

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Alternative)
Energy Resources Report for Calendar Year) Case No. 15-712-EL-ACP
2014 of MP2 Energy NE LLC.)

MOTION FOR PROTECTIVE ORDER

MP2 Energy NE LLC (MP2 Energy NE), by and through counsel, hereby moves for a protective order pursuant to Rule 4901-1-24, Ohio Administrative Code (O.A.C.), to keep certain forecasted information in its 2014 Annual Alternative Energy Resources Report confidential and not part of the public record. The basis for this Motion is set forth in the accompanying Memorandum in Support. Consistent with the requirements of Rule 4901-1-24, O.A.C., three unredacted copies of the report including the information for which the Applicant seeks protection are submitted under seal.

WHEREFORE, MP2 Energy NE respectfully requests that its Motion for Protective Order seeking confidential treatment of the aforementioned forecasted information be granted.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

MP2 Energy NE respectfully requests that the Public Utilities Commission of Ohio (Commission) designate as confidential and protect from public disclosure the figures discussed herein which are required components of the 2014 Annual Alternative Energy Resources Report (Report) that MP2 Energy NE has submitted to the Commission. If released to the public, the information would harm MP2 Energy NE, as it would provide its competitors with sensitive, proprietary information which is not generally known or available to the public.

MP2 Energy NE seeks confidential treatment of the following information that must be provided in the Report: (1) the projected amount of retail electric generation sales required in Section II.d.; (2) the renewable energy credits (RECs) figures required in Columns (A) and (B) of the initial chart appearing in Section III, titled “Renewable Energy Credits Required and Obtained for 2014”; and (3) the figures required under Columns (A), (B), (C), and (D) of the initial chart appearing in Section V, titled “10 Year Forecast of Solar and Non-Solar RECs.” The information contained in each of those sections constitutes forecasted trade secret information.

With regard to the first item for which MP2 Energy NE requests confidential treatment, Section II.d. requests any CRES that “was not active during calendar years 2011, 2012, and 2013 but did make sales during calendar year 2014” to “*project* the amount of retail electric generation sales anticipated for the whole of calendar year 2014 *as would have been projected on the first*

day retail generation sales were made in Ohio.” (Emphasis added). The directive for a CRES so situated clearly specifies that it “project,” or forecast, the figure to be set forth in the Report.

Likewise, the second item for which confidential treatment is sought requires MP2 Energy NE to use the forecasted information related in Section II.d. to calculate the figures listed in Columns (A) and (B) of the first table appearing in Section III. By logical extension, the REC figures listed in Columns (A) and (B), therefore, are based upon forecasted or projected information, and should be protected by the Commission, as they too amount to trade secret information.

The third set of figures for which MP2 Energy NE requests confidential treatment is the ten-year forecast for estimated sales, solar RECs, non-solar RECs, and total RECs, as reflected in Columns (A), (B), (C), and (D) in the first table appearing in Section V.a. Like the information discussed above, the estimated sales to be enumerated in Column (A) require MP2 Energy NE represent forecasted sales amounts. Moreover, the REC figures to be included under Columns (B), (C), and (D) require the use of such forecasted sales amounts in calculating the figures to be included thereunder. Such figures have previously been determined to be trade secret information by the Commission. See *In the Matter of Direct Energy Services, LLC’s Annual Alternative Energy Portfolio Status Report*, Case No. 12-1233-EL-ACP, Finding and Order at 5 (November 13, 2013).

Rule 4901-1-24(D), O.A.C., permits an attorney examiner to issue an order to protect the confidentiality of information contained in a document filed at the Commission "to the extent that state or federal law prohibits release of the information, including where the information is deemed 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."

Section 1333.61(D), Revised Code, defines a trade secret as information which "(1) 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) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Further, Section 149.43, Revised Code, states that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has opined that this "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399, 2000-Ohio-475. Moreover, in *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, the Supreme Court of Ohio adopted the following six factor test to determine whether information constitutes a "trade secret" under Section 1333.61, Revised Code:

- (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;
- (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. (1997), 80 Ohio St.3d 513, 524-25, 87 N.E.2d 661.

Applying these factors to the information that MP2 Energy NE seeks to protect in its Report, the Commission should grant MP2 Energy NE's motion in its entirety. The information contained in Section II.d., Columns (A) and (B) of the first table appearing in Section III, and Columbus (A), (B), (C), and (D) in the first table appearing in Section V.a. of the Report consists

of figures either representing or derived from forecasted or projected MP2 Energy NE sales figures. Neither this information, nor the methods utilized by MP2 Energy NE in developing these forecasts or projections is widely known outside the business, and further, is not known by those inside the business who are employed in capacities other than those that encompass financial and accounting services. Information of the nature contained in the aforementioned sections of the Report is not generally disclosed, as such disclosure would give competitors an advantage that could damage MP2 Energy NE's ability to compete in a number of important markets. Further, confidential treatment of the information contained in Section II.d., Columns (A) and (B) of the first table appearing in Section III, and Columbus (A), (B), (C), and (D) in the first table appearing in Section V.a. of the Report is not inconsistent with the purposes of Title 49 of the Revised Code.

In light of the nature of the information for which MP2 Energy NE seeks confidential treatment and the competitive advantage which disclosure of the information contained in the exhibits may provide to its competitors, the Commission should grant MP2 Energy NE's motion for a protective order.

WHEREFORE, MP2 Energy NE respectfully requests that the Commission grant its motion for a protective order covering the information contained in Section II.d., Columns (A) and (B) of the first table appearing in Section III, and Columbus (A), (B), (C), and (D) in the first table appearing in Section V.a. of its Report.

Respectfully submitted,

/s/ Rebecca L. Hussey

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Summary: Motion for Protective Order and Memorandum in Support regarding certain information contained in MP2 Energy NE LLC's 2014 Alternative Energy Resources Report electronically filed by Ms. Rebecca L Hussey on behalf of MP2 Energy NE LLC