

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of ADL High Voltage,)
Inc. for a Renewal Certificate as a Competitive Retail) Case No. 10-1362-EL-AGG
Electric Service Provider in Ohio.)

**ADL HIGH VOLTAGE, INC.'S
MOTION FOR PROTECTIVE ORDER AND
MOTION TO EXTEND PROTECTION**

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), ADL High Voltage, Inc., ("ADL") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a protective order to protect the confidentiality and prohibit disclosure of certain highly confidential and proprietary information in connection with ADL's renewal application for authority to operate as a competitive retail electric service ("CRES") provider in Ohio. The documents in Exhibit C-3 ("Financial Statements") and Exhibit C-5 ("Forecasted Financial Statements"), contemporaneously filed this date, contain competitively sensitive and highly proprietary business financial information composed of trade secrets. Pursuant to the requirements of O.A.C. 4091-1-24(D), ADL has filed under seal three unredacted copies of the confidential information sought to be protected by this Motion.

Pursuant to O.A.C. 4901-1-24(F), ADL also seeks to extend the protection sought by motion filed October 9, 2012, in connection with Exhibits C-3 and C-5 filed in ADL's CRES renewal application of October 3, 2012. No entry or order has been issued on such motion. ADL maintains that these exhibits continue to contain competitively sensitive and highly proprietary business financial information.

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The grounds for the instant Motion are set forth in the attached Memorandum in Support.

Respectfully Submitted,

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**MEMORANDUM IN SUPPORT OF ADL HIGH VOLTAGE, INC.'S
MOTION FOR PROTECTIVE ORDER AND
MOTION TO EXTEND PROTECTION**

Contemporaneously with this Motion for Protective Order, ADL High Voltage, Inc. ("ADL"), filed its Renewal Application for Certification as a Competitive Retail Electric Service ("CRES") provider ("2014 Renewal Application"). The 2014 Application contains certain information and materials required in accordance with the Commission's certification filing instructions for CRES providers and Rule 4901:1-24-09, Ohio Admin. Code ("O.A.C"). As part of the Application, the Commission requests information regarding ADL's financial statements as Exhibit C-3 to the Application, and ADL's forecasted financial statements as Exhibit C-5 to the 2014 Renewal Application (the "2014 Confidential Information"). ADL has submitted the Confidential Information as exhibits to the 2014 Renewal Application under seal because they contain competitively sensitive and highly proprietary business financial information that requires confidential treatment. Therefore, ADL requests that the Commission issue an order to protect the confidentiality and prohibit the disclosure of the 2014 Confidential Information.

O.A.C. 4901-1-24(D) provides for the issuance of an order to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal laws prohibit the release of such information and where nondisclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code ("R.C."). State law recognizes the need to protect information that is confidential in nature, as is the 2014 Confidential Information. R.C. 4901.12 and 4905.07 facilitate the protection of trade secrets in the Commission's

possession.¹ R.C. 4901.12 and 4905.07 reference R.C. 149.43, thereby incorporating the provision that excepts from the public record information and records the release of which is prohibited by law.²

State law also prohibits the release of information meeting the definition of a trade secret.³ The 2014 Confidential Information includes competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret as defined by R.C. 1333.61(D).

ADL is not a public company. ADL asserts that the 2014 Confidential Information is not generally known by the public, is held in confidence in the normal course of business, and that any public dissemination of such information or any portion thereof would harm ADL and give an undue advantage to ADL's retail electric competitors in Ohio and elsewhere where it conducts business. Additionally, the nondisclosure of the information will not impair the purposes of Title 49, as the Commission and its staff will have full access to the requested information. For the foregoing reasons, the 2014 Confidential Information contained in Exhibit C-3 and Exhibit C-5,

¹ R.C. 4901.12 provides: "Except as provided in section 149.43 of the Revised Code and as consistent with the purpose of Title XLIX [49] of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records."

R.C. 4905.07 provides: "Except as provided in section 149.43 of the Revised Code and as consistent with the purpose of Title XLIX [49] of the Revised Code, all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys."

² R.C. 149.43(A)(1)(v) provides, in part: "Public Record" does not mean records the release of which is prohibited by state or federal law."

³ R.C. 1333.61(D), defines trade secret to mean "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 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.

filed in connection with ADL's 2014 Renewal Application, clearly constitutes confidential and proprietary information and a trade secret pursuant to the foregoing requirements and authorities and should be afforded confidential treatment by the Commission.


ADL also seeks to continue the protection sought by motion filed October 9, 2012, for Exhibits C-3 and C-5, which were filed to support its renewal application in 2012 ("2012 Renewal Application"). A ruling has not been made on ADL's request. Considering the foregoing statutory authority, as well as its construction by the Ohio Supreme Court,⁴ the Confidential Information in the 2012 Application ("2012 Confidential Information") is valuable in that it is available only to ADL's president and director of business operations and to no other employees. Moreover, ADL is a privately held company which is not required to disclose the 2012 Confidential Information and ADL closely guards its confidentiality by not sharing it. Release of the information would provide a competitive advantage to its larger competitors in the marketplace who are attempting to secure the same business, and would disclose the names of ADL's suppliers. ADL has expended a significant amount of time and resources in developing the 2012 Confidential Information. Moreover, disclosure of the 2012 Confidential Information would harm the Company's competitive position in the marketplace. Accordingly, the 2012 Confidential Information for which the Company seeks continued protective treatment is trade secret information

⁴ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25, 1997-Ohio-75, which adopted six factors to be used in determining whether a trade secret claim meets the statutory definition:

- (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, *i.e.*, by the employees;
- (3) The precautions taken by the holder of the trade secret to guard the secrecy of the information;
- (4) The savings affected 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.

WHEREFORE, ADL respectfully requests that its Motion for Protective Order with respect to Exhibits C-3 and C-5 filed under seal with the 2014 Renewal Application be granted, and that the Commission extend the protection sought for the 2012 Confidential Information.

Respectfully Submitted,

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