

THE PUBLIC UTILITIES COMMISSION OF OHIO

MOTION FOR PROTECTIVE ORDER

Switch further asks that its responses to any subsequent requests for additional information or clarification which Staff might make with regard to these same requests also be permitted to be filed under seal, pursuant to the same Protective Order requested herein. The grounds supporting this Motion are fully explained in the attached Memorandum in Support.

Switch requests that the Protective Order be effective for a period of twenty-four (24) months from the effective date of the filing made in this proceeding.

Respectfully submitted,

/s/ Robert Dove

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Date: April 13, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Alternative Energy)
Resources Report for Calendar Year 2016) Case No. 18-0567-EL-ACP
From Switch Energy, LLC)

MEMORANDUM IN SUPPORT

Switch Energy, LLC (“Switch”) requests that the information it designated as confidential in the Alternative Energy Resources Report for Calendar Year 2016 be protected from public disclosure. Switch seeks protection of the information contained in its Ten-Year Projections, and Exhibit A, Compliance Plan Status Report Summary Sheet. Such information, if released to the public, would harm Switch by providing its competitors proprietary information in what is designated by statute to be a competitive service.

Ohio Admin. Code 4901-1-24(D) provides:

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 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 attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The need to protect the types of information that are the subject of this motion is recognized under Ohio law. The Commission would have full access to the information in order to fulfill its statutory obligations and the nondisclosure of said information will not frustrate the purposes of Title 49 of the Revised Code.

Ohio Law defines a “Trade Secret” as:

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.

Rev. Code § 1333.61(d). The Commission facilitates the protection of such trade secrets in its Rules in the Administrative Code as well. *See* Ohio Admin. Code 4901-1-24(A)(7).

The Ohio Supreme Court has adopted a six factor test to analyze whether information is a trade secret under Rev. Code § 1331:

(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.

State ex. Rel. Plain Dealer v. Ohio Dep't of Ins., 80 Ohio St. 3d 513, 687 N.E. 2d 661 (1998) (citations omitted).

Switch gladly provides this information to the Commission, but asks that it be subject to Protective Order due to the confidential, proprietary nature of this information and because its public disclosure might be injurious to the Company's competitive position. Switch does not make public disclosure of the requested information through SEC filings or otherwise. As such, and given the intense competition in the Competitive Retail Electric Service ("CRES") arena, this information is a legitimate trade secret, access to which could negatively affect Switch's competitive position.

This request for a Protective Order is reasonable, necessary and will not prejudice any other party or individual. In fact, to the extent Switch's ability to compete effectively is preserved, Ohio consumers will be better served. Fair competition is the philosophical basis for the CRES statute and implementing regulations.

For all of the foregoing reasons, Switch Energy, LLC respectfully requests that a Protective Order be issued which permits it to file confidentially its Ten-Year Projections, and Exhibit A, Compliance Plan Status Report Summary Sheet, and requires those with access to these Exhibits treat them in a confidential manner for a period of twenty-four (24) months from the effective date of the order issued in this proceeding. Switch Energy, LLC further requests that should Staff seek any additional information or clarification with respect to the Exhibits, those responses will also be permitted to be filed under seal and subject to the same Protective Order.

In compliance with Ohio Administrative Code 4901-01-24(D)(2), two (2) unredacted copies of Switch's Alternative Energy Resources Report for Calendar Year 2016 are being submitted under seal with this Motion.

Respectfully submitted,

/s/ Robert Dove

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Date: April 13, 2018

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Case No(s). 18-0567-EL-ACP

Summary: Motion for a Protective Order electronically filed by Mr. Robert Dove on behalf of Switch Energy, LLC