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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

2011 OCT 19 PM 4:02

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. d/b/a Just Energy ("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 Third Quarterly Report. A redacted version of this Third Quarterly Report has been publicly filed. Three (3) copies of the unredacted Third Quarterly Report have been submitted under seal.

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

Respectfully submitted,

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## **MEMORANDUM IN SUPPORT**

On November 22, 2010, the Commission issued an Opinion and Order approving a Stipulation with limited changes in this case. As part of the Stipulation, Commerce Energy agreed to file a Quarterly Report with the Commission as to the progress in managing the sales force.

Commerce Energy no longer allows sales agents to be at the customer's door during the third party verification ("TPV") process. During the third quarter of 2011, three agents were present during the TPV call and all were dealt with per the Company's Compliance Matrix. As part of the Stipulation, the Staff requested a monthly breakdown of the TPV calls which were not processed as a result of the call. This Quarterly Report contains a monthly breakdown of TPV calls processed and TPV calls not processed. If this information were made public, it would lead to the discovery of sales information which is confidential, competitively sensitive, highly proprietary and a trade secret. Thus, Commerce Energy seeks a protective order for the number of TPV calls that were processed and those that were not processed.

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

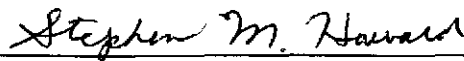
readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Commerce Energy asserts that the number of TPV calls processed and the number of TPV calls not processed in any given month is confidential and is not generally known or available to the general public. Public disclosure of this information would provide an undue competitive disadvantage to Commerce Energy.

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,



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Attorneys for Commerce Energy, Inc.  
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Exhibit


Quarterly Report – Number of TPV Calls  
Processed and Number of TPV Calls Not  
Processed in Any Given Month

Rationale

Public disclosure of the number of TPV calls  
processed and the number of TPV calls not  
processed in any given month would put  
Commerce Energy at an undue competitive  
disadvantage.

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was served upon the following persons this 19<sup>th</sup> day of October, 2011 via electronic mail.

  
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