

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Alternative Energy)	
Portfolio Status Report for Calendar Year)	Case No. 20-0807-EL-ACP
2019 from XOOM Energy Ohio, LLC)	

MOTION FOR PROTECTIVE ORDER

Pursuant to Ohio Administrative Code Rule 4901-1-24(D), XOOM Energy Ohio, LLC moves for a protective order to keep the confidential and proprietary subaccount data contained in the charts attached to its Alternative Energy Portfolio Status Report for Calendar Year 2019 confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. This same day, XOOM is submitting the confidential version of its Alternative Energy Portfolio Status Report for Calendar Year 2019 under seal in accordance with the April 8, 2020 directives of the Commission in *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings during the Declared State of Emergency and Related Matters*, Case Nos. 20-291-AU-UNC et al., Entry (April 8, 2020).

Respectfully submitted,

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

XOOM Energy Ohio, LLC (“XOOM”) requests that the confidential and proprietary subaccount data contained in the charts of its Alternative Energy Portfolio Status Report for 2019 be protected from public disclosure. The two charts identify market-sensitive information, market strategy and activities, and renewable energy credit (“REC”) prices and quantities at specific granular levels. Release of this information to the public would harm XOOM by providing its competitors with proprietary market 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 the two charts attached to XOOM’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 their 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 two specific chart 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 Portfolio Status Report for Calendar Year 2019 contains confidential and proprietary information. Such sensitive information is generally not disclosed at market-specific levels. Its disclosure could give competitors an understanding of XOOM's marketing strategy and activities, providing competitors with an advantage that would hinder XOOM's ability to compete. The compilation of this information has unique competitive value as well. In addition, public disclosure of this confidential information is not likely to assist the Commission in carrying out its duties. Moreover, the Commission has previously granted a protective order to prevent disclosure of marketing plans and strategies that constitutes trade secrets. *In the Matter of Stream Ohio Gas and Electric, LLC d/b/a Stream Energy for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 07-1283-GA-CRS, Entry at ¶ 9 (May 2, 2014).

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 the suppliers 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, XOOM requests that the Commission grant its motion for a protective order and to maintain under seal the unredacted charts of its Alternative Energy Portfolio Status Report for Calendar Year 2019.

Respectfully submitted,

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