence. Subsection (D) of R.C. 1333.61 defines "trade secret" as follows:

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, **process, procedure**, formula, pattern, compilation, program, device, method, technique, or improvement, or 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.³

¹ O.A.C. 4901-1-24.

² Id.

³ R.C. 1333.61 (emphasis added).

In analyzing a trade secret claim, the Ohio Supreme Court has adopted the following factors as relevant to determining whether a document constitutes a trade secret:

- (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 effected 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.⁴

The confidential material described above, if disclosed, would enable competitors to ascertain the manner in which Duke Energy Ohio plans and manages its Rider MGP 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.

The information for which Duke Energy Ohio is seeking confidential treatment is not known outside of Duke Energy Ohio, and it is not disseminated within Duke Energy Ohio except to those employees with a legitimate business need to know and act upon the information.

The public interest will be served by granting this motion. By protecting the confidentiality of the vendor's contract information, the Commission will prevent undue harm to Duke Energy Ohio and its customers, as well as ensuring a sound competitive marketplace.

Duke Energy Ohio considers the Confidential Attachments' confidential material to be proprietary, confidential, and trade secrets, as that term is used in R.C. 1333.61. In addition, this information should be treated as confidential pursuant to R.C. 4901.16. The redacted version of the Confidential Information includes the confidential material blacked out for the public.

⁴ *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 732 N.E.2d 373 (2000).

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(D), grant its Motion for Protective Order to protect the confidentiality of information contained in "TLB-4 Redacted Confidential Attachment", "TLB-5 Redacted Confidential Attachment", "TLB-6 Redacted Confidential Attachment", "TLB-7 Redacted Confidential Attachment", "TLB-9 Redacted Confidential Attachment" and "TLB-10 Redacted Confidential Attachment" by making a determination that the redacted information is confidential, proprietary, and a trade secret under R.C. 1333.61.

Respectfully submitted,

/s/ Rocco D'Ascenzo

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following party this 31st day of March 2020 , by regular U.S. Mail, overnight delivery, or electronic delivery.

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