

FILE

5

**KEGLER  
BROWN  
HILL +  
RITTER**

**Kegler Brown Hill + Ritter Co. LPA**  
65 East State Street, Suite 1800  
Columbus, OH 43215  
(614) 462-5400  
www.keglerbrown.com

April 1, 2016

Barcy McNeal  
Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
11th Floor  
Columbus, Ohio 43215

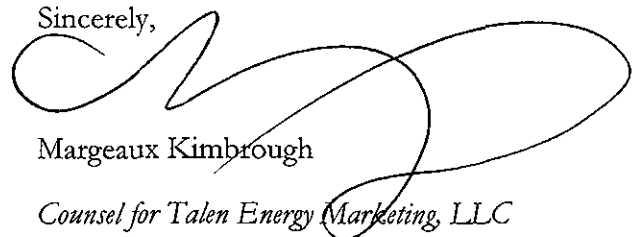
**Re: In the Matter of Talen Energy Marketing, LLC's Annual Alternative Portfolio Status  
Report and Plan for Compliance with Advanced and Renewable Benchmarks; Case No.  
16-0644-EL-ACP; Filing of Motion for Protective Order and Confidential Attachment**

Dear Ms. McNeal:

In connection with the above-referenced matter, enclosed for filing please find the original and two (2) copies of the Motion for Protective Order and two (2) unredacted copies of Talen Energy Marketing, LLC's projected baselines and renewable benchmarks, to be filed under seal. Please maintain the contents enclosed in the accompanying envelop as confidential, pursuant to Ohio Admin. Code 4901-1-24.

Please contact the undersigned with any questions.

Sincerely,



Margeaux Kimbrough

*Counsel for Talen Energy Marketing, LLC*

RECEIVED-DOCKETING DIV  
2016 APR -1 PM 3:44  
PUCO

This is to certify that the images appearing are an  
accurate and complete reproduction of the case file  
document delivered in the regular course of business.  
Technician SM Date Processed APR 04 2016

#4844-9446-4303 v1

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Alternative : Case No. 16-0644-EL-ACP  
Energy Portfolio Status Report of Talen :  
Energy Marketing, LLC :  
:  
:  
In the Matter of Talen Energy Marketing, :  
LLC's Plan for Compliance with :  
Advanced and Renewable Energy :  
Benchmarks :

PUCO

2016 APR - 1 PM 3:44

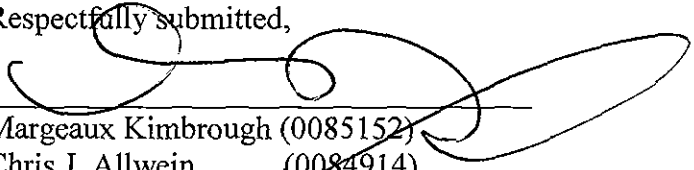
RECEIVED-DOCKETING DIV

MOTION FOR PROTECTIVE ORDER

Pursuant to Admin. Code 4901-1-24(D), Talen Energy Marketing, LLC ("*Talen*") hereby respectfully moves the Commission for a protective order designating as confidential Attachment 2 to its Plan for Compliance with Annual Advanced and Renewable Energy Benchmarks (the "*Compliance Plan*"). The information contained in Attachment 2 is proprietary trade secret information that is maintained as confidential by the company. Talen'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 Attachment 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)  
Chris J. Allwein (0084914)  
Kegler Brown Hill & Ritter Co., LPA  
65 East State Street, Suite 1800  
Columbus, Ohio 43215  
(614) 462-5437 (telephone)  
(614) 464-2634 (fax)

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

*Counsel for Talen Energy Marketing, LLC*

## **MEMORANDUM IN SUPPORT**

Pursuant to Admin. Code 4901:1-40-03(C), Talen has submitted its Compliance Plan. Along with this Compliance Plan, Talen has submitted a redacted version of Attachment 2. The unredacted version of Attachment 2 contains Talen's projected baselines for 2016, 2017, and 2018. These projections are based on Talen's 2015 year-to-date sales and contracted load combined with its historical win rate applied to opportunities currently being pursued.

The information contained in Attachment 2, submitted under seal with this Motion, if made public, would reveal Talen's projected load and projected annual benchmarks, which Talen considers confidential and proprietary trade secrets. If said information is released to the public, Talen would suffer substantial harm as its competitors would have access to Talen's proprietary information. As such, this information is a legitimate trade secret, access to which could negatively affect Talen's competitive position.

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

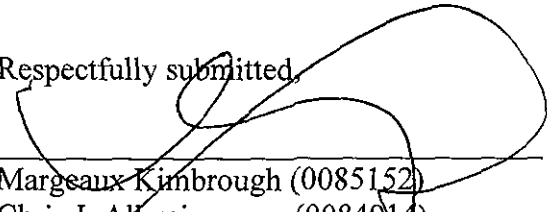
Admin. Code 4901-1-24(D) provides:

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.

with respect to such projected data have been granted by the Attorney Examiner.<sup>1</sup> Talen submits that the basis for the Attorney Examiner to grant Talen's present Motion is equally compelling here.

For all of the foregoing reasons, Talen Energy Marketing, LLC hereby respectfully requests that the Commission issue a Protective Order designating as confidential Attachment 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)  
Chris J. Allwein (0084914)  
Kegler Brown Hill & Ritter Co., LPA  
65 East State Street, Suite 1800  
Columbus, Ohio 43215  
(614) 462-5437 (telephone)  
(614) 464-2634 (fax)  
[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)  
*Counsel for Talen Energy Marketing, LLC*

---

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

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:

...[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. Rev. Code §1333.61(D).

Moreover, the Commission facilitates the protection of such trade secrets in its Rules in the Administrative Code as well. *See* 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 §1333:

(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 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 factors to the information contained in Attachment 2, it is clear that a protective order should be granted. Further, Talen notes that similar motions for protective order