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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Burton Energy Group, Inc. for)
Certification as an Aggregator/Power)
Broker in Ohio)

Case No. 14-1370-EL-AGG

BURTON ENERGY GROUP, INC.'S MOTION FOR PROTECTIVE ORDER

Burton Energy Group, Inc. ("Burton"), by and through its attorney, and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, moves for a protective order to keep confidential the confidential and/or proprietary information contained in Exhibits C-3, C-4, C-5, and C-7 of Burton's Application for Certification as an Aggregator/Power Broker for the State of Ohio. Pursuant to Rule 2901-1-24(D), Burton submits via mail the unredacted copies of Exhibits C-3, C-4, C-5, and C-7 that have been marked as "filed under seal."

A memorandum in support of this Motion is filed herewith.

Date:

Respectfully Submitted,

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In the Matter of the Application of)
Burton Energy Group, Inc. for) Case No. _____
Certification as an Aggregator/Power)
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**BURTON ENERGY GROUP, INC.'S MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

I. Introduction

In support of Burton Energy Group, Inc.'s ("Burton") Application for Certification as an Aggregator/Power Broker for the State of Ohio ("Application"), Burton submits under seal Exhibit C-3: Financial Statements, Exhibit C-4: Financial Arrangements, Exhibit C-5: Forecasted Financial Statement, Exhibit C-7: Credit Report. Since Burton is not a publicly traded company, its financial information is not publicly available. Thus, exhibits C-3, C-4, C-5, and C-7 contain competitively sensitive and highly proprietary business information that is not generally known or available to the public. Burton respectfully requests that the Commission enter an order protecting Exhibits C-3, C-4, C-5, and C-7 from public disclosure.

II. Argument

Exhibits C-3, C-4, C-5, and C-7 to the Application should be kept confidential because the information contained within those exhibits satisfies the requirements of Rule 4901-1-24(D) since it constitutes trade secrets which are protectable under Ohio law. Rule 4901-1-24(D) provides that the commission may issue any order necessary to protect the confidentiality of the information contained in an application when disclosure

of the information is prohibited by state or federal law, and where non-disclosure is not inconsistent with the purposes of Title 49 of the Ohio Revised Code. Moreover, Rule 4901-1-24(D) specifically notes that trade secrets under Ohio law are a type of confidential information intended to be protected by the Rule.

Section 4905.07 of the Revised Code, which delineates what facts and information in possession of the Commission shall be made public, also includes an exception prohibiting the release of records, when such release violates state or federal law. See R.C. 4905.07 ("[e]xcept as provided in section 149.43 of the revised code," excluding "(v) [r]ecords the release of which is prohibited by state or federal law"). The Ohio Supreme Court has established that trade secrets fall within this exception. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399 (2000) ("Trade secrets are exempt from disclosure under the 'state or federal law' exemption of R.C. 149.43.")

Exhibits C-3, C-4, C-5, and C-7 contain competitively sensitive and highly proprietary business financial information that falls with the statutory definition of trade secrets found in Section 1333.61(D) of the Ohio Revised Code, which states:

"Trade Secret" means information, including the whole or any portion or phrase 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.

In addition to this statutory definition, which reflects Ohio state policy favoring the protection of trade secrets, the Ohio Supreme Court looks to six factors when determining if information constitutes trade secrets within the meaning of Section 1333.61(D) of the Ohio Revised Code:

- (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;
- (3) The precautions taken by the holder of the trade secrets 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.¹

Considering the competitive environment in which Burton operates, the financial statements, financial arrangements, forecasted financial statements, and credit report and rating contained in Exhibits C-3, C-4, C-5, and C-7 of the Application are highly proprietary, confidential and commercially sensitive and thus qualify as trade secrets under Ohio law. Burton's treatment of such information as highly sensitive and confidential further evidences that these disclosures do, in fact, constitute trade secrets. Finally, protection of the information from public disclosure will not impair the Commission in its official duties, nor will it frustrate the purpose of Title 49, because the Commission will still retain full access to this confidential information and can thereby ensure that Burton complies with all the laws and regulations governing entities of this nature in Ohio.

¹ *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 524-25 (1997).

For the foregoing reasons, Burton requests that the designated information be protected from public disclosure.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J. Rambacher", is written over a horizontal line.

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