BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Alternative Energy Resources Report for Calendar Year 2017 from Hudson Energy Services, LLC.	**)** **)** **)**	**Case No. 18-0668-EL-ACP**

MOTION FOR PROTECTIVE ORDER

Pursuant to Ohio Administrative Code Rule 4901-1-24(D), Hudson Energy Services, LLC moves for a protective order to keep the confidential and proprietary information contained in Section II.A of its Alternative Energy Resources Report for Calendar Year 2017 confidential and not part of the public record. 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

Hudson Energy Services, LLC ("Hudson") requests that the ten-year forecast in Section II.A of its Alternative Energy Resources Report for 2017 be protected from public disclosure. The information in that section of the report lists the baseline megawatt-hours, solar REC requirement, and non-solar REC requirement. Release of this information to the public would harm Hudson by providing its competitors with proprietary information that is designed by statute to now be a competitive service.

Ohio Administrative Code ("O.A.C.") Rule 4901-1-24(D) provides that the Public Utilities Commission of Ohio ("Commission") or certain designated employees may 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 ("R.C."). State law recognizes the need to protect certain types of information, including that which is the subject of this motion. The non-disclosure of the information in Section II.A of Hudson's report 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. *See*, O.A.C. Rule 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, 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.

R.C. Section 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the projections that 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 Supreme Court of Ohio 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 Alternative Energy Resources Report for Calendar Year 2017 contains confidential and proprietary information. Such sensitive information is generally not disclosed. Its disclosure could give competitors an advantage that would hinder Hudson's ability to compete. In addition, public disclosure of this confidential information is not likely to assist the Commission in carrying out its duties. Moreover, the Commission has found this ten-year forecast information to constitute a trade secret. *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 ¶14 (November 13, 2013).

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, 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, Hudson requests that the Commission grant its motion for a protective order and to maintain under seal the information contained in Section II.A of its Alternative Energy Resources Report for Calendar Year 2017.

Respectfully submitted,

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4/13/2018 29809759

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/13/2018 4:13:33 PM

in

Case No(s). 18-0668-EL-ACP

Summary: Motion Motion for Protective Order electronically filed by Mrs. Gretchen L. Petrucci on behalf of Hudson Energy Services, LLC