

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

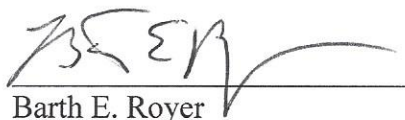
In the Matter of the Alternative Energy :
Portfolio Status Report of Lykins Oil : Case No. 16- -EL-ACP
Company d/b/a Lykins Energy Solutions. :

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 proprietary, competitively-sensitive information contained in its Alternative Energy Portfolio Status Report ("Report") filed this date in the above-captioned proceeding. The basis for this motion is set forth in the accompanying memorandum in support. The information for which protection is sought has been redacted from the public version of the Report. As required by Rule 4901-1-24(D)(2), OAC, two unredacted copies of the Report have been filed under seal.

WHEREFORE, Lykins respectfully requests that its motion be granted.

Respectfully submitted,



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In the Matter of the Alternative Energy :
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MEMORANDUM IN SUPPORT
OF
MOTION FOR PROTECTIVE ORDER
OF
LYKINS OIL COMPANY, D/B/A LYKINS ENERGY SOLUTIONS

Rule 4901:1-40-05(A)(1), Ohio Administrative Code ("OAC"), requires jurisdictional electric utilities and electric services companies to submit annual alternative energy portfolio status reports regarding their compliance with the advanced and renewable energy benchmarks set forth in Section 4928.64(B), Revised Code, and Rule 4901:1-40-03(A), OAC, for the preceding calendar year. Rule 4901:1-40-03(C), OAC requires each electric utility and electric services company to file, annually, a plan for compliance with future annual advanced and renewable energy benchmarks, including solar, utilizing at least a ten-year planning horizon. In accordance with said rules, Lykins has, this date, filed its 2015 Alternative Energy Portfolio Status Report ("Report") in the above-captioned proceeding. The Report includes Lykins' ten-year benchmark compliance plan.

The Table 1 in Section III of the Report sets forth the number of renewable energy credits ("RECs") obtained by Lykins to meet its 2015 benchmark obligations. Because these details constitute competitively-sensitive information, Lykins has redacted the RECs obtained from this table in the public version of the Report, and, by the foregoing motion, seeks a protective order from this Commission to prevent public disclosure of the redacted information. Table 2 in

Section V of the Report shows, by year, Lykins' ten-year forecast of estimated sales, estimated Solar RECs, estimated Non-Solar RECs, and the estimated total RECs. This information is also competitively sensitive and, thus, has been redacted from the public version of the Report. The foregoing motion for a protective order extends to the redacted Table 2 information as well.

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.

If disclosed to its competitors, the number of RECs obtained by Lykins in 2015 to meet its Renewable and Solar benchmarks would damage Lykins's position in the Ohio retail electric market. Similarly, disclosure of Lykins' sales forecasts and future benchmark requirements to competitors would also damage its competitive position. Competitively-sensitive information of this type 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’s REC acquisition strategy would disadvantage Lykins, particularly to the extent that certain types of RECS may be in short supply, and release of its sales forecasts and future acquisition strategy to competitors would also compromise its ability to compete. Thus, Lykins has treated the information that is the subject of its motion as proprietary, confidential business information, and does not reveal this information publicly.

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.”¹ Moreover, in considering similar requests for protection in connection with the filing of alternative energy supply portfolio reports in the past, the Commission has consistently granted motions for protective orders with respect to the type of information that is the subject of Lykins’ motion.² Plainly, the information redacted from Tables 1 and 2 is entitled to similar protection here.

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.” The

¹ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, at 370, 2009-Ohio-604 (2009).

² See, e.g., *In the Matter of Direct Energy Services, LLC Annual Alternative Energy Portfolio Status Report*, Case No. 12-1233-EL-ACP (Finding and Order dated November 13, 2013), wherein the Commission determined that information of this type qualifies as a trade secret under the six-part test enunciated by the Ohio Supreme Court in *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, at 524-525, 1997-Ohio-75 (1997).

public version of Lykins' Report complies with this requirement. 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 impaired by granting this motion, and no legitimate purpose would be served by public disclosure of the designated information.

WHEREFORE, Lykins respectfully requests that the Commission find that the information redacted from Tables 1 and 2 in the public version of its Report warrants protected status and grant its motion for a protective order.

Respectfully submitted,

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

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Case No(s). 16-0809-EL-ACP

Summary: Motion Motion for Protective Order and Memorandum in Support electronically
electronically filed by Mr. Sean P Malone on behalf of Lykins Oil Company and Deeds, John
Mr.