

**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 testimony filed in support of its Application in this proceeding. Specifically, the proprietary, confidential, and trade-secret information that Duke Energy Ohio seeks to have protected is contained in the testimony of Company Witness Stewart and in one attachment to the Testimony of Company Witness Spiller. Namely, confidential attachment ABS-2, attached to the Direct Testimony of B. Spiller, and the Confidential Direct Testimony of Jacob J. Stewart, including confidential attachment JJS-3. 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. 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.

/s/ Elyse H. Akhbari

Rocco O. D'Ascenzo (0077651)  
(Counsel of Record)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Larisa M. Vaysman (0090290)

Senior Counsel

Elyse H. Akhbari (0090701)

Senior Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45202

(513) 287-4320 (telephone)

(513) 287-4385 (fax)

[Rocco.dascenzo@duke-energy.com](mailto:Rocco.dascenzo@duke-energy.com)

[Jeanne.kingery@duke-energy.com](mailto:Jeanne.kingery@duke-energy.com)

[Larisa.vaysman@duke-energy.com](mailto:Larisa.vaysman@duke-energy.com)

[Elyse.akhbari@duke-energy.com](mailto:Elyse.akhbari@duke-energy.com)

Elizabeth M. Brama (PHV 22090)

TAFT STETTINIUS & HOLLISTER LLP

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

Phone: (612) 977-8400

Fax: (612) 977-8650

[ebra@taftlaw.com](mailto:ebra@taftlaw.com)

*Willing to accept service via email*

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

## MEMORANDUM IN SUPPORT

Simultaneous with this filing, Duke Energy Ohio is filing testimony in support of its Application to increase its natural gas distribution rates. Duke Energy Ohio has included certain proprietary, trade-secret information, in particular testimony and attachments that are identified as Attachment ABS-2, Attachment JJS-3, and the Confidential Direct Testimony of Jacob J. Stewart. The public disclosure of the information discussed below could damage Duke Energy Ohio's competitive position and business interests and 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.

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 Confidential Information identified below warrants protection and is not readily ascertainable within or outside of Duke Energy Ohio. Indeed, very few individuals within the

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

Company have access to the pertinent Confidential Information. The information set forth in the testimony in support of the Application includes the following proprietary, confidential, and/or trade secret documents:

- **Confidential Attachment ABS-2 to the Direct Testimony of Amy B. Spiller:** Confidential Attachment ABS-2 represents an Overview of Duke Energy Ohio's performance in its most recent Customer Sentiment and Satisfaction Trends (CSAT) survey. 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.
- **Confidential Testimony of Jacob J. Stewart:** Certain portions of the Direct Testimony of Company Witness Jacob J. Stewart contain competitively sensitive information that constitutes trade secret business and financial information. Namely, on page 15 of Mr. Stewart's Direct Testimony, certain information in Table 1 concerning Senior Management Committee STI plan details has been redacted. This information sets forth internal Company 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.
- **Confidential Attachment JJS-3(a)-(c) to the Direct Testimony of Jacob J. Stewart:** Confidential Attachment JJS-3, including subparts (a) through (c), sets forth the major incentive pay programs utilized by Duke Energy Ohio, including short-term incentive, the Duke Energy Union Employee Incentive Plan, and the long-term incentive. The short-term incentive and UEIP plan descriptions are included in Confidential Attachment JJS-3(a). The two long-term incentive plans, Restricted Stock Units (RSU) and Executive LTI Plan brochure, are included as Confidential Attachments JJS-3(b) and JJS-3(c), respectively. This competitively sensitive information sets forth internal Company 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.

All the information covered by the Attachments and testimony 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> 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), grant its Motion for Protective Order by deciding that the redacted information identified above is either confidential, proprietary, or trade secret under R. C. 1333.61.

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

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Elyse H. Akhbari

Rocco O. D'Ascenzo (0077651)  
(Counsel of Record)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Larisa M. Vaysman (0090290)

Senior Counsel

Elyse H. Akhbari (0090701)

Senior Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45202

(513) 287-4320 (telephone)

(513) 287-4385 (fax)

[Rocco.dascenzo@duke-energy.com](mailto:Rocco.dascenzo@duke-energy.com)

[Jeanne.kingery@duke-energy.com](mailto:Jeanne.kingery@duke-energy.com)

[Larisa.vaysman@duke-energy.com](mailto:Larisa.vaysman@duke-energy.com)

[Elyse.akhbari@duke-energy.com](mailto:Elyse.akhbari@duke-energy.com)

Elizabeth M. Brama (0101616)

TAFT STETTINIUS & HOLLISTER LLP

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

Phone: (612) 977-8400

Fax: (612) 977-8650

[ebra@taftlaw.com](mailto:ebra@taftlaw.com)

*Willing to accept service via email*

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

## 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 14<sup>th</sup> day of July, 2022, upon the persons listed below.

*/s/ Elyse H. Akhbari*  
Elyse H. Akhbari

Attorney Examiners:

Matthew Sandor, [matthew.sandor@puco.ohio.gov](mailto:matthew.sandor@puco.ohio.gov)  
Nicholas Walstra, [Nicholas.walstra@puco.ohio.gov](mailto:Nicholas.walstra@puco.ohio.gov)

John H. Jones  
Section Chief  
Assistant Attorney General  
Public Utilities Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: 614-466-4397  
Facsimile: 614-644-8764  
[John.Jones@ohioattorneygeneral.gov](mailto:John.Jones@ohioattorneygeneral.gov)

### **Attorney for Staff of the Public Utilities Commission of Ohio**

William J. Michael (Counsel of Record)  
Ambrosia E. Wilson  
Connor D. Semple  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
65 East State Street, 7th Floor  
Columbus, Ohio 43215  
Telephone: [Michael]: (614) 466-1291  
Telephone: [Wilson]: (614) 466-1292  
Telephone: [Semple]: (614) 466-9565  
[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  
[connor.semple@occ.ohio.gov](mailto:connor.semple@occ.ohio.gov)

### **Attorneys for the Office of the Ohio Consumers' Counsel**



Michael Nugent (0090408) (Counsel of Record)

Evan Betterton (100089)

Stacie Cathcart (0095582)

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

Telephone: (614) 659-5000

[michael.nugent@igs.com](mailto:michael.nugent@igs.com)

[evan.betterton@igs.com](mailto:evan.betterton@igs.com)

[stacie.cathcart@igs.com](mailto:stacie.cathcart@igs.com)

**Attorneys for IGS Energy**

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AAM**

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 Kingery, Jeanne W. and Akhbari, Elyse Hanson and  
Vaysman, Larisa and Elizabeth M. Brama