

CASE NUMBER: 13-1132-GA-ORD**CASE DESCRIPTION:** IN THE MATTER OF THE COMMISSION'S REVIEW OF THE UNIFORM PURCHASED GAS ADJUSTMENT CLAUSE RULES CONTAINED IN CHAPTER 4901:1-14 OF THE OHIO ADMINISTRATIVE**DATE OF SERVICE:** 11/14/2013**DOCUMENT SIGNED ON:** 11/13/2013*Please See Attachment***Sign Here:** *ML*

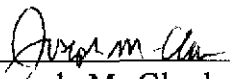
PARTY OF RECORD	ATTORNEY
none	ATTORNEY *Mallarnee, Patti The Office of the Ohio Consumers Counsel 10 W. Broad St. Suite 1800 Columbus, OH 43215 Phone: 614-466-8574 Email: mallarnee@occ.state.oh.us

PARTY OF RECORD	ATTORNEY
PARTY OF RECORD OHIO CONSUMERS COUNSEL 10 WEST BROAD STREET STE 1800 COLUMBUS, OH 43215-3485 Phone: 614-466-9585	NONE
OHIO GAS ASSOCIATION ROY RUSHING, PRESIDENT 6100 EMERALD PKWY DUBLIN, OH 43016 Phone: 659-5990	NONE
OHIO OIL AND GAS ASSOCIATION THOMAS E. STEWART P.O. BOX 535 GRANVILLE, OH 43023	NONE

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trade secret. Pursuant to Rule 4901-1-24(D) of the O.A.C. and the October 29, 2013 Entry in this matter, Direct Energy has filed a redacted version of the respective tables and moves for a protective order to keep its tables showing the average cost data for the renewable energy credits that it has retired, or will be retiring, to demonstrate compliance with its 2012 Ohio AEPS obligations confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) unredacted copies of the exhibits are submitted under seal.

Respectfully submitted,



Joseph M. Clark (0080711)
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
(614) 220-4369 EXT 232
joseph.clark@directenergy.com

Counsel for Direct Energy Services, LLC,
and Direct Energy Business, LLC

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

Direct Energy believes that the tables containing its average renewable energy credit cost data for the 2012 compliance year should be protected from public disclosure as a trade secret. The average cost data included in this table would reveal Direct Energy's purchase information which it considers proprietary and confidential. Such information if released to the public would harm Direct Energy by providing its competitors with proprietary information and a competitive advantage in what is designed by statute to be a competitive service.

Rule 4901-1-24(D) of the O.A.C. provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the

requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the “public records” statute must also be read in pari materia with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982.) Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1- 24(A)(7)).

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“Trade secret” means information, 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.

R.C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion.

In State ex rel The Plain Dealer the Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six factor test to analyze whether information is a trade secret under the statute:

(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.

Id. at 524-525 (quoting Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

Applying these factors to the table containing the confidential average cost data for the renewable energy credits, it is clear that a protective order should again be granted. In the same Entry establishing the 2012 AEPS cost data reporting obligation, the Commission granted a Direct Energy Business motion for protective treatment of exactly the same information requested in this case as it relates to 2011 AEPS compliance cost data.

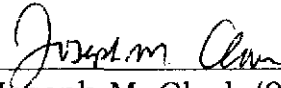
The tables which are the subject of this motion contain average cost data for the renewable energy credits that Direct Energy has retired, or will be retiring, to demonstrate compliance with its 2012 Ohio AEPS obligations. The tables contain average cost data for Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar renewable energy credits. Such sensitive cost data information is generally not disclosed. Its disclosure could give competitors an

advantage that would hinder Direct Energy's ability to compete. On the other hand, public disclosure of this average cost data information is not likely to assist the Commission in carrying out its duties under Section 4928.64(D)(1)(b), Revised Code.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate for Direct Energy the protections the Ohio General Assembly has granted to all businesses through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. 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).

WHEREFORE, for the above reasons Direct Energy requests the Commission grant its motion for a protective order and maintain under seal its table containing the average cost data for the renewable energy credits that it has retired or will be retiring.

Respectfully submitted,



Joseph M. Clark (0080711)
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
(614) 220-4369 EXT 232
joseph.clark@directenergy.com

Counsel for Direct Energy Services, LLC,
and Direct Energy Business, LLC

LIST OF EXHIBITS FOR WHICH PROTECTION IS SOUGHT

EXHIBIT

Tables containing average cost data for the renewable energy credits that Direct Energy has retired or will be retiring to demonstrate compliance with its 2012 Ohio AEPS obligations.

REASONS JUSTIFYING PROTECTION

This table contains average cost data which would reveal Direct Energy purchase information which Direct Energy considers proprietary and confidential. Disclosure would give an undue advantage to competitors and would hinder Direct Energy's ability to compete.