

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., to Adjust	)	
Rider DR-IM and Rider AU for	)	Case No. 10-2326-GE-RDR
2010 SmartGrid Costs and Mid-	)	
Deployment Review.	)	

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**MOTION OF DUKE ENERGY OHIO, INC.  
FOR CONTINUATION OF THE PROTECTIVE ORDER TO PROTECT THE  
DUKE ENERGY OHIO SMART GRID AUDIT AND ASSESSMENT REPORT, DUKE  
ENERGY OHIO, INC. APPLICATION AND COMMENTS OF STAFF-ON BEHALF OF  
THE PUBLIC UTILITES COMMISSION OF OHIO**

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On June 30, 2011, the Staff of the Public Utilities Commission of Ohio, (Staff), filed the *Duke Energy Ohio Smart Grid Audit and Assessment Report* (Audit Report) authored by MetaVu, Inc. (MetaVu) and it Application. Also on June 30, 2011, Duke Energy Ohio, Inc., (Duke Energy Ohio) submitted two separate motions for confidential treatment to protect the confidentiality of information filed in the MetaVu document and the *Application of Duke Energy Ohio, Inc. to Adjust the Rider DR-IM and Rider-AU for 2010 SmartGrid Costs and Mid-Deployment Review* (Application). On September 19, 2011, the Public Utilities Commission of Ohio Staff (Commission) ordered Duke Energy Ohio to file an amended motion for protective order to provide further support regarding the need for protection of certain specific elements of its Application and the Audit Report. On September 28, 2011, Duke Energy Ohio filed an amended motion for protective order. The motion for protective treatment was granted in the Entry of January 25, 2012. On November 4, 2011, Comments were submitted on behalf of the Staff and a motion for protective order filed to keep portions of Staff's Comments pertaining to information relative to Duke Energy Ohio contained within its Comments as highly sensitive and

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confidential. The motion for protective treatment regarding Staff's Comments was also granted in the Entry of January 25, 2012. Also, Duke Energy Ohio filed for extension of confidential treatment on June 4, 2013, October 16, 2014, February 24, 2016, July 7, 2017, November 20, 2018 and April 2 2020 but has not yet received a ruling from the Commission. Additionally, a *Memorandum Contra Duke Energy Ohio's Motion to Continue Protective Order* was filed on December 5, 2018 by the Office of the Ohio Consumers' Counsel to which Duke Energy Ohio filed a *Reply* on December 12, 2018. To date, neither of these filings have been ruled on by the Commission. By this motion, Duke Energy Ohio seeks to continue the protected treatment of these documents granted in the Commission's Order issued on January 25, 2012, determining that the information contained in the Application, MetaVu audit report and Staff Comments is proprietary and should be treated as confidential. Duke Energy Ohio requests that the Commission continue the Order issued on January 25, 2012 to indicate that this data, filed under seal, should be maintained at the Commission in a separate file which has restricted access.

Duke Energy Ohio, Inc. respectfully requests that the Commission continue to protect the confidentiality of extremely sensitive information contained in the Application, MetaVu audit report and Staff Comments. Reasons for this motion are set forth more fully in the attached Memorandum in Support.

Respectfully submitted,

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### **MEMORANDUM IN SUPPORT**

Duke Energy Ohio respectfully requests that the Commission extend the protection of the Confidential Information included in the Application, MetaVu audit report and Staff Comments in the proceeding hereunder. The information for which protection was granted on January 25, 2012, and for which the Company seeks an extension of that 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:<sup>1</sup>

- (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, for which the attorney examiner found warranted protection, included data privacy and data security contained in the MetaVu report at Section 4, Guidelines and Practices conformity assessment, related information in Section 9: Appendix 3 and information in Section 13: Appendix 7, related to forecast information. The Confidential Information, for which the Staff sought confidential treatment in its Comments referenced both the Application and the MetaVu Report. The information is highly sensitive in that it discusses a review of the Company's compliance with certain cyber security guidelines. The Report details where weaknesses may exist and such information could be used by parties seeking nefarious access to the Company's systems.

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<sup>1</sup> *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25, 1997-Ohio-75.

The cost information in Duke Energy Ohio's Application contains highly sensitive per-unit prices that could impact competitive bidding for products and services for which customers ultimately pay. Such information, as contained in the MetaVu report at the sections referenced above and the competitive bidding information reflected in the Staff's Comments and Duke Energy Ohio's Application 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 MetaVu report at the sections referenced above and the competitive bidding information reflected in the Staff's Comments and Duke Energy Ohio's Application. 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 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 either party would need to access the confidential portions of the MetaVu report at the sections referenced above and the competitive bidding information reflected in the Staff's Comments and Duke Energy Ohio's Application. The public, redacted version provides a comprehensive view of the issues discussed in his testimony. 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 MetaVu report at the sections referenced above and the competitive bidding information reflected in the Staff's Comments and Duke Energy Ohio's Application is appropriate, and is require 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).

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to Ohio Admin. Code Rule 4901-1-24(D), grant its motion for a protective order by making a determination that the confidential material contained in MetaVu report at the sections referenced above and the competitive bidding information reflected in the Staff's Comments and Duke Energy Ohio's Application be designated as confidential.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following parties via electronic mail, regular mail or by hand delivery this 16<sup>th</sup> day of August, 2021.

/s/ Jeanne W. Kingery  
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Summary: Motion Motion of Duke Energy Ohio, Inc. For Continuation of The Protective Order To Protect The Duke Energy Ohio Smart Grid Audit and Assessment Report, Duke Energy Ohio Audit and Comments of Staff on Behalf of The Public Utilities Commission of Ohio electronically filed by Mrs. Tammy M Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Kingery, Jeanne W.