

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV
2016 APR 12 PM 3:57

In the Matter of the Annual Alternative)
Energy Resources Report for Calendar Year) Case No. 16-767-EL-ACP
2015 of MP2 Energy NE LLC.)

PUCO

MOTION FOR PROTECTIVE ORDER

MP2 Energy NE LLC (MP2 Energy NE), by and through counsel, hereby moves for a protective order pursuant to Rule 4901-1-24, Ohio Administrative Code (O.A.C.), to keep certain forecasted information in its 2015 Annual Alternative Energy Resources Report confidential and not part of the public record. The basis for this Motion is set forth in the accompanying Memorandum in Support. Consistent with the requirements of Rule 4901-1-24, O.A.C., two unredacted copies of the report including the information for which the Applicant seeks protection are submitted under seal.

WHEREFORE, MP2 Energy NE respectfully requests that its Motion for Protective Order seeking confidential treatment of the aforementioned forecasted information be granted.

Respectfully submitted,



Ryan P. O'Rourke (0082651)
Carpenter Lipps & Leland LLP
280 N. High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4110
Email: o'rourke@carpenterlipps.com
(willing to accept service via email)

Counsel for MP2 Energy NE LLC

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician A-J Date Processed 4/12/16

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Alternative)
Energy Resources Report for Calendar Year) Case No. 16-767-EL-ACP
2015 of MP2 Energy NE LLC.)

MEMORANDUM IN SUPPORT

MP2 Energy NE respectfully requests that the Public Utilities Commission of Ohio (Commission) designate as confidential and protect from public disclosure the figures discussed herein which are required components of the 2015 Annual Alternative Energy Resources Report (Report) that MP2 Energy NE has submitted to the Commission. If released to the public, the information would harm MP2 Energy NE, as it would provide its competitors with sensitive, proprietary information which is not generally known or available to the public.

MP2 Energy NE seeks confidential treatment of the chart appearing in Section V.a, titled "10 Year Forecast of Solar and Non-Solar RECs." The information contained in that section constitutes forecasted trade secret information. The estimated sales enumerated under Column (A) require MP2 Energy NE to forecast its sales amounts. Moreover, the REC figures included under Columns (B), (C), and (D) require the use of such forecasted sales amounts in calculating the figures included thereunder. Such figures have previously been determined to be trade secret information by the Commission. See *In the Matter of Direct Energy Services, LLC's Annual Alternative Energy Portfolio Status Report*, Case No. 12-1233-EL-ACP, Finding and Order at 5 (November 13, 2013).

Rule 4901-1-24(D), O.A.C., permits an attorney examiner to issue an order to protect the confidentiality of information contained in a document filed at the Commission "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 non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

Section 1333.61(D), Revised Code, defines a trade secret as information which "(1) 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[; and] (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Further, Section 149.43, Revised Code, states that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has opined that this "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 2000-Ohio-475. Moreover, in *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, the Supreme Court of Ohio adopted the following six factor test to determine whether information constitutes a "trade secret" under Section 1333.61, Revised Code:

- (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;
- (6) the amount of time and expense it would take for others to acquire and duplicate the information.

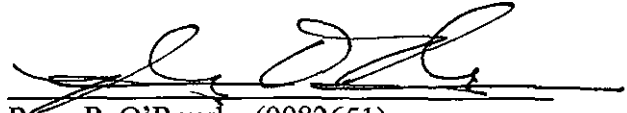
State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-25, 87 N.E.2d 661 (1997).

Applying these factors to the information that MP2 Energy NE seeks to protect in its Report, the Commission should grant MP2 Energy NE's motion in its entirety. The information contained in columns (A), (B), (C), and (D) in the table appearing in Section V.a. of the Report consists of figures either representing or derived from forecasted or projected MP2 Energy NE sales figures. Neither this information, nor the methods utilized by MP2 Energy NE in developing these forecasts or projections is widely known outside the business, and further, is not known by those inside the business who are employed in capacities other than those that encompass financial and accounting services. Information of the nature contained in the aforementioned sections of the Report is not generally disclosed, as such disclosure would give competitors an advantage that could damage MP2 Energy NE's ability to compete in a number of important markets. Further, confidential treatment of the information contained in columns (A), (B), (C), and (D) in the table appearing in Section V.a. of the Report is not inconsistent with the purposes of Title 49 of the Revised Code.

In light of the nature of the information for which MP2 Energy NE seeks confidential treatment and the competitive advantage which disclosure of the information contained in the exhibits may provide to its competitors, the Commission should grant MP2 Energy NE's motion for a protective order.

WHEREFORE, MP2 Energy NE respectfully requests that the Commission grant its motion for a protective order covering the information contained in columns (A), (B), (C), and (D) in the table appearing in Section V.a. of its Report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ryan P. O'Rourke", is written over a horizontal line.

Ryan P. O'Rourke (0082651)
Carpenter Lipps & Leland LLP
280 N. High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4110
Email: o'rourke@carpenterlipps.com

Counsel for MP2 Energy NE, LLC

1351-001.657461v1