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BEFORE  
THE PUBLIC UTILITIES COMMISSION ORDER NO. 12 PM 5:02

In the Matter of the Application of Commerce )  
Energy, Inc. for a Renewal of Certification as a ) Case No. 02-1828-GA-CRS  
Competitive Retail Natural Gas Supplier. )

PUCO

**MOTION FOR PROTECTIVE ORDER**

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, Commerce Energy, Inc. ("Commerce Energy") respectfully requests that the Public Utilities Commission of Ohio ("PUCO") or ("Commission") grant its Motion for a Protective Order with regard to the Exhibit C-5 (Forecasted Financial Statements) offered in support of its Renewal Certification Application for the reasons set forth in the attached Memorandum in Support. Previous motions for protective treatment with respect to Exhibit C-5 have been granted. Three (3) copies of Exhibit C-5 have been submitted under seal.

WHEREFORE, Commerce Energy respectfully requests that the Commission grant its motion for a protective order.

Respectfully submitted,

Stephen M. Howard

M. Howard Petricoff  
Stephen M. Howard  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Tel: (614) 464-5401  
Fax: (614) 719-4772  
E-mail: smhoward@vssp.com

Attorneys for Commerce Energy, Inc.

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## **MEMORANDUM IN SUPPORT**

Commerce Energy, Inc. ("Commerce Energy") has filed a renewal application in Case No. 02-1828-GA-CRS. Part of the renewal application calls for the filing of certain financial exhibits. Commerce Energy seeks a protective order to protect the confidentiality of and to prohibit the disclosure of Exhibit C-5-Forecasted Financial Statement, which contains competitively sensitive and highly proprietary business financial information. This exhibit has been clearly marked as confidential and is being submitted contemporaneously with this Motion, under seal, separate from the remainder of the materials that comprise the Application for a Renewal of Certification.

Section 4929.23, Revised Code states that a retail natural gas supplier, "...shall provide the Public Utilities Commission which such information, regarding a competitive retail natural gas service for which it is subject to certification, as the Commission considers necessary to carry out Section 4929.20 and 4929.24 of the Revised Code. The Commission shall take such measures as it considers necessary to protect the confidentiality of any such information."

(emphasis added). Thus, the General Assembly clearly recognized the importance of balancing the need to provide the Commission with adequate information to review an application for certification with the need to protect the confidential information of market participants. While certification is the gateway to participating in a competitive market, the disclosure of confidential information will bar the path.

Rule 4901-1-24(D) of the Ohio Administrative Code authorizes the Commission to issue an order protecting the confidentiality of information where it constitutes a trade secret and where disclosure is not inconsistent with Title 49 of the Ohio Revised Code. As discussed

above, Title 49 already addresses the concern of protecting proprietary information. Moreover, both Sections 4901.12 and 4905.07, Revised Code allow exceptions to the rule that all proceedings of the Public Utilities Commission of Ohio are public. Those exceptions are outlined in Section 149.43, Revised Code which excludes the release of records which are protected by state law. Under Section 149.43, Revised Code trade secrets are not subject to the public disclosure by government agencies, nor are they considered public records. Rule 4901-1-27(e) of the Ohio Administrative Code states that in hearings, the Attorney Examiner will, "[p]rotect public disclosure of trade secrets, proprietary business information, or confidential research, development or commercial materials and information."

The information Commerce Energy seeks to protect falls under the ambit of trade secrets, proprietary business information, and, confidential research, development and commercial materials and information.

Trade Secret is defined in Section 1333.61(D), Revised Code as follows:

"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:

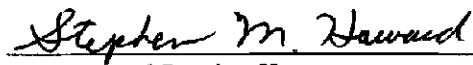
- (1) It derives independent economic value, actual or potential, from not being generally known to, or not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Commerce Energy asserts that its forecasted financial information (Exhibit C-5) is confidential and is not generally known or available to the general public. Public disclosure of

this information would jeopardize Commerce Energy's ability to negotiate and to compete in the market.

WHEREFORE, Commerce Energy respectfully requests that the Commission grant its Motion for a Protective Order pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code for the reasons set forth above.

Respectfully submitted,

A handwritten signature in black ink, reading "Stephen M. Howard", is written over a horizontal line.

M. Howard Petricoff  
Stephen M. Howard  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Tel: (614) 464-5401  
Fax: (614) 719-4772  
E-mail: smhoward@vssp.com

Attorneys for Commerce Energy, Inc.

**Exhibit**

**Rationale**

Exhibit C-5

Public disclosure of forecasted financial statements could jeopardize Commerce Energy's ability to negotiate and compete in the market.