

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Linde Energy Services Inc.)
Annual Alternative Energy Portfolio Status) Case No. 13-0540-EL-ACP
Report and Plan for Compliance with)
Future Annual Advanced and Renewable)
Energy Benchmarks)

**MOTION OF LINDE ENERGY SERVICES INC. FOR
PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT**

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April 3, 2013

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FOR PROTECTIVE ORDER**

Pursuant to Rule 4901-1-24, Ohio Administrative Code ("O.A.C."), Linde Energy Services Inc. ("LESI") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a Protective Order to protect the confidentiality and prohibit the disclosure of the confidential information contained in LESI's Annual Alternative Energy Portfolio Status Report and Plan for Compliance with Future Annual Advanced and Renewable Energy Benchmarks filed contemporaneously herein in this proceeding. The confidential information is not subject to disclosure and includes competitively sensitive and highly proprietary business information comprising trade secrets. The grounds for this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

LESI's motion requests that certain confidential information contained in the Annual Alternative Energy Portfolio Status Report and Plan for Compliance with Future Annual Advanced and Renewable Energy Benchmarks filed April 3, 2013 be exempted from public disclosure as confidential, proprietary and competitively sensitive ("Confidential Information"). Specifically, LESI requests that the information contained within Table 1, Table 2 and Table 3 be exempted from disclosure as Confidential Information. The information in Table 1, Table 2 and Table 3 provides information on LESI's actual and forecast load that, if readily available and in the public record, would be available to competitors and impair competition. Accordingly, LESI requests a protective order to preserve the confidentiality of this Confidential Information.

II. ARGUMENT

The actual and projected load information of LESI contains competitively sensitive and highly proprietary business information that constitutes trade secrets under Ohio law and the Commission's rules. State law recognizes the need to protect information that is confidential in nature. Accordingly, the General Assembly granted

the Commission statutory authority to exempt certain documents from disclosure.¹ Pursuant to this statutory grant of authority, the Commission promulgated Rule 4901-1-24, O.A.C. Rule 4901-1-24(D), O.A.C., provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal law prohibit the release of such information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.² A trade secret is defined by 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, 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.

Section 1333.61(D), Revised Code (emphasis added).

The LESI-related information contained within Table 1, Table 2 and Table 3 is competitively sensitive and highly proprietary business and financial information falling

¹ See Sections 4901.12 and 4905.07, Revised Code.

² Section 149.43(A)(1)(v), Revised Code; *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St. 3d 513, 530 (1997).


within the statutory characterization of a trade secret.³ Public disclosure of LESI's actual and forecast load would jeopardize LESI's business position and its ability to compete. The actual and forecast load information LESI seeks to protect derives independent economic value from not being generally known and not being readily ascertainable by proper means by LESI's competitors. Further, the efforts to protect the confidential pricing information are reasonable under the circumstances. Finally, actual customer load and usage are routinely accorded protected status by the Commission.

The non-disclosure of the actual usage and pricing information will not impair the purposes of Title 49 of the Revised Code, as the Commission and its Staff will have full access to the confidential information in order to complete its review process. Because LESI's information constitutes a trade secret, it should be accorded protected status.

III. CONCLUSION

LESI respectfully requests that this Motion for Protective Order be granted for the reasons set forth herein.

Respectfully submitted,



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³ Section 1333.61(D), Revised Code.