

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's) Case No: 18-0607-EL-ACP
Alternative Energy Portfolio Standard)
Report to the General Assembly for the)
2017 Compliance Year)
)

MOTION FOR PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT OF
IGS DAYTON, INC.

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MOTION FOR PROTECTIVE ORDER

IGS Dayton, Inc. ("IGS Dayton"), 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 IGS Dayton's renewable energy credit ("REC") purchase amount ("Confidential Information") contained in the Commission's Alternative Energy Portfolio Standard Report to the General Assembly for the 2017 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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Attorney for IGS Dayton, Inc.

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MEMORANDUM IN SUPPORT

Pursuant to Rule 4901:1-24(D), OAC, IGS Dayton requests protective treatment of IGS Dayton's 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 IGS Dayton's business operations, comprising of trade secrets. The public release of this information would cause harm to IGS Dayton 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 IGS Dayton's 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 IGS Dayton's potential growth, market share and margins. Competitors could use the Confidential Information to make strategic decisions in response to IGS Dayton's 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 IGS Dayton.

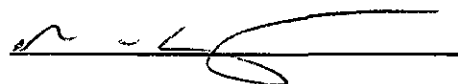
Furthermore, IGS Dayton is a privately-held company and, therefore, would be especially vulnerable if protective treatment is not granted. Indeed, the Commission has previously found the need for protective treatment to be especially "persuasive for the privately held companies."²

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.

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., ACN Energy 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).

The reasons set forth above demonstrate that the Confidential Information has actual, substantial independent economic value from not being generally known, and 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 IGS Dayton's business and competitive interests. Thus, IGS Dayton 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 'Michael Nugent', is written over a horizontal line.

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Attorney for IGS Dayton, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Protective Order and Memorandum in Support of IGS Dayton, Inc.* was served upon the following parties of record this 14th day of April 2018, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.


**One of the Attorneys for
IGS Dayton, Inc.**

william.wright@puc.state.oh.us



Public Utilities Commission

Staff's Template RPS Compliance Filing Report 2017 Compliance Year

Company Name: IGS Dayton, Inc.

Case Number (i.e., XX-XXXX-EL-ACP): 18-0607

Point of Contact for RPS Filing – Name: Tara Chapman

Point of Contact for RPS Filing – Email: tchapman@igsenergy.com

Point of Contact for RPS Filing – Phone: 6146595058

Did the Company have Ohio retail electric sales in 2017?

YES ☒

NO ☐

If a CRES with sales in 2017, confirm the sales were conducted either as a power marketer or retail generation provider (i.e., took title to the electricity).

YES ☒

NO ☐

If this RPS report also addresses the compliance obligation of an additional CRES Provider, list the company(-ies). Otherwise, indicate N/A.

N/A

Note: If the Company indicated zero Ohio retail electric sales in 2017, it need not complete the remainder of this form.

I. Annual RPS Compliance Status Report (refer to Ohio Adm.Code 4901:1-40-05)

Note: Please complete Section I in its entirety and without redaction.

A. Baseline Determination

1. SELECT ONE: To determine its compliance baseline, is the Company proposing to use (a) the 3 year average method or (b) compliance year (2017) sales?



(a) the 3 year average method



(b) compliance year (2017) sales

2. 3 Year Average Calculation (*Note: years with zero sales should be excluded from calculation of average*)

Year	Annual Sales (MWHs)
2014	N/A
2015	N/A
2016	N/A
Three Year Average	N/A



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3. Compliance year (2017) sales in MWHs: 1,624,645.000
4. Source of reported sales volumes: CRES Annual
5. For CRES Providers, if the reported sales volume(s) differs from that in the company's CRES Annual Report(s) filed with the Commission, provide an explanation below for the difference. Otherwise, indicate N/A.

N/A

B. Compliance Obligation for 2017

	Required Quantity	Retired Quantity	Tracking System(s)
Solar	XXX	XXX	PJM GATS
Non-Solar	XXX	XXX	PJM GATS

Note: multiply the proposed baseline by the statutory benchmarks to determine the Required Quantity, with the product rounded to the nearest whole number.

- C. If the Company had a compliance deficiency or compliance excess in a previous year(s) that was rolled forward, describe how that has been incorporated within this filing. Otherwise, indicate N/A.

N/A

- D. Complete and file Staff's compliance worksheet along with filing report.
- E. If the Company is proposing to pay an alternative compliance payment for all or part of its 2017 compliance obligation, enter that amount here: \$
Pursuant to Ohio Adm.Code 4901:1-40-08, the obligation is rounded up to the next MWh in the event of a compliance payment.



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II. Annual RPS Compliance Planning Report (refer to Ohio Adm.Code 4901:1-40-03(C))

A. Projected (non-binding) baseline for the current and future calendar years.

Year	Baseline (MWHs)	Non-Solar Requirement	Solar Requirement
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			

B. Describe the Company's supply portfolio projection, including both generation fleet and power purchases, for the 10 year planning horizon.

IGS Dayton has Merged with Interstate Gas Supply, Inc. See Interstate Gas Supply Inc. RPS 2017 Filing for Projection Planning.

C. Describe the methodology used by the Company to evaluate its compliance options.

IGS Dayton purchased all OH Solar and OH Non Solar RECs on the OTC REC Market.

D. Describe any perceived impediments to achieving compliance with the required benchmarks, as well as suggestions for addressing any such impediments.

N/A

III. RPS Administration

Please describe any suggestions (non-legislative) the Company may have to make the administration of the Ohio RPS more effective and efficient. Additional communications, enhancements to the RPS webpage, etc.

No Comment