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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of AEP Energy Inc.'s Annual Alternative Energy Portfolio Status Report and Plan for Compliance with Future Annual Advanced and Renewable Benchmarks	)))))	Case No. 17-982-EL-ACP

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, AEP Energy, Inc. ("AEP Energy") filed a redacted version of its 2016 Annual Alternative Energy Portfolio Status Report, and it moves for a protective order to keep the information confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support.

Respectfully submitted,

Andrew C. Emerson
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
Tel: (614) 227-2104
Fax: (614) 227-2100
Email: aemerson@porterwright.com

Attorney for AEP Energy, Inc.

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

AEP Energy requests that the information designated as confidential – the initial baseline calculation, 2016 renewable and solar energy benchmarks, 2016 renewable compliance efforts, and the ten year renewable energy forecast – be protected from public disclosure. If this information is released to the public, it would harm AEP Energy and its competitive position by providing to its competitors confidential and proprietary information regarding what is designed by statute to now be a competitive service.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Public Utilities Commission of Ohio (the "Commission") or certain designated employees may issue an order that 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.

The criteria for what should be kept confidential by the Commission is well established, and the Commission also long ago recognized its statutory obligation to protect 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 information that is the subject of this motion. 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 the protections the Ohio General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act. The 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); OhioBell 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 7, 1990).

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), delineated factors to be considered in recognizing a trade secret:

> (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.

Applying these factors here, AEP Energy's 2016 Annual Alternative Energy Status Report includes proprietary information concerning the company's initial baseline calculation, 2016 renewable and solar energy benchmarks, 2016 renewable compliance efforts, and the ten year renewable energy forecast that AEP Energy seeks to keep confidential. AEP Energy is a privately held corporation, and it does not disclose this information to anyone outside its corporate affiliates and representatives. Knowledge by a competitor of such information would do harm to AEP Energy's competitive position in the marketplace. Additionally, public disclosure of this information is not likely to assist the Commission in carrying out its duties under applicable rules. Thus, the 2016 identified material should be kept under seal.

WHEREFORE, for the above reasons, AEP Energy requests that the Commission grant its motion for a protective order to keep the information identified above confidential and not part of the public record.

Respectfully submitted,

Andrew C. Emerson
Porter Wright Morris & Arthur LLP
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Columbus, Ohio 43215
Tel: (614) 227-2104
Fax: (614) 227-2100
Email: aemerson@porterwright.com

Attorney for AEP Energy, Inc.