

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of AEP Energy, Inc.’s	:	
Annual Alternative Energy Portfolio	:	Case No. 14-0585-EL-ACP
Status Report and Plan for Compliance	:	
with Future Annual Advances and	:	
Renewable Benchmarks.	:	

**MEMORANDUM CONTRA
TO THE MOTION FOR A PROTECTIVE ORDER
FILED BY AEP ENERGY INC.
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

AEP Energy, Inc. (AEP Energy or Company) is not entitled to the confidential treatment it seeks in Tables 1-3 of the Company’s annual compliance status report filed in this case. Tables 1-3 in the report – filed under seal – do not contain any proprietary information requiring confidential treatment. The information in the tables may easily be derived from AEP Energy’s publicly available actual retail sales in its CRES annual reports, and the applicable statute, R.C. 4928.64(B)(2). The material does not merit a protective order. The Public Utilities Commission of Ohio (Commission) should deny AEP Energy’s request for a protective order with respect to Tables 1-3 of the report. Staff is not expressing a position on the requested treatment of the data redacted from the Company’s ten-year alternative energy compliance plan also filed in this case.

STATEMENT OF FACTS

On April 15, 2014, AEP Energy filed its annual compliance status report, along with a motion for a protective order covering components of the filing. In the compliance report, AEP Energy redacted its Ohio retail electric sales for 2010-2012, as well as its renewable energy credits (RECs) required for 2013, as part of its filing pursuant to O.A.C. 4901:1-40-05. In addition, the Company redacted the projected data provided in response to the filing requirements under O.A.C. 4901:1-40-03(C). AEP Energy's Motion for Protective Order refers to the redacted portions as involving trade-secret information for which confidential treatment is warranted. This is misguided as it relates to Tables 1-3 of the report.

LAW AND ARGUMENT

- A. The under-seal information in Tables 1-3 of the report may be easily derived from AEP Energy's publicly available actual retail electric sales and R.C. 4928.64(B)(2), and, therefore, does not merit confidential treatment.**

AEP Energy is not entitled to the confidential treatment it seeks in this proceeding. The information in Tables 1-3 of the Company's annual compliance status report – filed under seal – does not contain any proprietary information requiring confidential treatment. Rather, the tables merely contain information that may easily be derived from AEP Energy's publicly available CRES annual reports and R.C. 4928.64(B)(2). The quantity of RECs required is therefore simply a function of applying the baseline figure, comprised of publicly-available sales volumes, to the public statutory benchmark percentages. The Commission has previously held that this type of information is public

in a similar case, Case No. 12-1233-EL-ACP, *In the Matter of Direct Energy Services, LLC Annual Alternative Energy Portfolio Status Report*, and stated:

With respect to the information regarding the RECs required and obtained by DES, as reported at item (3) on the second page of the amended alternative energy portfolio status report and as shown on the attachment at the end of the report, the Commission finds that the number of RECs and solar RECs required to meet DES' 2011 renewable energy benchmark requirements may be easily derived from DES' publicly available actual retail electric sales. The information is, therefore, not a trade secret. Accordingly, the Commission's docketing division should move the second page of DES' 2011 amended alternative energy portfolio status report and the attachment at the end of the report, as filed under seal on April 12, 2013, to the public file, no sooner than 14 days after the date of this finding and order, or November 27, 2013.

R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term “public records” excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets.¹ Similarly, O.A.C. 4901-1-24 allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-

¹ *State ex rel Besser v. Ohio State*, 89 Ohio St. 3d 396, 399, 732 N.E.2d 373 (2000).

disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

R.C. 1333.61(D) defines a trade secret as “information . . . 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.” The information in Tables 1-3 of the Company’s annual compliance status report may easily be derived from AEP Energy’s publicly available CRES annual reports, filed at the Commission, and R.C. 4928.64(B)(2). As a result, the information lacks independent economic value and AEP Energy cannot perform reasonable efforts to maintain its secrecy.

Ohio law requires the information to be public unless confidentiality is established. Here, AEP Energy has failed to establish cause for confidential treatment. The under-seal material in Tables 1-3 of the Company’s annual compliance status report do not merit a protective order. It is the Company’s burden to justify confidential treatment. Here, the Company fails to meet this burden. The Commission should deny AEP Energy’s motion for a protective order as it relates to Tables 1-3 of the Company’s annual compliance status report.

CONCLUSION

AEP Energy is not entitled to confidential treatment in Tables 1-3 of the Company's annual compliance status report. The information in the tables lack the sensitivity required by Ohio law to be treated as confidential. Ohio law requires the information to be public unless confidentiality is established. The information in the tables is easy discernable and should be open to public scrutiny. The Commission should deny AEP Energy's request for confidential treatment as it relates to Tables 1-3 of the Company's annual compliance status report.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Memorandum Contra to the Motion for a Protective Order Filed by Noble Americas Energy Solutions LLC Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio was served by regular U.S. mail, postage prepaid, hand-delivered, or via electronic mail, upon the following parties of record, this 29th day of April, 2014.

/s/ Steven L. Beeler

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Case No(s). 14-0585-EL-ACP

Summary: Memorandum Memorandum Contra to the Motion for a Protective order filed by AEP Energy Inc. electronically filed by Mrs. Tonneta Y Scott on behalf of PUCO