

FILE

8

# THOMPSON HINE

ATLANTA

CLEVELAND

DAYTON

WASHINGTON, D.C.

CINCINNATI

COLUMBUS

NEW YORK

RECEIVED-BOOKING DIV

2012 APR 13 PM 4:30

April 13, 2012

## PUCO

Via Hand Delivery

Barcy McNeal, Secretary  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

RE: In the Matter of Border Energy Electric Services, Inc. Annual Alternative Energy Portfolio Status Report and Plan for Compliance with Future Renewable Energy Benchmarks, PUCO Case No. 12-1237-EL-ACP

Dear Ms. McNeal:

Enclosed are an original and ten (10) copies of an Annual Alternative Energy Portfolio Status Report and Plan for Compliance with Future Renewable Energy Benchmarks (the "Report"), to be filed on behalf of Border Energy Electric Services, Inc. in connection with the above-referenced matter.

In addition, supplied herewith in a sealed envelope are three (3) copies of page 4 of the Report, which includes confidential information. These documents are filed under seal in accordance with O.A.C. 4901-1-24(D) and should be treated as confidential.

✓ A Motion for Protective Order and Memorandum in Support are attached hereto for filing as well.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,



Ann B. Zallocco

Enclosures

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 JE Date Processed APR 13 2012

Ann.Zallocco@ThompsonHine.com Phone 614.469.3225 Fax 614.469.3361

704350.1

THOMPSON HINE LLP  
ATTORNEYS AT LAW

41 South High Street  
Suite 1700  
Columbus, Ohio 43215-6101

www.ThompsonHine.com  
Phone 614.469.3200  
Fax 614.469.3361

RECEIVED-BOOKETING DIV  
2012 APR 13 PM 4:34  
PUCO

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Border Energy Electric )  
Services, Inc. Annual Alternative Energy ) Case No. 12 - 1237 - EL - ACP  
Portfolio Status Report and Plan for Compliance )  
with Future Renewable Energy Benchmarks )

**MOTION FOR PROTECTIVE ORDER**

Pursuant to Ohio Adm.Code 4901-1-24(D), Border Energy Electric Services, Inc. (“Border”) hereby moves the Commission for a protective order regarding the confidential information that it is filing contemporaneously with this Motion, specifically the projected baselines and renewable energy certificate (“REC”) requirements set forth in Table 1 of its Alternative Energy Portfolio Status Report and Plan for Compliance with Future Renewable Energy Benchmarks (the “Confidential Information”). Section 4929.23(A), Revised Code, requires the Commission to take the necessary measures to protect the confidentiality of certain information provided to the Commission by a retail natural gas supplier subject to certification.

Border requests that the Commission issue such order as is necessary to protect the Confidential Information. Non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code because the Commission and its Staff will have full access to the Confidential Information in order to fulfill their statutory obligations.

The bases for this Motion may be found in the attached Memorandum of Support.

Respectfully submitted,

BORDER ENERGY ELECTRIC SERVICES, INC.

By: Ann B. Zallocco

Carolyn S. Flahive (0072404)

Ann B. Zallocco (0081435)

THOMPSON HINE LLP

41 S. High Street, Suite 1700

Columbus, Ohio 43215

Telephone: (614) 469-3200

Facsimile: (614) 469-3361

Its Counsel

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Border Energy Electric                                    )  
Services, Inc. Annual Alternative Energy                                    ) Case No. 12 - 1237 - EL - ACP  
Portfolio Status Report and Plan for Compliance                            )  
with Future Renewable Energy Benchmarks                                    )

**MEMORANDUM IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER**

Border Energy Electric Services, Inc. (“Border”) is concurrently filing an Alternative Energy Portfolio Status Report and Plan for Compliance with Future Renewable Energy Benchmarks (the “Report”). Table 1 of the Report provides the Commission with a projection of Border’s “baseline,” i.e. its forecasted retail electric load, for the years 2012, 2013 and 2014, and its future renewable energy compliance obligations (together, the “Confidential Information”). Because Border considers such information in Table 1 of the Report to be confidential, the projected baselines and renewable energy certificate (“REC”) requirements set forth in Table 1 have been filed under seal as required by Ohio Adm.Code 4901-1-24(D).

The Confidential Information includes detail about the operations of Border that would be of significant interest to competitors. Consequently, that data constitutes confidential information that should not be disclosed in the public record.

The Confidential Information constitutes trade secrets as defined in Revised Code §1333.61(D). The information (1) derives 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.

The Ohio Supreme Court adopted six factors to be used in determining whether a trade secret claim meets the statutory definition:

- 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 for others to acquire and duplicate the information.

*State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 (1997).

The Confidential Information is not known outside of Border and is known within Border only to senior managers and a limited number of employees with a particular need to know. Border has taken precautions to guard the secrecy of the Confidential Information by limiting its dissemination. Further, Border expended a significant amount of time and money in developing the Confidential Information. Disclosure of the Confidential Information would harm Border's competitive position in the marketplace. (See attached Affidavit of Andrew Mitrey, President, Border Energy Electric Services, Inc.)

The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 because the Commission and its Staff have access to the information. Granting protection of the Confidential Information requested herein will not impair the Commission's regulatory responsibilities.

Confidential treatment of Table 1 of the Report is therefore both appropriate and required by Ohio law and the Commission's rules. For the foregoing reasons, Border Energy Electric Services, Inc. prays that its Motion for Protective Order be granted.

Respectfully submitted,

BORDER ENERGY ELECTRIC SERVICES, INC.

By: 

Carolyn S. Flahive (0072404)

Ann B. Zallocco (0081435)

THOMPSON HINE LLP

41 S. High Street, Suite 1700

Columbus, Ohio 43215

Telephone: (614) 469-3200

Facsimile: (614) 469-3361

Its Counsel

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Border Energy Electric                    )  
Services, Inc. Annual Alternative Energy                ) Case No. 12 - 1237 - EL - ACP  
Portfolio Status Report and Plan for Compliance       )  
with Future Renewable Energy Benchmarks            )

**AFFIDAVIT OF ANDREW MITREY**

STATE OF OHIO

COUNTY OF DELAWARE

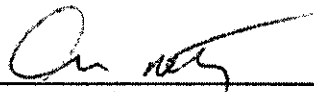
**NOW COMES** Andrew Mitrey, being first duly cautioned and sworn, deposes and says as follows:

1. I am President of Border Energy Electric Services, Inc. (“Border”), 9787 Fairway Drive, Powell, Ohio 43065. I make this Affidavit on behalf of Border, and do so in the ordinary discharge of my responsibilities.
2. I have personal knowledge of all relevant matters pertaining to the Alternative Energy Portfolio Status Report and Plan for Compliance with Future Renewable Energy Benchmarks (the “Report”) that Border is contemporaneously filing with the Public Utilities Commission of Ohio. I am authorized to make this Affidavit on behalf of Border.
3. Border considers its projected “baselines,” i.e. its forecasted retail electric loads, for the years 2012, 2013 and 2014, and its future renewable energy compliance obligations included within Table 1 of the Report (the “Forecasted Load and REC Information”) to be confidential.
4. The Forecasted Load and REC Information is not otherwise available to the general public, and includes detail about the operations of Border that would be of significant

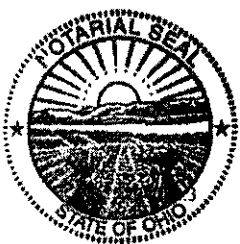
interest to competitors. Consequently, Border is requesting that the Forecasted Load and REC Information not be disclosed to the public.

5. The Forecasted Load and REC Information 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 derive economic value from its disclosure or use.
6. The Forecasted Load and REC Information is provided only to Border's senior management and a restricted list of employees who have a particular need to know the Information.
7. The Forecasted Load and REC Information is indicative of Border's current and future business plans and, therefore, public disclosure of the Forecasted Load and REC Information would place Border at a competitive and economic disadvantage.
8. The Forecasted Load and REC Information is the subject of efforts by Border that are reasonable under the circumstances to maintain its secrecy.
9. Border has expended a significant amount of time and money to develop the Forecasted Load and REC Information. Disclosure of the Forecasted Load and REC Information would harm Border's competitive position in the marketplace.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
Andrew Mitrey

Sworn to before me and subscribed in my presence this 12 day of April, 2012.



**ANN M LINN**  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
March 05, 2017

  
\_\_\_\_\_  
Notary Public