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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Alternative Energy Resources Report for Calendar Year 2015 of Direct Energy Business, LLC.	)))	Case No. 16-0761-EL-ACP

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), Direct Energy Business, LLC ("DEB") moves for a protective order to keep certain confidential and proprietary information contained in its Amended Alternative Energy Annual Status Report for Calendar Year 2015 confidential and not part of the public record. Specifically, DEB asks for protective treatment of the Ten year Forecast information found in subsections 5(a), (b), and (c) of the Amended Alternative Energy Annual Status Report.

The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, two (2) unredacted copies of the report are submitted under seal.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

DEB requests that the information it designated as confidential in the Amended Alternative Energy Resources Report for Calendar Year 2015 be protected from public disclosure. The information for which protection is sought covers the projected amount of retail electric generation sales anticipated for ten (10) years as well as the ten (10) year forecast of Solar renewable energy credits ("RECs"), Non-Solar RECs, and the total RECs. Such information, if released to the public, would harm DEB by providing its competitors proprietary information in what is designed by statute to now be a competitive service.

Rule 4901-1-24(D) of the Ohio Administrative Code 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, patter, 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 projections which are 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)).

After applying these factors to the information sought to be protected, it is clear that a protective order should be granted.

The Amended Alternative Energy Resources Report for Calendar Year 2015 contains confidential and proprietary information. Such sensitive information is generally not disclosed. 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. Its disclosure could give competitors an advantage that would hinder DEB's ability to compete by informing competitors of DEB's internal calculations of DEB's future projected growth as well as its strategies for future compliance with Ohio's alternative energy requirements. This information could be valuable to DEB's competitors in the market, as it would inform other suppliers' analysis of the marketplace as may be impacted by DEB's future activities.

The ten (10) year forecast information is not publicly available and is the subject of reasonable efforts to maintain its secrecy. The information is not known outside DEB and only available to those employees who need this information to perform their job functions. DEB expends effort as well as money in obtaining and developing the information and it would take significant amounts of time and expense to acquire and duplicate the information about DEB.

Finally, the Commission previously granted similar protective treatment of 10-year forecast information. In the Matter of Direct Energy Services, LLC Annual Alternative Energy Portfolio Status Report, Case No. 12-1233-EL-ACP, Finding and Order at 5 (November 13, 2013). Granting DEB's Motion would be consistent with this precedent and

continue the solid public policy embraced by the Commission's precedent to protect the ten (10) year forecast data.

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 DEB. 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 the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power 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 DEB requests the Commission grant its motion for a protective order and to maintain the ten (10) year forecast information contained in Sections 5(a), (b), and (c) of the Amended Alternative Energy Resources Report for Calendar Year 2015 under seal.

Respectfully submitted,

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