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November 1, 2013

**Customized
Energy Solutions**



Ms. Barcy F. McNeal, Secretary
Public Utilities Commission of Ohio
180 E. Broad Street, 11th Floor
Columbus, OH 43215

Re: Case No. 13-1909-EL-ACP
Palmco Power OH, LLC

Dear Ms. McNeal,

Pursuant to the Commission's October 29, 2013 entry in Case No. 12-2668-EL-ACP, Palmco Power OH, LLC ("Palmco") hereby submits average cost data for RECs used in compliance with the 2012 Ohio AEPS standard requirements. Palmco is a Certified Retail Electric Supplier and filed its Annual Alternative Energy Supply Portfolio Report on April 15, 2013 in Case No. 13-0930-EL-ACP.

Palmco has eFiled the public version of its report and Motion for Protective Order under docket 13-1909-EL-ACP, and in accordance with Rule 4901-1-24(D) of the Ohio Administrative Code, three copies of the confidential version of the report are hereby submitted under seal to the Commission. A copy of the Motion for Protective Order is also included. Please contact the undersigned with questions or concerns regarding this submission.

Thank you,

Erika Schmitt
Customized Energy Solutions, Ltd.
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On behalf of Palmco Power OH, LLC

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Alternative Energy Portfolio Standard)	Case No. 13-1909-EL-ACP
Report to the General Assembly for the)	
2012 Compliance Year)	

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C.") and the October 29, 2013 Entry, Palmco Power OH, LLC moves for a protective order to keep certain information related to its Alternative Energy Resources Report for Calendar Year 2012 compliance obligations confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) unredacted copies of the exhibits are submitted under seal.

Respectfully submitted,



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Counsel for Palmco Power OH, LLC

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

On April 15, 2013 in Case No. 13-930-EL-ACP, Palmco Power OH, LLC (“Palmco”) filed a redacted version of its Alternative Energy Supply Portfolio Report for 2012, filed a motion for protective order, and submitted a confidential version under seal. By Entry of October 29, 2013 in Case Nos. 12-2668-EL-ACP and 13-1909-EL-ACP, all electric distribution utilities and electric services companies, including Palmco were directed to file in Case No. 13-1909-EL-ACP, by November 15, 2013, the average cost data for the renewable energy credits (“RECs”) that it has retired or will be retiring to demonstrate compliance with its 2012 Ohio Alternative Energy Portfolio Status Report obligations. The Attorney Examiner also indicated that if any renewable energy credits were purchased as part of a bundled product (i.e., renewable power purchase agreement) or were self-generated, reporting companies should include details and supporting calculations as to how the reported renewable energy credit costs were determined. The Attorney Examiner also indicated that if any reporting company believed that its average REC cost data for the 2012 compliance year should be protected from public disclosure as a trade secret, it should submit the information under seal with a motion for protective order pursuant to Rule 4901-1-24, O.A.C.

Palmco requests that the information it designates as confidential in responding to the October 29, 2013 Entry be protected from public disclosure. The information for which protection is sought covers the average cost of 2012 renewable energy credits retired and whether renewable energy credits were purchased as part of a bundled product. Such information if released to the public would harm Palmco by providing its competitors proprietary information in what is designed by statute to now be a competitive service.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division 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. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982.) Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"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.

R.C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the financial information which is the subject of this motion.

In State ex rel The Plain Dealer the Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six factor test to analyze whether information is a trade secret under the statute:

- (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 effected 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.

Id. at 524-525 (quoting Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

After applying these factors to the information sought to be protected, it is clear that a protective order should be granted.

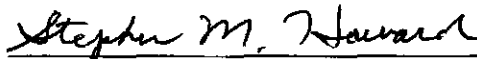
The average cost of renewable energy credits for 2012 compliance obligations and whether the renewable energy credits were purchased as part of a bundled product is confidential and proprietary information and constitutes a trade secret. Such sensitive information is generally not disclosed. Its disclosure could give competitors an advantage that

would hinder Palmco's ability to compete. In addition, public disclosure of this confidential information is not likely to assist the Commission in carrying out its duties.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); Ohio Bell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

WHEREFORE, for the above reasons, Palmco Power OH, LLC requests the Commission grant its motion for a protective order and to maintain the average cost of renewable energy credits for 2012 compliance obligations and information relating to whether or not any renewable energy credits were purchased as part of a bundled product under seal.

Respectfully submitted,



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