

FILE

## BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Annual Alternative )  
 Energy Portfolio Status Report of North )  
 American Power and Gas, LLC )

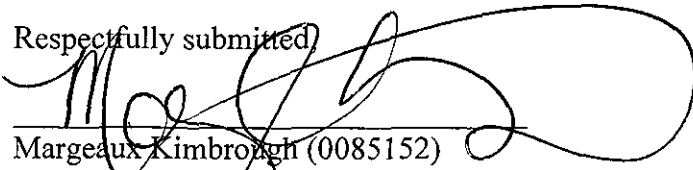
Case No. 15-0705-EL-ACF

In the Matter of the Report of North )  
 American Power and Gas, LLC )  
 Concerning its Plan for Compliance )  
 with Advanced and Renewable Energy )  
 Benchmarks )

## MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, North American Power and Gas, LLC ("NAPG") hereby respectfully moves the Commission for a protective order to keep confidential and not part of the public record certain confidential and proprietary information contained in Table 2 of its 2014 Plan for Compliance with Annual Advanced and Renewable Energy Benchmarks ("Compliance Plan"). NAPG's Compliance Plan was filed with the Commission on the same date as the filing of this Motion. Consistent with the requirements of Admin. Code 4901-1-24(D), two (2) unredacted copies of Table 2 are submitted under seal with this Motion. The grounds for this Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted

  
 Margeaux Kimbrough (0085152)

Kegler Brown Hill &amp; Ritter LPA

Capitol Square, Suite 1800

65 East State Street

Columbus, Ohio 43215

Telephone: (614) 462-5496

Facsimile: (614) 464-2634

[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)

Counsel for North American Power and Gas, LLC

## **MEMORANDUM IN SUPPORT**

Pursuant to Admin. Code 4901:1-40-03(C), NAPG has submitted its Compliance Plan, which contains a ten-year forecast of estimated sales, solar renewable energy credits, and non-solar renewable energy credits. This confidential information has been compiled in Table 2 of the Compliance Plan. Such information, if release to the public, would harm NAPG by providing its competitors with proprietary information in what is designed by statute to now be a competitive service. Given the intense competition in the competitive service arena, this information is a legitimate trade secret, access to which could negatively affect NAPG's competitive position.

The need to protect the type of information that is the subject of this Motion is recognized under Ohio law.

Ohio Admin. Code 4901-1-24(D) provides:

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.

The Commission would have full access to the information in order to fulfill its statutory obligations and the nondisclosure of said information will not frustrate the purposes of Title 49 of the Revised Code.

Ohio law defines a "Trade Secret" as:

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. Rev. Code §1333.61(D).

The Commission facilitates the protection of such trade secrets in its Rules in the Administrative Code as well. *See* Ohio Admin. Code 4901-1-24(A)(7).

The Ohio Supreme Court has adopted a six factor test to analyze whether information is a trade secret under Rev. Code § 1331:

- (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. Plain Dealer v. Ohio Dep't of Ins.*, 80 Ohio St. 3d 513, 687 N.E. 2d 661 (1998) (citations omitted).

Applying the above factors to the information contained in Table 2, it is clear that a protective order should be granted. Further, NAPG notes that similar motions for protective order with respect to such projected data have been granted by the Attorney Examiner.<sup>1</sup> NAPG submits that the basis for the Attorney Examiner to grant NAPG's present Motion is equally compelling here.

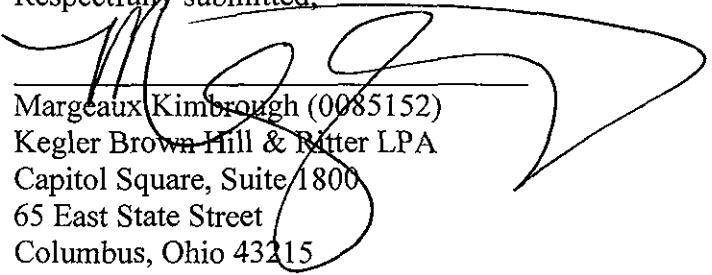
For all of the foregoing reasons, North American Power and Gas, LLC hereby respectfully requests that the Commission issue a Protective Order designating as confidential the information

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<sup>1</sup> See Entry by Attorney Examiner Sarah J. Parrot, May 22, 2013, In the Matter of AEP Retail Energy Partners, LLC's Annual Alternative Energy Portfolio Status Report, Case No. 11-2453-EL-ACP, Finding No. (6).

contained in Table 2 to its Plan for Compliance with Annual Advanced and Renewable Energy Benchmarks and which has been filed under seal with this Motion.

Respectfully submitted,



Margeaux Kimbrough (0085152)  
Kegler Brown Hill & Ritter LPA  
Capitol Square, Suite 1800  
65 East State Street  
Columbus, Ohio 43215  
Telephone: (614) 462-5437  
Facsimile: (614) 464-2634  
[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)

*Counsel for North American Power and Gas, LLC*