

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for an	)	Case No. 21-887-EL-AIR
Increase in Electric Distribution Rates.	)	

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for Tariff	)	Case No. 21-888-EL-ATA
Approval.	)	

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for Approval	)	Case No. 21-889-EL-AAM
to Change Accounting Methods.	)	

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**MOTION OF DUKE ENERGY OHIO, INC.,  
FOR A PROTECTIVE ORDER**

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Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves the Public Utilities Commission of Ohio (Commission) for a protective order, pursuant to O.A.C. Rule 4901-1-24(D), covering certain confidential information that is included as part of the application filed in the above-captioned proceedings. Specifically, the proprietary, trade-secret information that Duke Energy Ohio seeks to have protected is contained in the response to O.A.C. 4901-7-01, Appendix, Supplemental (C)(10) requirement concerning forecasting methodology and certain schedules that are part of the Management Policies and Practices discussion required by O.A.C. 4901-7-01, Appendix, Supplemental (B)(9), and identified as Schedule S-4.2.

Duke Energy Ohio sets forth, in the attached Memorandum in Support, its reasons why confidential treatment of this information is necessary. In compliance with the governing rule, Duke Energy Ohio is filing, under seal, the confidential information.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

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**Attorneys for Duke Energy Ohio, Inc.**

## MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its Motion for a Protective Order, as detailed herein.

Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio is engaged in the business of supplying electric distribution service to customers in southwestern Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of R.C. 4905.02 and an electric light company, as defined by R.C. 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 is filing, simultaneously with this motion, an application for an increase in distribution rates (Application). The Application contains certain information, the public disclosure of which could damage Duke Energy Ohio's competitive position and business interests.

O.A.C. 4901-1-24(D) provides that the Commission or its attorney examiners may issue a protective order to assure the confidentiality of information contained in filed documents, to the extent that state or federal law prohibits the release of the information, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The Commission, therefore, generally refers to the requirements of R.C. 1333.61 for a determination of whether specific information should be released or treated confidentially.

Subsection (D) of that section 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.<sup>1</sup>

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.

The information set forth in the Application includes the following four<sup>2</sup> proprietary documents:

- Supplemental (C)(10) information comprises the Company's current budget guidelines and assumptions. Within that document is guidance concerning labor inflation rates, which are, in part, based on confidential labor contracts that include negotiated wage increases. Disclosure of this information would negatively impact the Company's ability to retain its labor force at reasonable cost levels.
- Exhibit IT-5, provided as part of the MPP, explains the Company's internal cybersecurity policy. The functioning of the Company's entire business depends on the safety and security of its electronic operations. It is critical that this information remain beyond the reach of those who would wish to compromise service to customers.

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<sup>1</sup> R.C. 1333.61(emphasis added).

<sup>2</sup> Note that, when the Application was being prepared for filing, the Company anticipated that two additional documents would be considered proprietary and were therefore redacted in the Application. It has since been determined that such documents, Exhibits CS-1 and CS-2, are not proprietary. The Company is therefore not requesting a protective order concerning those items and is filing them in unredacted form.

- Exhibits IT-2 and IT-3, provided in response to the second of the three functional areas chosen by Staff, describe the internal asset management policy and third-party service provider standard. Both detail information that has been created by Duke Energy Ohio in order to ensure the confidentiality of electronic data and cyber security risks. The continued confidentiality of this information is, as with Exhibit IT-5, critical to the Company's ability to provide reliable service and to maintain confidentiality of customers' data.

All of the information covered by the four exhibits referenced above is subject to reasonable efforts to maintain its security. The Company takes steps, internally, to ensure that this information is not disclosed to anyone who does not have a business need to know the material. Externally, the Company does not disclose this information other than under the terms of appropriate protective devices, such as confidentiality agreements.

O.A.C. 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, under seal.<sup>3</sup> Duke Energy Ohio is filing the material under seal, together with this Motion and Memorandum in Support.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(D), grant its Motion for Protective Order by making a determination that the redacted information is confidential, proprietary, and a trade secret under R. C. 1333.61.

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<sup>3</sup> O.A.C. Rule 4901-1-24.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

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## **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 1<sup>st</sup> day of October 2021, upon the persons listed below.

*/s/ Jeanne W. Kingery*  
Jeanne W. Kingery

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Summary: Motion Motion for Protective Order electronically filed by Ms. Emily Olive on behalf of Duke Energy Ohio and D'Ascenzo, Rocco O. Mr. and Kingery, Jeanne W. Ms. and Vaysman, Larisa M. Ms. and Ms. Elizabeth M. Brama