

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

MOTION FOR A PROTECTIVE ORDER

By the February 26, 2015 Attorney Examiner Entry each electric distribution utility and electric services company with a 2013 Alternative Energy Portfolio Standard (“AEPS”) compliance requirement was directed to file by March 12, 2015, the average cost data for renewable energy credits (“RECs”) that it has retired or will be retiring, to demonstrate compliance with its 2013 Ohio AEPS obligations. The cost data is 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 Entry further stated that, if any electric company believes that its alternative 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 Ohio Administrative Code (“OAC”) Rule 49014 -24.

DTE Energy Supply, Inc. (“DTE Energy”) believes that its average renewable energy cost data for the 2013 cost year is commercially sensitive and should be protected from public disclosure as a trade secret pursuant to OAC Rule 4901-1-24(D) and the February 26, 2015 Entry in this matter. DTE Energy has filed a redacted version and moves for a protective order to keep its average cost data for the renewable energy that it has retired, or will be retiring, to demonstrate compliance with its 2013 Ohio AEPS obligations confidential and out of the public record.

Consistent with the requirements of OAC Rule 4901-1-24(D), DTE Energy filed under seal the unredacted copies of its AEPS compliance data that are the subject of this motion.

Respectfully submitted on behalf of
DTE Energy Supply, Inc.



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MEMORANDUM IN SUPPORT

OAC Rule 4901-1-24(D), provides that the Commission or certain designated Commission employees may issue an 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. . . to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.” Moreover, Ohio Revised Code Section (“R.C.”) 4928.06(F) specifically permits the Commission to grant confidentiality to competitive information. DTE Energy asserts that the information being submitted constitutes confidential and proprietary business information, as well as a trade secret; and as such, state law prohibits the release of the information.

R.C. 4901.12 and 4905.07, were amended in 1996 to facilitate the protection of trade secrets in Commission proceedings. By referencing R.C. 149.43, (Ohio’s Public Records Law), the Commission-specific statutes incorporate the definition of “public records,” as well as an exception to that definition that includes “[r]ecords the release of which is prohibited by state or federal law.” R.C. 149.43(A)(1). In turn, state law prohibits the release of information meeting the definition of a trade secret. *See* R.C. 1333.61(D) and 1333.62. For this reason, records containing trade secrets are prohibited from public disclosure.

The definition of “trade secret” is set forth in R.C. 1333.61(D):

“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.

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. As the Ohio Supreme Court recently explained:

by adopting the Uniform Trade Secrets Act, with the express purpose to make uniform the law with respect to their subject among states, the General Assembly has determined that public policy in Ohio, as in the majority of other jurisdictions, favors the protection of trade secrets, whether memorized or reduced to some tangible form.

Al Minor & Associates, Inc. v. Martin, (2008) 117 Ohio St.3d 58.

Courts of other jurisdictions not only have held that a state public utilities commission has the authority to protect trade secrets, but that trade secret statutes create a duty to protect them.

See New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982).

Furthermore, this Commission itself has recognized the need to protect trade secrets from public disclosure as consistent with its other statutory obligations:

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). The Commission has previously carried out its obligation to protect the trade secret status of information from utilities and other regulated entities in numerous proceedings. *See, e.g., Cleveland Electric Illuminating Co.*, Case No. 07-171-EL-BTX (Entry dated August 14, 2008); *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).

Expounding upon the “trade secret” definition above, the Ohio Supreme Court has delineated factors to be considered in analyzing a trade secret claim:

- (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.

State ex. rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St.3d 513, 524-525. Here, DTE Energy requests that AEPS cost data designated as confidential be protected from public disclosure. DTE Energy redacted the confidential information from its report. In addition, the information for which DTE Energy seeks protection is entirely private and has never appeared in the public record.

For the reasons stated herein, DTE Energy’s AEPS cost data falls directly within the definition of a “trade secret,” and should be protected from public disclosure. Accordingly, DTE Energy respectfully requests that the Commission grant this Motion for Protective Order and protect its AEPS cost data from public disclosure.

Respectfully submitted on behalf of
DTE Energy Supply, Inc.



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Summary: Motion of DTE Energy Supply, Inc. for Protective Order electronically filed by Teresa Orahod on behalf of Thomas O'Brien