

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Renewal Certification)	
Application of T.E.S. Energy Services, L.P.)	Case No. 11-1209-GA-AGG
To be a Natural Gas Broker)	
In the Matter of the Renewal Certification)	
Application of T.E.S. Energy Services, L.P.)	Case No. 11-2541-EL-AGG
To be a Electric Aggregator/Power Broker)	

MOTION FOR PROTECTIVE ORDER

Applicant T.E.S. Energy Services, L.P., (“TES Energy”) by and through counsel, hereby moves¹ for the entry of a Protective Order designating as confidential the C-3 Exhibits required in the Renewal Certification Applications (collectively “Applications”) for Natural Gas Broker and for Electric Aggregator/Power Broker. The two Applications were initially submitted on April 28, 2017. Applicant and Counsel were subsequently informed that some of the exhibits in both Applications required modification in order to be considered for approval by the Public Utilities Commission of Ohio (“Commission” or “PUCO”). One of the exhibits modified was Exhibit C-3 (“financial statements”), at which time TES Energy realized the updated exhibit, identical for both Applications, contained confidential material. As a result, TES Energy is filing under seal Exhibit C-3 in both Application dockets. As required by Rule 4901-1-24(D)(2), TES Energy filed under seal two copies of the confidential and unredacted material along with this Motion for Protective Order in both cases.

¹ Pursuant to Ohio Administrative Code 4901-1-24.

The basis for this Motion is set forth in the accompanying Memorandum in Support of this Motion for Protective Order. Public disclosure of this information would harm TES Energy's competitive position as a Natural Gas Broker and as an Electric Aggregator/Power Broker.

TES Energy understands that filing this Protective Order for both Applications in accordance with Ohio Administrative Code 4901:1-24-07, shall be automatically approved on the thirty-first day after the date of filing and the information shall be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided, unless the commission or an attorney examiner appointed by the commission rules otherwise.

WHEREFORE, T.E.S. Energy Services, L.P., respectfully requests that its motion for both Certification Renewal Applications be granted.

Respectfully Submitted,

/s/Christopher J. Allwein

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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

TES Energy, by and through counsel, hereby files this Memorandum in Support of its Motion for a Protective Order pursuant to Ohio Administrative Code 4901-1-24. The Motion for Protective Order requests that the Commission designate as confidential financial information that TES Energy has provided for both of their Certification Renewal Applications.

I. Legal Standard

Section 4905.07 of the Ohio Revised Code provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43 of the Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43 of the Revised Code specifies that the term “public records” excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *See, In the Matter of the Application for North American Power and Gas, LLC for Certification as a Competitive Retail Electric Marketer*, Case No. 11-5566-EL-CRS, Entry (Dec. 16, 2011) (citing *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d, 396, 399 (2000)).

Similarly, the Commission's Procedural Rules contemplate that certain information required to be submitted before the Commission which constitutes a trade secret or is otherwise prohibited from release by state or federal law, will need to be protected from public disclosure. Specifically, the Ohio Administrative Code 4901-1-24(D) provides:

Upon motion of any party or person with regard to the filing of 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 an attorney examiner 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, the deputy legal director, or the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code....

Ohio law defines a "Trade Secret" as:

[I]nformation, 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. (*Emphasis Added*).

Ohio Rev. Code § 1333.61(D). The Commission facilitates the protection of such trade secrets in its Rules in the Administrative Code as well. *See* Ohio Admin. Code 4901-1-24(A) (7).

The Ohio Supreme Court has adopted the following six factor test to analyze whether information is a trade secret under Ohio Revised Code § 1331:

- (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 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.

State ex rel. Plain Dealer v. Ohio Dep't of Ins., 80 Ohio St. 3d 513, 534-525, 687 N.E.2d 661, 672 (1998) (citing *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134–135, 454 N.E.2d 588, 592 (1983)).

II. Argument

TES Energy requests to be kept confidential in these Application cases financial information that is not publicly available. Therefore, disclosure of this information would harm TES Energy's competitive position in the marketplace, hamper TES Energy's ability to conduct related business, and falls within the statutory characterization of a trade secret.

Furthermore, TES Energy respectfully submits that public disclosure of this information is not likely to assist the Commission in carrying out its duties pursuant to Title 49 of the Ohio Revised Code. Rather, the protection of this information will better serve Ohio consumers by facilitating fair competition among businesses that provide certain retail electric and natural gas services. Finally, the Commission's protection of this information from disclosure would be consistent with prior precedent and would not prejudice any other parties.

Because TES is a privately held company, the above-described information submitted under seal in these filings is confidential information that is not publicly available. Public disclosure of this information would create an undue hardship on the Company because the disclosure would cause substantial harm to TES Energy's competitive position in the marketplace. Therefore, this information falls within the statutory characterization of a trade secret as defined by Section 1333.61(D) of the Revised Code.

Furthermore, the Commission has provided protective orders for similar information in prior proceedings. *See In the Matter of the Application of BlueStar Energy Services, Inc. for Certification as a Competitive Retail Electric Supplier*, Case No. 10-384-EL-CRS, Entry (May 3, 2010) (granting confidential protection for information provided in response to Sections C-3, C-4, C-5, and C-7 of the Application); *In the Matter of Application of T.E.S. Energy Services, L.P. for Certification as a Competitive Retail Electric Service Broker/Aggregator*, Case No. 11-2541-EL-AGG, Entry (June 20, 2011) (granting confidential protection for information provided in response to Sections C-3, C-5, and C-7 of the Application).

III. Conclusion

For the reasons stated above, confidential treatment of the financial information of TES Energy is appropriate and required by Ohio law and the Commission's Rules. *See* Ohio Rev. Code § 1333.61(D); Ohio Admin. Code 4901-1-24(D). Accordingly, TES Energy, respectfully requests that a Protective Order be issued.

In compliance with Ohio Administrative Code 4901-01-24(D)(2), two unredacted copies of T.E.S. Energy, L.P.'s confidential information are being submitted under seal in each case with this Motion.

Respectfully Submitted,

/s/Christopher J. Allwein

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Summary: Motion for Protective Order electronically filed by Mr. Christopher J. Allwein on behalf of T.E.S. Energy Services, L.P.