

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for an Increase	)	Case No. 22-507-GA-AIR
in Natural Gas Rates.	)	

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for Approval	)	Case No. 22-508-GA-ALT
of an Alternative Form of Regulation.	)	

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for Tariff	)	Case No. 22-509-GA-ATA
Approval.	)	

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for Approval	)	Case No. 22-510-GA-AAM
to Change Accounting Methods.	)	

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

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Pursuant to O.A.C. 4901-1-24(D), Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby requests protective treatment of certain highly confidential information contained in the schedules filed in support of its Application in this proceeding. Specifically, the proprietary, confidential, critical infrastructure, and trade-secret information that Duke Energy Ohio seeks to have protected is contained in 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. The information that the Company seeks to protect from disclosure is confidential and contains proprietary trade secrets that are subject to protection from disclosure under Ohio law. Moreover, certain information identified below comprises critical energy infrastructure information (CEII), for which the Commission has previously afforded

confidential treatment. The reasons for this motion are more fully explained in the attached Memorandum in Support.

In compliance with the governing rule, Duke Energy Ohio is filing, under seal, the confidential information.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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## **MEMORANDUM IN SUPPORT**

Simultaneous with this filing, Duke Energy Ohio is filing an application (Application) to increase its natural gas distribution rates. In support of this Application, Duke Energy Ohio has included certain proprietary, trade-secret information, in particular 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. Additionally, Duke Energy Ohio has included certain critical energy infrastructure information (CEII), which constitutes an “infrastructure record” as that term is used in R.C. 149.433. The public disclosure of the information discussed below could damage Duke Energy Ohio’s competitive position and business interests, as well as jeopardizing the safety and security of its natural gas transmission pipeline system. Duke Energy Ohio therefore 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 natural gas transmission service to customers in southwestern Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of R.C. 4905.02. 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.

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.

Additionally, the Commission’s administrative rules allow for the issuance of an order to protect the confidentiality of information, “to the extent that state or federal law prohibits release of the information . . .” O.A.C. 4901-1-24(D). Federal law prohibits the release of the Critical Energy Infrastructure Information. Following the terrorist attacks of September 11, 2001, the Federal Energy Regulatory Commission (FERC) issued Order 662, thereby removing certain documents likely to contain CEII from ready public access. The release of CEII would place the gas transmission system in an unsafe and unreliable situation by creating security issues and inviting criminal or terrorist activity intended to threaten persons and property. Gas-related CEII, such as is present here, has previously been protected by the Commission. *See, e.g., In the Matter of the Natural Gas Long-Term Forecast Report of Duke Energy Ohio*, Case No. 14-868-GA-FOR, Entry (July 30, 2015) and Entry (August 3, 2017). Furthermore, in considering rule changes, the Commission has discussed the need to maintain protection for gas CEII. *See, e.g., In the Matter*

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

*of the Review of Chapters 4901:5-1; 4901:5-3; 4901:5-5 and 4901:5-7, Ohio Administrative Code, Case No. 05-1128-GE-ORD, Finding and Order, pg. 2 (June 14, 2006).*

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

- (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.

*State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 1997-Ohio-75, 80 Ohio St.3d 513, pp. 18-19.

The Commission has previously concluded that CEII is covered under these standards, making it protectable under Ohio law. *See In the Matter of the Natural Gas Long-Term Forecast Report of Duke Energy Ohio*, Case No. 14-868-GA-FOR, Entry (July 30, 2015) and Entry (August 3, 2017).

The Confidential Information identified below warrants protection and constitutes confidential critical energy infrastructure information and is not readily ascertainable within or outside Duke Energy Ohio. Indeed, very few individuals within the Company have access to the pertinent Confidential Information. The information set forth in the Application includes the following proprietary, confidential, and/or CEII documents:

- **Proprietary Information:** MPP Areas Attachment 1. Attachment 1 is provided in response to the first of the three functional areas chosen by Staff and describes internal auditing, evaluation of the Company's internal controls, processes, and procedures. This competitively sensitive information sets forth internal Company auditing policies, results, and procedures, the content of which contains business information and financial information that derives independent economic value and is shielded from public disclosure, as well as disclosure within the Company to those who do not require access to such information.
- **CEII:** MPP Areas Attachment 3—Figures 1 and 2. Figures 1 and 2, provided in response to the third of three functional areas chosen by Staff, show a map of the Ohio natural gas transmission system and associated pipeline statistics. The continued confidentiality of this information is critical to the Company's ability to maintain as confidential aspects of critical infrastructure and should be appropriately shielded from public disclosure as such.

All the information covered by the Attachments 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>2</sup> Moreover, Federal law prohibits the release of the CEII identified above as this information is extremely sensitive and its disclosure could jeopardize the safety and security of the Duke Energy Ohio natural gas transmission system. Duke Energy Ohio is filing these materials 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) and prior rulings related to CEII, grant its Motion for Protective Order by

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<sup>2</sup> O.A.C. Rule 4901-1-24.

deciding that the redacted information identified above is either confidential, proprietary, a trade secret under R. C. 1333.61, or CEII that is worthy of protection pursuant to the limitations of federal law.

Respectfully submitted,

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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 30th day of June 2022, upon the persons listed below.

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Summary: Motion Motion of Duke Energy Ohio, Inc. For A Protective Order electronically filed by Mrs. Tammy M. Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Akhbari, Elyse Hanson and Kingery, Jeanne W. and Vaysman, Larisa and Elizabeth M. Brama