



BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative :  
Energy Portfolio Status Report of : Case No. 11-2470-EL-ACP  
Dominion Retail, Inc. :

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MEMORANDUM IN SUPPORT  
OF  
MOTION FOR PROTECTIVE ORDER  
OF  
DOMINION RETAIL, INC.

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Rule 4901:1-40-05(A)(1), Ohio Administrative Code ("OAC"), requires jurisdictional electric utilities and electric services companies to submit annual alternative energy portfolio status reports regarding their compliance with the advanced and renewable energy benchmarks set forth in Section 4928.64(B), Revised Code, and Rule 4901:1-40-03(A), OAC, for the preceding calendar year. In accordance with said rule, Dominion Retail, Inc. ("Dominion Retail") has, this date, filed its 2010 Alternative Energy Portfolio Status Report in the above-captioned proceeding, and has appended, as Exhibit A to the report, the details of the renewable energy credits ("RECs") retired by Dominion Retail in 2010 to meet its benchmark obligations. Because these details constitute competitively sensitive information, Dominion Retail has redacted the version of Exhibit A filed in the public docket, and, by the foregoing motion, seeks a protective order from this Commission to prevent public disclosure of the redacted information. In accordance with Rule 4901-1-24(D)(2), Ohio Administrative Code ("OAC"), Dominion Retail has filed herewith three copies of the confidential, unredacted version of Exhibit A under seal.

Rule 4901-1-24(D), OAC, provides, in pertinent part, as follows:

(D) Upon motion of any party or person filing 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 the attorney examiner assigned to the case 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, or the attorney examiner assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.

Dominion Retail submits that its motion for protection is consistent with the criteria governing the issuance of protective orders set forth in the above rule, in that state law prohibits release of the information for which protection is sought and because non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

If disclosed to its competitors, the identity and sources of the RECs retired by Dominion Retail in 2010 to meet its Non-Ohio Renewable, Ohio Renewable, and Non-Ohio Solar benchmarks information would damage Dominion Retail's position in the Ohio retail electric market.<sup>1</sup> Competitively-sensitive information of this type is routinely accorded protected status by the Commission pursuant to Rule 4901-1-24(A)(7), OAC, based on its determination that such information constitutes a "trade secret, or other confidential research, development, (or) commercial information under Ohio law." Indeed, the statutory definition of a "trade secret" set out in Section 1333.61(D), Revised Code, includes "business information" that "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

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<sup>1</sup> As indicated in its report, because of the limited availability of Ohio Solar RECS, Dominion Retail was unable to acquire RECs in this category during to 2010. Accordingly, Dominion Retail is seeking relief from the 2010 Ohio Solar benchmark on force majeure grounds.

from its disclosure or use.” In a competitive environment, disclosure of Dominion Retail’s REC acquisition strategy would disadvantage Dominion Retail, particularly to the extent that certain types of RECS may be in short supply. Thus, Dominion Retail has treated the information that is the subject of its motion as proprietary, confidential business information, and does not reveal this information publicly.

The Ohio Supreme specifically cited the “the volatility and competitiveness of the electric industry” as a factor in affirming a Commission decision to accord protection to certain business information, stating that “(e)xposing a competitor’s business strategies and pricing points would likely have a negative impact on that provider’s viability.”<sup>2</sup> Moreover, in considering similar requests for protection in connection with the filing of the 2009 alternative energy supply portfolio reports, the Commission granted motions for protective orders with respect to the very same information – *i.e.*, the details and sources of RECs retired to meet benchmark obligations – that is the subject of Dominion Retail’s motion.<sup>3</sup> Clearly, the information contained in Exhibit A is entitled to similar protection here.

Rule 4901-1-24(D)(1), OAC, provides that the public version of documents containing information for which protection is requested “should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information.” However, in this instance, this requirement would entail submitting a blank reporting form, which would be a meaningless exercise.<sup>4</sup> Thus, Dominion Retail has redacted Exhibit A in its

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<sup>2</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, at 370, 2009-Ohio-604 (2009).

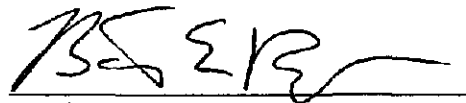
<sup>3</sup> See, e.g., *In the Matter of the Application of FirstEnergy Solutions Corp. for Approval of its Alternative Energy Annual Status Report*, Case No. 10-467-EL-ACP (Entry dated January 5, 2011).

<sup>4</sup> In so stating, Dominion Retail would note that it has disclosed in its report that it was unable to acquire any Ohio Solar RECs in 2010, so no purpose would be served by repeating that information in a public version of the form.

entirety, and seeks protection for the entire document. Because the Commission and its staff will have full access to the information for which protection is requested, the Commission's ability to review this information will in no way be impaired by granting this motion, and no legitimate purpose would be served by public disclosure of the designated information.

WHEREFORE, Dominion Retail respectfully requests that Exhibit A to its 2010 Alternative Energy Supply Portfolio Status Report be granted protected status and that the Commission grant its motion.

Respectfully submitted,



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