

Case No. 18-0692-EL-ACP

This is to certify that the images appearing are an accurate and complete reproduction of a certain document delivered in the regular course of business.

Technician AS Date Processed 4/17/18

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

LifeEnergy requests that the information it designated as confidential in the Report be protected from public disclosure. The redacted information consists of the ten-year forecast of Solar RECs, Non-Solar RECs, and the total RECs. The information LifeEnergy seeks to protect constitutes a trade secret and if such information be released to the public, it would harm LifeEnergy by providing its competitors proprietary information.

Ohio Adm. Code 4901-1-24(D) provides that the Public Utilities Commission of Ohio (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. The non-disclosure of the information will not impair the purposes of Title 49.

The criteria to keep certain information confidential has been well established, and the Commission has 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.)

In addition, 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 (the "Act"), and clearly reflects the state policy favoring the protection of trade secrets such as the financial information which is the subject of this motion:

“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. § 1333.61(0).

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)).

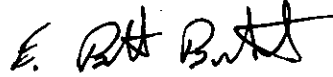
The Ohio Supreme Court has further held that the Commission has the authority to protect the trade secrets of the companies subject to its jurisdiction and that the trade secrets statute creates a duty to protect them. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 370 (2009). 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); *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).

Applying the above factors to the information sought to be protected by this motion, LifeEnergy asserts that the Report contains confidential and proprietary information, which sensitive information is generally not disclosed to anyone outside of LifeEnergy's corporate affiliates and representatives. Such disclosure would give its competitors an advantage that would hinder LifeEnergy's ability to compete and would have a negative impact on the functioning of the competitive retail electric services market.

WHEREFORE, for the above reasons LifeEnergy requests the Commission grant its motion for a protective order and to maintain the information contained in the Report under seal.

Respectfully submitted,



E. Brett Breitschwerdt (OH Bar No. 0082801)

McGuireWoods LLP

434 Fayetteville Street

Suite 2600

Raleigh, North Carolina 27601

(919) 755-6563

bbreitschwerdt@mcguirewoods.com

Counsel for LifeEnergy, LLC