

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of :
Lykins Oil Company d/b/a Lykins :
Energy Solutions for Certification as : Case No. 14-0931-EL-CRS
An Electric Aggregator, Power Broker, :
And Power Marketer. :

MOTION FOR PROTECTIVE ORDER
OF
LYKINS OIL COMPANY d/b/a LYKINS ENERGY SOLUTIONS

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code ("OAC"), Lykins Oil Company d/b/a Lykins Energy Solutions ("Lykins") hereby moves for a protective order to preserve the confidentiality of certain competitively-sensitive information contained in Exhibits C-3 and C-5 of its application filed this date in the above-captioned proceeding. The basis for this motion is set forth in the accompanying memorandum in support. As required by Rule 4901-1-24(D)(2), OAC, three unredacted copies of Exhibit C-3 and C-5 for which protection is sought have been filed under seal.

WHEREFORE, Lykins respectfully requests that its motion be granted.

Respectfully submitted,



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MEMORANDUM IN SUPPORT
OF
MOTION FOR PROTECTIVE ORDER
OF
LYKINS OIL COMPANY d/b/a LYKINS ENERGY SOLUTIONS

By its application filed this date in the above-captioned matter, Lykins Oil Company d/b/a Lykins Energy Solutions ("Lykins") seeks authority to provide electric aggregation, power broker, and power marketer services to customers in this state. Rule 4901:1-24-04(A), Ohio Administrative Code ("OAC"), requires that applications for certification to provide such services be made on forms supplied by the Commission. The application form for the authority requested in this case requires the applicant to provide, as Exhibit C-3 to the application, copies of audited or officer-certified financial statements for the most recent two years, and, as Exhibit C-5 to the application, two years of projected financial statements relating to the service that is the subject of the application.

In accordance with Rule 4901:1-24-04(A), OAC, Lykins has submitted its application on the form supplied by the Commission and has attached thereto all required exhibits. However, because financial statements submitted as Exhibit C-3 and Exhibit C-5 constitute confidential, competitively-sensitive information, Lykins has not included copies of those exhibits with the application filed in the public docket, and, by the foregoing motion, seeks a protective order from

this Commission to prevent public disclosure of the information in question. In accordance with Rule 4901-1-24(D)(2), OAC, Lykins has filed herewith three copies of the confidential unredacted versions of Exhibit C-3 and Exhibit C-5 under seal.

Rule 4901-1-24(D), OAC, provides, in pertinent part, as follows:

(D) Upon motion of any party or person filing a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, or the attorney examiner assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.

Lykins submits that its motion for protection is consistent with the criteria governing the issuance of protective orders set forth in the above rule, in that state law prohibits release of the information for which protection is sought and because non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

As described in the application, Lykins Oil Company is engaged in the business of supplying traditional fuels and environmentally friendly alternative fuels for business and governmental fleets, municipalities, homes, and farms, and currently serves over 25,000 customers in fourteen states. Since 2012, Lykins Oil Company has also been a Commission-certified electric aggregator / power broker and a natural gas broker, providing such services in this state under the trade name of Lykins Energy.¹ However, Lykins Oil Company is not a

¹ By its application in this case, Lykins seeks to consolidate its electric aggregation, power brokerage, and newly-requested power marketer authority under a single CRES certificate. Henceforth, Lykins will provide these services under the recently registered trade name of "Lykins Energy Solutions."

publicly-traded company, and, thus, is under no obligation to disclose its financial statements. Further, the petroleum products business in which Lykins Oil Company is engaged is highly competitive. Thus, as a matter of corporate policy, Lykins Oil Company does not disclose its financial statements to the public. Indeed, if the information contained in Exhibit C-3 were disclosed to its competitors, it would damage Lykins Oil Company's position in the petroleum products market. Similarly, because the Ohio retail electric and natural gas markets are also highly competitive, disclosure of the results of its electric and natural gas broker operations, which are included in its financial statements, would damage Lykins' position in these markets.

As explained in the application, Lykins has not heretofore provided power marketer services in this state. However, there can be no question that the retail electric market in Ohio is, in general, highly competitive. Thus, disclosure of the forecasted results of its power marketer operations contained in Exhibit C-5 to competitors in that market could damage Lykins' ability to compete.

Competitively-sensitive information of the type contained in Exhibit C-3 and Exhibit C-5 is routinely accorded protected status by the Commission pursuant to Rule 4901-1-24(A)(7), OAC, based on its determination that such information constitutes a "trade secret, or other confidential research, development, (or) commercial information under Ohio law." Indeed, the statutory definition of a "trade secret" set out in Section 1333.61(D), Revised Code, includes "business information" that "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." In a competitive environment, disclosure of Lykins historical and forecasted financial information would disadvantage Lykins.

The Ohio Supreme Court specifically cited the "the volatility and competitiveness of the electric industry" as a factor in affirming a Commission decision to accord protection to certain business information, stating that "(e)xposing a competitor's business strategies and pricing points would likely have a negative impact on that provider's viability."² Moreover, in considering similar requests for protection of the information submitted in Exhibit C-3 and Exhibit C-5 in other certification proceedings, the Commission has granted motions for protective orders with respect to the very same information – *i.e.*, historical and forecasted financial statements – that is the subject of Lykins' motion in this case.³ Plainly, the information contained in Exhibit C-3 and C-5 of Lykins' application is entitled to similar protection here. Indeed, under pending Rule 4901:1-24-08, OAC, the filing of these financial exhibits under seal will automatically result in the exhibits being accorded protected status without the need for filing a motion for a protective order.

Rule 4901-1-24(D)(1), OAC, provides that the public version of documents containing information for which protection is requested "should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information." However, in this instance, this requirement would entail submitting what would essentially be a blank document, which would be a meaningless exercise. Thus, Lykins has redacted Exhibit C-3 and Exhibit C-5 in their entirety, and seeks protection for the entire documents as a whole. Because the Commission and its staff will have full access to the information for which protection is requested, the Commission's ability to review this information will in no way be

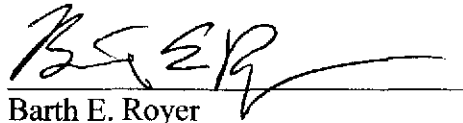
² See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, at 370, 2009-Ohio-604 (2009).

³ See, e.g., *In the Matter of the Application of Renewal Application of Dominion Retail, Inc. For Certification by the Public Utilities Commission of Ohio as a Retail Generation Provider, Power Marketer, Power Broker and Aggregator*, Case No. 00-1781-EL-CRS (Entry dated December 15, 2010).

impaired by granting this motion, and no legitimate purpose would be served by public disclosure of the designated information.

WHEREFORE, Lykins respectfully requests that Exhibit C-3 and Exhibit C-5 of its application in this case be granted protected status and that the Commission grant the foregoing motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. E. Royer', is written over a horizontal line.

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