

FILE

BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO 2014 APR 28 PM 3:49

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In the Matter of EDF Industrial Power)
Services (OH), LLC's Annual Alternative)
Energy Portfolio Status Report and Plan for)
Compliance with Future Annual Advanced)
and Renewable Energy Benchmarks)

Case No. 14-P3-EL-ACP

Motion for Protective Order of
EDF Industrial Power Services (OH), LLC

Pursuant to Ohio Adm. Code 4901-1-24(D), EDF Industrial Power Services (OH), LLC ("EIPS OH") hereby moves for a protective order to preserve as confidential certain competitively sensitive information contained in its Alternative Energy Portfolio Status Report for calendar year 2013 (the "Annual Report"), filed on this date in the above-captioned proceeding.

The basis for this motion is set forth in the accompanying memorandum in support. As required by Ohio Adm. Code 4901-1-24(D)(2), EIPS OH has filed under seal three copies of the confidential and unredacted Annual Report.

WHEREFORE, EIPS OH respectfully requests that this motion be granted.

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Respectfully submitted,



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Dated April 28, 2014

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of EDF Industrial Power |) | |
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| and Renewable Energy Benchmarks |) | |

Memorandum in Support of Motion for

Protective Order of EDF Industrial Power Services (OH), LLC

Ohio Administrative Code 4901:1-40-05(A) requires jurisdictional electric utilities and electric service companies to submit annual reports showing their compliance with the benchmarks set forth in Ohio Revised Code ("R.C.") § 4928.64(B) and Ohio Adm. Code 4901:1-40-03(A). Accordingly, EDF Industrial Power Services (OH), LLC ("EIPS OH") has in the above-captioned proceeding on this date filed its Annual Alternative Energy Portfolio Status Report (the "Annual Report"). Because this Annual Report contains competitively sensitive information, EIPS OH has redacted portions from the publicly filed version of the Annual Report and seeks a protective order from the Commission to prevent public disclosure of the redacted information.¹ In compliance with Ohio Adm. Code 4901-1-24(D)(2), EIPS OH has filed under seal three copies of the confidential and unredacted version of the Annual Report.

Ohio Adm. Code 4901-1-24(D) states that:

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

¹ Ohio Adm. Code 4901-1-24(D)(1) states that public versions of documents submitted that contain 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."

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 non-disclosure 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.

Consistent with the criteria for the issuance of a protective order as set forth in the aforementioned rule, EIPS OH submits that the information it seeks to protect constitutes a trade secret under Ohio law and non-disclosure of such information is not inconsistent with the purpose of Title 49 of the Revised Code. R.C. § 1333.61(D) defines a trade secret as:

information . . . 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.

The redacted information is independently economically valuable both to EIPS OH and to its competitors as the information is neither generally known nor readily ascertainable by others, and EIPS OH's has taken reasonable steps to protect its secrecy.


The redacted information from the Annual Report consists of forecasted baseline volumes and the associated calculations based on those forecasts, which if revealed would divulge EIPS OH's strategic position and planning in Ohio.² Public disclosure of this information would damage EIPS OH's position in the Ohio retail electric market, particularly if used by EIPS OH's competitors. The Ohio Supreme Court has stated that "[e]xposing a

² The Commission has granted similar protection to other electric service providers. See, e.g., *Border Energy Electric Services, Inc.*, Case No. 13-0881-EL-ACP (Dec. 18, 2013); *Champion Energy Services, LLC*, Case No. 12-1260-EL-ACP (Nov. 13, 2013).

competitor's business strategies . . . would likely have a negative impact on that provider's viability."³ Such a risk of damage to EIPS OH's interests is unnecessary when the Commission and Staff will have full access to the unredacted version of the information for their respective reviews.

WHEREFORE, EIPS OH respectfully requests that the information redacted in the Annual Report be granted confidential treatment and that the Commission grant this Motion.

Respectfully submitted,


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Dated April 28, 2014.

HUI-167167v2

³ *Ohio Consumers' Counsel v. Pub. Util. Comm'n. of Ohio*, 121 Ohio St.3d 362, 370 (2009).