

**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
OF COMMERCE ENERGY INC. D/B/A JUST ENERGY**

By the October 29, 2013 Entry in this matter, the Attorney Examiner directed that each electric distribution utility and electric services company with a 2012 Alternative Energy Portfolio Standard compliance requirement was to file by November 15, 2013, the average cost data for the renewable energy credits that it has retired or will be retiring, to demonstrate compliance with its 2012 Ohio AEPS obligations. The cost data to be filed was to be provided as an average cost for each of the following four categories: Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar. The Attorney Examiner indicated that, if any reporting company believes that its average renewable energy credit cost data for the 2012 compliance year should be protected from public disclosure as a trade secret, it should file the information under seal with a Motion for Protective Order pursuant to Rule 4901-1-24 of the Ohio Administrative Code ("O.A.C.").

Commerce Energy Inc. d/b/a Just Energy ("Just Energy") believes that its average renewable energy cost data for 2012 should be protected from public disclosure as a trade secret. Pursuant to Rule 4901-1-24(D) of the O.A.C. and the October 29, 2013 Entry in this matter, Just Energy has filed a redacted version of the data and moves for a protective order to keep its data for the renewable energy credits that it has retired, or will be retiring, to demonstrate compliance

with its 2012 Ohio AEPS 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,



M. Howard Petricoff (0008287)
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5414
mhpetricoff@vorys.com

Counsel for Commerce Energy Inc. d/b/a Just Energy

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.)	

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER
OF COMMERCE ENERGY INC. D/B/A JUST ENERGY**

Commerce Energy Inc. d/b/a Just Energy ("Just Energy") believes that its average renewable energy credit cost data for the 2012 compliance year should be protected from public disclosure as a trade secret. The average cost data included would reveal Just Energy's purchase information, which it considers proprietary and confidential. Such information, if released to the public, would harm Just Energy by providing its competitors with proprietary information and a competitive advantage in what is designed by statute to 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 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 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. *See, e.g.*, Rule 4901-1-24(A)(7), O.A.C.

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.

Section 1333.61(D), Ohio Revised Code. 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 confidential average cost data for the renewable energy credits, it is clear that a protective order should be granted. This average cost data for Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar renewable energy credits is sensitive cost data information and is generally not disclosed. Its disclosure could give competitors an advantage that would hinder Just Energy's ability to compete. On the other hand, public disclosure of this average cost data information is not likely to assist the Commission in carrying out its duties under Section 4928-64(D)(1)(b), Revised Code.

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, Just Energy requests the Commission grant its motion for a protective order and maintain under seal its average cost data for the renewable energy credits that it has retired or will be retiring to demonstrate compliance with its 2012 Ohio AEPS obligations.

Respectfully submitted,



M. Howard Petricoff (0008287)
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5414
mhpetricoff@vorys.com

Counsel for Commerce Energy Inc. d/b/a Just Energy

LIST OF EXHIBITS
FOR WHICH PROTECTION IS SOUGHT

<u>EXHIBIT</u>	<u>REASONS JUSTIFYING PROTECTION</u>
Table containing average cost data for the renewable energy credits that Commerce Energy Inc. d/b/a Just Energy has retired or will be retiring to demonstrate compliance with its 2012 Ohio AEPS obligations.	This table contains average cost data which would reveal Commerce Energy Inc. d/b/a Just Energy's purchase information which Just Energy considers proprietary and confidential. Disclosure would give an undue advantage to competitors and would hinder Just Energy's ability to compete.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/14/2013 4:30:30 PM

in

Case No(s). 13-1909-EL-ACP

Summary: Motion Motion for Protective Order electronically filed by M HOWARD PETRICOFF
on behalf of Commerce Energy Inc. d/b/a Just Energy