

**BEFORE THE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the RPS Compliance Filing	)	Case No. 21-0427-EL-ACP
Report for 2020 Compliance Year	)	
	)	

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**ENERGY HARBOR LLC’S  
MOTION FOR PROTECTIVE ORDER**

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Energy Harbor LLC (“Energy Harbor”), pursuant to O.A.C. 4901-1-24(D), moves for a protective order keeping confidential certain information included in Energy Harbor’s RPS Compliance Filing Report for Compliance Year 2020 (“RPS Annual Report”), which information is being filed contemporaneously herewith under seal. As described further in the attached Memorandum in Support of this Motion, the RPS Annual Report contains confidential information such as Energy Harbor’s compliance year (2020) sales in MWH and the quantity (required and retired) of renewable energy in the compliance year (collectively, the “Confidential Information”). Energy Harbor considers the Confidential Information a proprietary trade secret, thereby warranting protection.

Accordingly, Energy Harbor requests that the Confidential Information in the RPS Annual Report, which has been clearly marked as confidential and filed under seal, be protected from public disclosure for the maximum amount of time permitted under Ohio law.

Respectfully submitted,

/s/ Mark T. Keaney

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**MEMORANDUM IN SUPPORT OF  
ENERGY HARBOR LLC’S MOTION FOR PROTECTIVE ORDER**

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Pursuant to O.A.C. 4901-1-24(D), Energy Harbor LLC (“Energy Harbor”) moves for a protective order keeping confidential information contained in Energy Harbor’s RPS Compliance Filing Report for Compliance Year 2020 (“RPS Annual Report”) such as Energy Harbor’s compliance year (2020) sales in MWH and the quantity (required and retired) of renewable energy in the compliance year (“Confidential Information”). A public version of the RPS Annual Report is being filed with appropriate redactions, and a confidential version of the RPS Annual Report is filed separately under seal. Energy Harbor requests that the Confidential Information in the RPS Annual Report be protected from public disclosure going forward because it contains proprietary trade secrets regarding Energy Harbor’s business operations.

Public disclosure of the Confidential Information will harm Energy Harbor’s ability to compete in the competitive market, and the Confidential Information falls squarely within the definition of a “trade secret” under Ohio law. Ohio law defines a “trade secret” as:

[A]ny 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. [And]

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>1</sup>

Ohio law grants special protections to such trade secrets, including statutory causes of action for an injunction precluding the misappropriation of trade secrets.<sup>2</sup> The Commission has recognized the statutory obligation to protect trade secrets.<sup>3</sup> Indeed, the Commission's rules provide that it may issue any order "necessary to protect a party or person," including that a "trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way."<sup>4</sup> Ohio law also reflects a recognition that information associated with Ohio's competitive market calls for particular protection.<sup>5</sup>

The Confidential Information identified in the RPS Annual Report constitutes a trade secret that warrants such protection for the maximum amount of time permitted under Ohio law. If the Confidential Information was made public, Energy Harbor's competitors would be able to access it, and could gain valuable insight into Energy Harbor's current and future business operations and business strategies in the competitive market. By knowing the total sales as requested in the RPS Annual Report and/or the amount of renewable energy credits acquired and retired, Energy Harbor's competitors (or potential competitors) will be able to determine Energy Harbor's market share in Ohio. Armed with knowledge of Energy Harbor LLC's market share,

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<sup>1</sup> R.C. § 1333.61(D).

<sup>2</sup> See R.C. § 1333.62.

<sup>3</sup> See *In re: General Telephone Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets); See, e.g., *Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

<sup>4</sup> O.A.C. 4901-1-24(A)(7).

<sup>5</sup> See R.C. § 4928.06(F) ("The commission shall take such measures as it considers necessary to protect the confidentiality of any such information" that the commission is provided with regard to competitive retail electric service.); see also *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 370 2009-Ohio-604, ¶ 31 (2009) (citing R.C. § 4928.06(F)).

competitors could adjust their marketing strategies to respond to competition from Energy Harbor. Competitors, for example, could use Energy Harbor LLC's sales information to develop misleading comparative advertising, highlighting their relative prominence in the market while diminishing Energy Harbor's. If successful, such tactics would lead to fewer competitive retail electric service providers operating in Ohio's competitive market. Granting proprietary treatment of the Confidential Information is thus necessary to ensure free and fair competition. Moreover, public disclosure of the Confidential Information is not likely to assist the Commission in carrying out its duties, since the Commission and its Staff will already have access to the Confidential Information.

Accordingly, for the foregoing reasons, Energy Harbor seeks a protective order preventing public disclosure of the Confidential Information in the RPS Annual Report for the maximum amount of time permitted under Ohio law.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 14th day of April, 2021.

/s/ Mark T. Keaney

One of the Attorneys for Energy Harbor  
LLC

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Motion Motion for Protective Order and Memorandum in Support of Energy Harbor LLC electronically filed by Mark T Keaney on behalf of Energy Harbor LLC