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BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO

IN THE MATTER OF TERM
POWER & GAS, LLC D/B/A
ENCOA'S ANNUAL
ALTERNATIVE ENERGY
PORTFOLIO STATUS REPORT
AND PLAN FOR COMPLIANCE
WITH FUTURE ANNUAL
ADVANCED AND RENEWABLE
ENERGY BENCHMARKS

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Case No. 13-1100-EL-ACP

**TERM POWER & GAS, LLC D/B/A ENCOA'S
MOTION FOR PROTECTIVE ORDER**

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code ("O.A.C."), TERM Power & Gas, LLC d/b/a ENCOA ("ENCOA") hereby moves for a protective order to preserve the confidentiality of certain competitively sensitive information contained in Section II and Exhibit A to its alternative energy portfolio status report for calendar year 2012 and plan for compliance with future annual advanced and renewable energy benchmarks ("Annual Report"), filed on this date in the above-captioned proceeding.

The basis for this motion is set forth in the accompanying memorandum in support. As required by Rule 4901-1-24(D)(2), O.A.C., ENCOA has filed under seal three copies of the confidential and unredacted Annual Report.

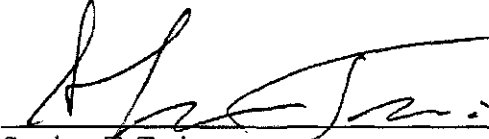
WHEREFORE, ENCOA respectfully requests that its motion be granted.

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Respectfully submitted,

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April 29, 2013

**BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO**

IN THE MATTER OF TERM	§	
POWER & GAS, LLC D/B/A	§	
ENCOA'S ANNUAL	§	Case No. 13-____-EL-ACP
ALTERNATIVE ENERGY	§	
PORTFOLIO STATUS REPORT	§	
AND PLAN FOR COMPLIANCE	§	
WITH FUTURE ANNUAL	§	
ADVANCED AND RENEWABLE	§	
ENERGY BENCHMARKS	§	

**TERM POWER & GAS, LLC D/B/A ENCOA'S
MEMORANDUM IN SUPPORT OF PROTECTIVE ORDER**

Rule 4901:1-40-05(A)(I), Ohio Administrative Code ("O.A.C."), requires jurisdictional electric utilities and electric services companies to submit annual alternative energy portfolio status reports regarding their compliance with the advanced and renewable energy benchmarks set forth in Section 4928.64(B), Revised Code, and Rule 4901:1-40-03(A), O.A.C., for the preceding calendar year. In accordance with these provisions, TERM Power & Gas, LLC d/b/a ENCOA ("ENCOA") has, this date, filed its alternative energy portfolio status report for calendar year 2012 and plan for compliance with future annual advanced and renewable energy benchmarks ("Annual Report") in the above-captioned proceeding.

Because the Annual Report contains competitively sensitive information, ENCOA has redacted portions of Exhibit A from the version that ENCOA filed publicly, and seeks a protective order from the Commission to prevent public disclosure of the redacted information. Specifically, the information for which protective treatment is sought is ENCOA's projected baseline calculations, projected renewable and solar energy benchmarks, projected renewable energy compliance efforts, and multi-year renewable energy forecast ("Confidential Information").

In accordance with Rule 4901-1-24(D)(2), O.A.C., ENCOA has filed three copies of the confidential and unredacted version of the Annual Report under seal.

Rule 4901-1-24(D), O.A.C., provides, in pertinent part, as follows:

(D) Upon motion of any party or person filing a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, or the attorney examiner assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.

ENCOA submits that its Motion for Protective Order is consistent with the criteria governing the issuance of protective orders set forth in the above rule, in that protection is sought for the Confidential Information that constitutes a trade secret under Ohio law and because non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

Disclosure of this type of information, especially to competitors, would damage ENCOA's position in the Ohio retail electric market. The Ohio Supreme Court has specifically cited the "the volatility and competitiveness of the electric industry" as a factor in affirming a Commission decision to accord protection to certain business information, stating in pertinent

part that “(e)xposing a competitors business strategies [] would likely have a negative impact on that provider’s viability.”¹

Competitively sensitive information of this type is protected from disclosure because it constitutes a “trade secret, or other confidential research, development, commercial, or other information.” The statutory definition of a “trade secret” set out in Section 1333.61(D), Revised Code, includes “business information” that satisfies both of the following: “(1) [i]t 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[;]” and (2) [i]t is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” ENCOA’s competitors can obtain economic value from disclosure of the Confidential Information, meaning ENCOA itself derives independent economic value from the information not being generally known, and ENCOA has taken all reasonable measures to maintain the secrecy of this information, including that these projections are not known outside of ENCOA.

Rule 4901-1-24(D)(1), O.A.C., provides that the public version of documents containing information for which protection is requested “should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information.” In this instance, ENCOA has redacted only the Confidential Information from the publicly filed version of its Annual Report.

¹ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 370, 2009-Ohio-604 (2009).

Finally, because the Commission and its staff will have full access to the information for which protection is requested, the Commission's ability to review this information will in no way be impaired by granting this motion, and no legitimate purpose would be served by public disclosure of the designated information.

WHEREFORE, ENCOA respectfully requests that the Confidential Information redacted from Exhibit A to its Annual Report be granted protected status and that the Commission grant its Motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen T. Tsai", is written over a horizontal line. To the right of the signature, the number "#0080803" is handwritten.

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