

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of The Purchased)
Gas Adjustment Clause Contained Within the Rate) Case No. 18-0218-GA-GCR
Schedules of Duke Energy Ohio, Inc. and Related)
Matters.)

DUKE ENERGY OHIO, INC.
MOTION 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 requested by the Company on January 24, 2019.¹ In its Motion for Protective Order of January 24, 2019, the Company requested that specific information included in the document entitled ‘Report to the Public Utilities Commission of Ohio Management and Performance Audit of Gas Purchasing Practices and Policies of Duke Energy Ohio, Inc.’ (Report), which was prepared at the request of the Commission in the above-captioned proceeding, be afforded confidential treatment.

Although the Opinion and Order filed in this proceeding on December 18, 2019 did not explicitly grant the Company’s Motion for Protective Order, it noted that the Report had been filed under seal and that a redacted version had been filed in the public docket.² Duke Energy Ohio hereby moves to extend its Motion for Protective Order filed on January 24, 2019³ to continue the confidential treatment of specific information (Confidential Information) included

¹ Motion for Protective Order (January 24, 2019).

² Finding and Order, p. 3 (December 18, 2019).

³ Out of an abundance of caution, Duke Energy Ohio is using the date of its Motion for Protective Order (rather than the date of the Commission’s Opinion and Order) as the starting point for calculating the 24-month expiration period in O.A.C. 4901-1-24(F).

in the Report and to maintain the Report under seal, with only the redacted version being filed in the public docket.

Respectfully submitted,

/s/ Larisa M. Vaysman

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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 Report to the Public Utilities Commission of Ohio Management. Protection was initially requested for this information on January 24, 2019.⁴ 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.]

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.

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

⁴ Motion for Protective Order (January 24, 2019).

- (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.⁵

The Confidential Information, for which Duke Energy Ohio requests continued protection, contains confidential trade secret information. Duke Energy Ohio reviewed the material contained within the Report and has redacted material that it believes constitutes sensitive, trade secret information for competitive business reasons. Accordingly, Duke Energy Ohio requests that the Commission continue to protect under Ohio law this material as confidential, trade secret information.

Specifically, Duke Energy Ohio is proposing confidential treatment of certain forecasting models and pricing for certain customers. This is information that is not generally available to the public, and could be used by others to derive value therefrom. Further, the Company takes steps to ensure that this information is not disclosed to anyone within or affiliated with its organization who does not have a business need to know the material and it does not externally disclose such confidential information absent the existence of appropriate protective devices.

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

Duke Energy hereby moves to extend the Protective Order and to continue the confidential treatment of specific confidential information included in the Report.

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. The redacted information contained in the 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 Report and further outlined in the list above 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,

/s/ Larisa M. Vaysman
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties this 10th day of December 2020, via electronic transmission, hand delivery or regular U.S. Mail.

/s/Larisa M. Vaysman
Larisa M. Vaysman

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Summary: Motion Duke Energy Ohio, Inc. Motion to Extend Protective Order electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and Vaysman, Larisa and D'Ascenzo, Rocco O. Mr. and Kingery, Jeanne W