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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MOTION FOR PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT OF
Border Energy Electric Services, Inc.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

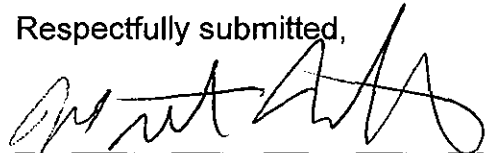
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Case No: 14-2328-EL-ACP

MOTION FOR PROTECTIVE ORDER

Border Energy Electric Services, Inc. ("BEES"), by its attorneys and pursuant to Rule 4901-1-24(D), Ohio Administrative Code ("OAC"), move for a protective order keeping confidential the designated confidential and/or proprietary information concurrently filed under seal with this motion in the above-captioned docket. The information for which protective treatment is sought is BEES' renewable energy credit ("REC") purchase amount ("Confidential Information") contained in the Commission's Alternative Energy Portfolio Standard Report to the General Assembly for the 2013 Compliance Year ("Correspondence"). A confidential, unredacted version of the Correspondence has been filed concurrently with this motion under seal with the Commission. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of Rule 4901-1-24(D), OAC, three unredacted copies of the Correspondence have been simultaneously filed under seal.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Pursuant to Rule 4901:1-24(D), OAC, BEES requests protective treatment of BEES' renewable energy credit ("REC") purchase amount. The information for which protection is sought includes competitively sensitive information and proprietary business and financial information relating to BEES' business operations, comprising of trade secrets. The public release of this information would cause harm to BEES and its future operations and would compromise its ability to compete with retail electric suppliers on an equal basis.

The Commission's Rules allow for protective treatment of certain confidential information filed at the Commission in order to prevent disclosure of such information. Rule 4901-1-24(D), OAC, states in part (emphasis added):

Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any 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 by the commission, the legal director, the deputy legal director, or the attorney examiner 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. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.

Ohio law recognizes the need to provide protective treatment to information such as the Confidential Information. Under R.C. 1333.61(D), "Trade secret" means:

[I]nformation, 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.

Expounding upon the definition of "trade secret," the Ohio Supreme Court has delineated factors to be considered when 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 of others to acquire and duplicate information.¹

The definition of "trade secret" clearly reflects the state policy favoring the protection of trade secrets such as the customer load information which is the subject of this motion. The Confidential Information consists of REC prices that are proprietary, confidential and that constitute trade secrets. Public disclosure of this information would jeopardize BEES' business position and impair competition in the marketplace. By

¹ *State ex. rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 524-525 (1997).

examining the Confidential Information, competitors could reasonably estimate BEES' potential growth, market share and margins. Competitors could use the Confidential Information to make strategic decisions in response to BEES' correspondence

The information contained in the Confidential Information is not generally known by the public, is held in confidence in the normal course of business, and has never appeared in the public record. The Confidential Information sought to be protected is disclosed to only a few key personnel at BEES.

Furthermore, BEES is a privately-held company and, therefore, would be especially vulnerable if protective treatment is not granted. Indeed, the Commission has previously found the need for protective treatment to be especially "persuasive for the privately held companies."²

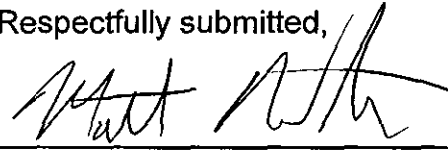
Lastly, granting confidential treatment to the information will not impair the purposes of Ohio Revised Code Title 49, because the documents filed under seal will allow the Commission and Staff to have full access to the information.

The reasons set forth above demonstrate that the Confidential Information has actual, substantial independent economic value from not being generally known, and

² See *In the Matter of the Applications of the Following Entities for a Certificate to Provide Competitive Retail Natural Gas Service in Ohio: NICOR Energy L.L.C., Vectren Retail LLC, d.b.a. Vectren Source, Shell Energy Services Co. L.L.C., Volunteer Energy Services Inc., ACNEnergy Inc., Energy America LLC, FirstEnergy Solutions Corp., AEP Ohio Retail Energy LLC, Energy Cooperative of Ohio, MidAmerica Energy Company, ProLiance Energy LLC, Metromedia Energy Inc., and UGI Energy Services Inc., d.b.a. GASMARK*, Case Nos. 02-1654-GACRS, 02-1668-GA-CRS, 02-1680-GA-CRS, 02-1786-GA-CRS, 02-1828-GA-CRS, 02-1829-GA-CRS, 02-1864-GA-CRS, 02-1889-GA-CRS, 02-1891-GA-CRS, 02-1893-GA-CRS, 02-1909-GA-CRS, 02-1926-GA-CRS, 02-1968-GA-CRS, Entry, (June 14, 2003); See *Id.* at para. 3, p. 2. See also *In the Matter of the Applications of: Vectren Retail, LLC, d/b/a Vectren Source, Interstate Gas Supply, Inc., Shell Energy Services Co., L.L.C., and FirstEnergy Solutions Corp. for Certification as Retail Natural Gas Suppliers in the State of Ohio; In the Matter of the Application of Direct Energy Services, LLC for Renewal of Certification as a Competitive Retail Natural Gas Supplier and for Approval to Transfer that Certification*, Case Nos. 02-1668-GA-CRS, 02-1683-GA-CRS, 02-1680-GA-CRS, 02-1864-GA-CRS, 02-1829-GA-CRS, Entry (Aug. 11, 2004).

not being ascertainable by proper means by persons who would derive economic value from disclosure. Public disclosure of the Confidential Information will cause substantial harm to BEES' business and competitive interests. Thus, BEES respectfully requests the Commission to grant an order to protect the confidentiality of the Confidential Information.

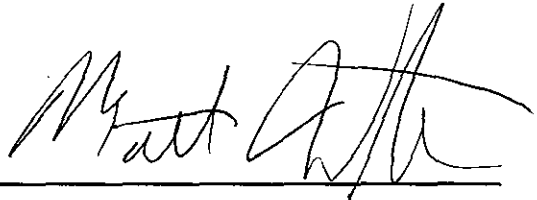
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matt White', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Protective Order and Memorandum in Support of* Border Energy Electric Services, Inc. was served upon the following parties of record this 1st day of April 2015, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

A handwritten signature in black ink, appearing to read "Matt A. H.", is written over a horizontal line.

One of the Attorneys for IGS Energy

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