

BEFORE

THE PUBLIC UTILITY COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio for Authority to Establish a)
Standard Service Offer Pursuant to Section)
4928.143, Revised Code, in the Form of an) Case No. 14-841-EL-SSO
Electric Security Plan, Accounting)
Modifications and Tariffs for Generation)
Service.)

In the Matter of the Application of Duke)
Energy Ohio for Authority to Amend its) Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)

**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 filed with the Public Utilities Commission of Ohio (Commission) in connection with its Electric Security Plan (ESP), Case No. 14-841-EL-SSO, *et al.* (ESP III). Said documents were afforded confidential treatment by the Opinion and Order (Protective Order) in this case dated April 2, 2015,¹ wherein it was ordered that the initial twenty-four month period for which confidential protection will be afforded would expire on April 3, 2017.² On February 17, 2017 a Motion to Extend Protective Order was filed but a ruling has not yet been made by the Commission.³ On January 7, 2019 a Motion to Extend Protective Order was filed but a ruling has

¹ *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer and Related Matters*, Case No. 14-841-EL-SSO, *et al.* (April 2, 2015).

² *Id.*

³ *Id.* Motion of Duke Energy Ohio, Inc. to Extend Protective Order (February 17, 2017)

not yet been made by the Commission.⁴ Duke Energy hereby moves to extend the Protective Order and to continue the confidential treatment of specific confidential information included in the following exhibits that were admitted into evidence (Confidential Information):

1. Duke Energy Ohio exhibits 16A-17A, 21A;
2. OCC Exhibits 4A-5A, 7A-8A, 10A-27A, 29A-31A, 39A, 41A, 43A-44A;
3. OEG Exhibit 1A;
4. IGS Exhibit 4A, 7A-8A, 12A;
5. Sierra Exhibit 4A;
6. OMA Exhibits 3A – 8A;
7. Transcript Volumes (Confidential versions) III, V-VII, IX-XII, and XV;
8. Confidential version of Initial Brief filed by IGS on December 15, 2014;
9. Confidential version of Initial Brief filed by Sierra Club on December 15, 2014; and
10. Confidential version of Initial Post-Hearing Brief filed by OCC on December 15, 2014.

Specifically, the proprietary, trade-secret information the Company seeks to continue to protect includes sensitive and proprietary financial information and analysis. 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 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 Commission's

⁴ Motion of Duke Energy Ohio, Inc. to Extend Protective Order (January 7, 2019).

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.

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MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission extend the protection of the following Confidential Information admitted as evidence in the Company's ESP III proceedings:

1. Duke Energy Ohio exhibits 16A-17A, 21A;
2. OCC Exhibits 4A-5A, 7A-8A, 10A-27A, 29A-31A, 39A, 41A, 43A-44A;
3. OEG Exhibit 1A;
4. IGS Exhibit 4A, 7A-8A, 12A;
5. Sierra Exhibit 4A;
6. OMA Exhibits 3A – 8A; and
7. Transcript Volumes (Confidential versions) III, V-VII, IX-XII, and XV;
8. Confidential version of Initial Brief filed by IGS on December 15, 2014;
9. Confidential version of Initial Brief filed by Sierra Club on December 15, 2014; and
10. Confidential version of Initial Post-Hearing Brief filed by OCC on December 15, 2014.

As demonstrated in the Company's ESP III proceedings and as reasserted herein, this information constitutes proprietary trade secret information, primarily related to the Ohio Valley Electric Company's (OVEC) financial analysis and planning. The information for which protection was granted by Opinion and Order on April 2, 2015, and for which the Company seeks an extension of that protection, constitutes trade secret information and, therefore, requires continued protection from disclosure.

The Commission 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.

Further, the Supreme Court of Ohio has adopted six factors to be used in determining whether a trade secret claim meets the statutory definition:⁵

- (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.

The Confidential Information, which the Commission found warranted protection, includes information relevant to Duke Energy Ohio’s application for an electric security plan. Portions of the analysis undertaken by the Company in applying for approval of an electric security plan and preparing for hearing necessarily involve 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 Confidential Information contained within these documents. The Confidential Information is closely guarded

⁵ *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25, 1997-Ohio-75.

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. Accordingly, the Confidential Information for which the Company seeks continued protective treatment is trade secret, proprietary 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 III proceedings. As such, granting continued protection of the Confidential Information will not impair the regulatory responsibilities incumbent upon the Commission or Staff.

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).

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

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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 10th day of November, 2020.

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