

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Alternative Energy Portfolio Standard	)	Case No. 14-2328-EL-ACP
Report to the General Assembly for	)	
the 2013 Compliance Year	)	

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**MOTION FOR PROTECTIVE ORDER**

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By the February 26, 2015 Entry in this matter, the Attorney Examiner directed that each electric distribution utility and electric services company with a 2013 Alternative Energy Portfolio Standard compliance requirement was to file by March 12, 2015 the average cost data for the renewable energy credits that it has retired or will be retiring, to demonstrate compliance with its 2013 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 2013 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.").

Direct Energy Services, LLC, and Direct Energy Business, LLC (collectively, "Direct Energy") believe their average renewable energy cost data for the 2013 cost year should be protected from public disclosure as a trade

secret. Pursuant to Rule 4901-1-24(D) of the O.A.C. and the February 26, 2015 Entry in this matter, Direct Energy has filed a redacted version of the respective tables and moves for a protective order to keep its tables showing the average cost data for the renewable energy credits that it has retired, or will be retiring, to demonstrate compliance with its 2013 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,

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Counsel for Direct Energy Services, LLC,  
and Direct Energy Business, LLC

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

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Direct Energy believes that the tables containing its average renewable energy credit cost data for the 2013 compliance year should be protected from public disclosure as a trade secret. The average cost data included in this table would reveal Direct Energy's purchase information which it considers proprietary and confidential. Such information if released to the public would harm Direct 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 O.A.C. 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, patter, 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 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)).

Applying these factors to the table containing the confidential average cost data for the renewable energy credits, it is clear that a protective order should again be granted. The Commission previously granted similar Motions for Direct Energy entities for this information. In the Matter of the Commission's Alternative Energy Portfolio Standard Report to the General Assembly for the 2012 Compliance Year, Case No. 13-1909-EL-ACP, Entry at 2 (January 14, 2014); In the Matter of the Commission's Alternative Energy Portfolio Standard Report to the General Assembly for the 2011 Compliance Year, Case No. 12-2668-EL-ACP, Entry at 3 (October 29, 2013).

The tables which are the subject of this motion contain average cost data for the renewable energy credits that Direct Energy has retired, or will be retiring, to demonstrate compliance with its 2013 Ohio AEPS obligations. The

tables contain average cost data for Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar renewable energy credits. Such sensitive cost data information is generally not disclosed. Its disclosure could give competitors an advantage that would hinder Direct 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 for Direct Energy the protections the Ohio General Assembly has granted to all businesses 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 Direct Energy requests the Commission grant its motion for a protective order and maintain under seal its table containing the average cost data for the renewable energy credits that it has retired or will be retiring.

Respectfully submitted,

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Summary: Motion for Protective Order electronically filed by JOSEPH CLARK on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC