

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the matter of the Application of)	
HB Hayes & Associates, LLC d/b/a)	Case No. 14-743-GA-AGG
Alternative Energy Source)	
For Certification as a Natural Gas Aggregator)	

For good cause shown, the Motion for Protective Order filed by HB Hayes & Associates, LLC d/b/a Alternative Energy Source ("AES") is hereby granted. Specifically, the Commission extends the previous Protective Order for an addition twenty-four months thereby (1) providing continuing protection from disclosure to the financial documents submitted as Exhibits C-3, C-5, and C-7 to the original application for certification; (2) providing continuing protection from disclosure to the financial documents submitted as Exhibits C-3, C-5 and C-7 to the 2016 and 2018 renewal applications for certification; and (3) providing protection from disclosure for the same twenty-four month period to the financial documents submitted as Exhibits C-3, C-5, and C-7 to the 2020 renewal application for certification, submitted simultaneously with the Motion for Protective Order.

IT IS SO ORDERED.

Public Utilities Commission of Ohio

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the Application of)	
HB Hayes & Associates, LLC d/b/a)	Case No. 14-743-GA-AGG
Alternative Energy Source)	
For Certification as a Natural Gas Aggregator)	

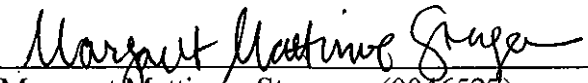
MOTION TO EXTEND PROTECTIVE ORDER

Pursuant to Ohio Administrative Code 4901-1-24, HB Hayes & Associates, LLC d/b/a Alternative Energy Source (“AES”) respectfully requests that the Public Utilities Commission of Ohio (“the Commission”) extend the Protective Order first entered in this case on July 3, 2014. The Order was first granted on July 3, 2014, and, in response to AES’ Motions for Protective Orders in 2016 and 2018, the Commission renewed and continued that protection through “Confidential Treatment” docket entries on April 25, 2016 and April 10, 2018. This motion seeks to renew and continue the protection that has been in place continuously since 2014, and to protect documents being filed with AES’ 2020 Renewal Application.

Specifically, AES seeks: (1) continuing protection from disclosure for the financial information submitted as Exhibits C-3, C-5 and C-7 to its original application for certification in this matter; (2) continuing protection from disclosure of the financial information submitted as Exhibits C-3, C-5 and C-7 to its 2016 and 2018 renewal applications; and (3) protection from disclosure of the financial information submitted as Exhibits C-3, C-5 and C-7 to its 2020 renewal application, submitted simultaneously with this motion.

The grounds for this Motion are set forth more fully in the following Memorandum
in Support.

Respectfully submitted,


Margaret Mattimoe Sturgeon (0046527)
Attorney for HB Hayes & Associates, LLC d/b/a
Alternative Energy Source
Liebenthal Levine Ltd.
5800 Monroe Street, Building D, Suite 3
Sylvania, OH 43560
(419) 517-0086; Fax (888) 840-4556
pms@liebenthal-levine.com

MEMORANDUM IN SUPPORT

Background. On May 21, 2014, HB Hayes & Associates, LLC d/b/a Alternative Energy Source (“AES”) was issued Ohio Competitive Aggregation/Retail Natural Gas Brokerage Certificate Number 14-354G(1), for certification effective from May 22, 2014 through May 22, 2018. A copy of the Certificate is attached hereto as **Exhibit 1**. In connection with its application, AES submitted a Motion for Protective Order with respect to certain financial statements submitted as Exhibits C-3 and C-5 to its certification application. The Commission granted AES’s Motion for Protective Order by entry dated July 3, 2104 (“the 2014 Protective Order”), finding that the information comprising Exhibits C-3 and C-5 constitutes trade secrets. A copy of the Protective Order is attached hereto as **Exhibit 2**.

On April 10, 2018, AES filed a Renewal Certificate Application. In connection with the Renewal Application, AES filed a motion to extend the 2016 Protective Order. (See **Exhibit 3**.) While the electronic docket shows an April 10, 2018 entry for “Confidential treatment of document Exhibits C-3, C-5 and C-7,” it shows nothing else with respect to the request for protective order.

The 2018 application was granted and Renewal Certificate #14-354G(2) was issued on May 25, 2018. (See **Exhibit 4.**)

Current Application and Request for Protective Order. As stated above, AES's certification expires on May 22, 2020. Therefore, contemporaneously with the filing of this Motion, AES is filing a 2020 Renewal Certification Application, including Exhibit C-3 (balance sheet, comparative income statement and personal financial statement) (together, the "Financial Statements"), Exhibit C-5 (the balance sheet and forecasted income statement) (together, the "Forecasted Financial Statements") and Exhibit C-7 ("the Credit Report"). These exhibits to the 2020 application have been clearly marked as Confidential and are being filed under seal contemporaneously with this Motion. AES seeks protection for these new filings, as well as continued protection for Exhibits C-3 and C-5 to the 2014 Certification Application, and Exhibits C-3, C-5 and C-7 to its 2016 and 2018 Renewal Certification Applications.

Law and Support. This Motion is made pursuant to Ohio Admin. Code 4901-1-24, which provides in relevant part:

- (D) 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.

* * *

- (F) A party wishing to extend a protective order beyond twenty-four months shall file an appropriate motion at least forty-

five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.

Ohio Admin. Code 4901-1-24(D), (F). In turn, the term “Trade secret” is defined in R.C. 1333.61(D) as follows:

“Trade secret” means 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 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.

R.C. 1333.61(D).

AES asserts that the Financial Statements and Forecasted Financial Statements are competitively sensitive and highly proprietary business information, and that this information is not generally known or available to the general public. Moreover, AES makes concerted efforts to maintain the confidentiality of this information. Public disclosure would jeopardize AES’s ability to negotiate and to compete in the market and would directly threaten AES’s financial viability. The financial information AES seeks to protect, including Exhibits C-3, C-5 and C-7 to the 2014, 2016 and 2018 certification applications, were previously found to be trade secrets, and their nature as such has not changed. Moreover, the financial information now submitted as Exhibits C-3, C-5 and C-7 to the renewal application likewise qualify as trade secrets and are similarly deserving of protection from disclosure. See R.C. 1333.61(D); see also, *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E. 2d 661 (1997).

Furthermore, the nondisclosure of the Financial Statements and Forecasted Financial Statements is consistent with the purposes of Title 49 of the Ohio Revised Code. Specifically, R.C. 4929.23(A) states that a retail natural gas supplier “shall provide the public utilities commission with such information, regarding a competitive retail natural gas service for which it is subject to certification, as the commission considers necessary to carry out sections 4929.20 to 4929.24 of the Revised Code. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information.” (Emphasis added). Thus, the General Assembly clearly recognized the importance of balancing the need to provide the Commission with adequate information to review an application for certification with the need to protect the confidential information of market participants.¹ Therefore, because the information AES seeks to protect comprises trade secrets, and because nondisclosure of that information comports with the important purpose of protecting such sensitive information, the Commission should grant AES’s Motion. The commission has previously found AES entitled to such protection in granting the Protective Order in this matter on July 3, 2014 and in making its April 25, 2016 and April 10, 2018 docket entries.

Finally, the Financial Statements and Forecasted Financial Statements are permeated with trade secret information, and thus cannot be reasonably redacted to remove the confidential information. A protective order for the whole of the Financial Statements and Forecasted Financial Statements is the appropriate means to protect AES’s trade secrets.

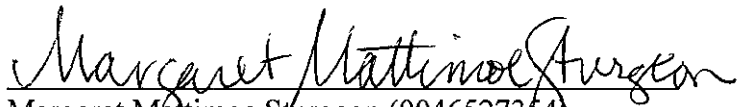
WHEREFORE, AES respectfully requests that the Commission grant this Motion for Protective Order, pursuant to Ohio Admin. Code 4901-1-24. Specifically, AES requests that the

¹ The importance of protecting commercially sensitive information is reflected in the Ohio Administrative Code, as well. For example, Ohio Admin. Code 4901-1-27(B)(7)(e) states that in hearings, “the presiding hearing officer may, without limitation: Take such actions as are necessary to: [p]revent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information.”

Protective Order be extended for an additional twenty-four (24) months, to: (1) provide continuing protection from disclosure to the financial documents submitted as Exhibits C-3, C-5 and C-7 to the original application for certification; (2) to provide continuing protection from disclosure to the financial documents submitted as Exhibits C-3, C-5 and C-7 to the 2016 and 2018 renewal applications for certification; and (3) to protect from disclosure for the same twenty-four (24) month period the financial documents submitted as Exhibits C-3, C-5 and C-7 to the 2020 Renewal Certification Application, submitted simultaneously with this Motion.

Submitted herewith for the Commission's convenience is a proposed order favorable to this Motion.

Respectfully submitted,

A handwritten signature in cursive script, reading "Margaret Mattimoe Sturgeon".

Margaret Mattimoe Sturgeon (0046527354)
Attorney for HB Hayes & Associates, LLC d/b/a
Alternative Energy Source
Liebenthal Levine Ltd.
5800 Monroe Street, Building D, Suite 3
Sylvania, OH 43560
(419) 517-0086; Fax (888) 840-4556

FILE

Exhibit 1

The Public Utilities Commission of Ohio

Ohio Competitive Aggregation/Retail Natural Gas Brokerage Certificate

Issued pursuant to Case Number(s):

14-0743-GA-AGG

Is

Ohio Competitive Aggregation/Retail Natural Gas Brokerage Certificate Number:

14-354G(1)

Granted to:

HB Hayes & Associates, LLC dba Alternative Energy Source

Whose office or principal place of business is located at:

8225 Farnsworth Rd., A-10, Waterville, Ohio 43566

And is hereby certified to provide:

Aggregation/Retail Natural Gas Brokerage Services

within the state of Ohio, for a two-year period.

Certification Effective:

May 22, 2014 Through May 22, 2016

The certification of Ohio competitive aggregation/retail natural gas brokers is governed by Chapter 49001:1-27 of the Ohio Administrative Code and section 4929.20 of the Ohio Revised Code.

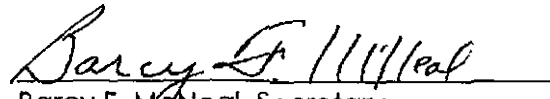
This Certificate is revocable if all of the conditions set forth in the aforementioned case(s) as well as those under law, are not met.

Certificate entity is subject to all rules and regulations of the commission, now existing or hereafter promulgated.

Witness the seal of the Commission affixed at Columbus, Ohio

Dated: **May 21, 2014**

By Order of
The Public Utilities Commission of Ohio



Barcy F. McNeal, Secretary
Tanowa M. Troupe, Acting Secretary
Holly Karg, Acting Secretary

CRNGS AUTOMATIC CASE ACTION FORM

Case No. **14-0743-GA-AGG**

Date Sent: **May 21, 2014**

Effective Date of Certificate: **May 22, 2014**

Certificate Expires: **May 22, 2016**

Company Name and Company Name d/b/a: **HB Hayes & Associates, LLC dba
Alternative Energy Source**

☐ Renewal

Action Needed:

☒ Issue Certificate Number **14-354G(1)** to: **HB Hayes & Associates, LLC dba
Alternative Energy Source** at (address): **8225 Farnsworth Rd., A-10,
Waterville, OHIO 43566**

☒ Certified To Provide the Following Services:

- ☐ Retail Generation
- ☒ Aggregation
- ☐ Retail Natural Gas Marketer Services
- ☒ Retail Natural Gas Brokerage Services
- ☐ Governmental Aggregation

☐ Renew Certificate No. to

☐ Revise Certificate No. to (check all applicable):

- ☐ Reflect name change from to
- ☐ Reflect address change from to
- ☐ Add new service offering to certificate:
 - ☐ Retail Generation
 - ☐ Aggregation
 - ☐ Power Marketer
 - ☐ Power Broker
 - ☐ Governmental Aggregation
- ☐ Correct Administrative Error
- ☐ Reflect Change of Ownership to:

☐ Cancel Certificate No.

☐ Protect Un-redacted copies until

☐ Close Case File, Case Withdrawn at Applicant's Request

CASE NUMBER: 14-0743-GA-AGG
CASE DESCRIPTION: HB HAYES & ASSOCIATES LLC DBA ALTERNATIVE ENERGY
DATE OF SERVICE: 5/21/2014
DOCUMENT SIGNED ON: 5/21/2014

Sign Here: _____

**APPLICANT****ATTORNEY****PARTY OF RECORD**

HB HAYES &
ASSOCIATES LLC DBA
ALTERNATIVE ENERGY SOURCE NONE
HUCK B. HAYES
8225 FARNSWORTH RD
WATERVILLE ,OH 43566
Phone:(866)645-7322
Fax:(866) 865-8740
Email:HUCKHAYES@AES-
ENERG.COM

Exhibit 2

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
HB Hayes & Associates, LLC d/b/a)
Alternative Energy Sources for) Case No. 14-743-GA-AGG
Certification as a Competitive Retail)
Natural Gas Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On April 21, 2014, HB Hayes & Associates, LLC d/b/a Alternative Energy Sources (Alternative) filed an application for certification as a competitive retail natural gas aggregator. On the same day Alternative filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that certain exhibits, filed under seal as part of its application, namely exhibits C-3 (financial statements) and C-5 (forecasted financial statements), be kept under seal.
- (2) In support of its motion for a protective order, Alternative explains that exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, Alternative requests that the information found in these two exhibits be treated as confidential.
- (3) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43 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. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (4) Similarly, Ohio Adm.Code 4901-1-24 allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information,

including where the information is deemed * * * to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

- (5) Ohio law defines a trade secret as "information * * * that satisfies both of the following: (a) 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. (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." R.C. 1333.61(D).
- (6) The attorney examiner has examined the information covered by the motion for a protective order filed by Alternative, as well as the assertions set forth in the supportive memoranda. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in exhibits C-3 and C-5 of Alternative's application constitute trade secret information. Release of these documents is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Accordingly, the attorney examiner finds that Alternative's motion for a protective order is reasonable with regard to exhibits C-3 and C-5, which were filed under seal; therefore, the motions should be granted.
- (7) Ohio Adm.Code 4901-1-24(F) provides for protective orders to expire after 24 months. The attorney examiner finds that the 24-month provision in Ohio Adm.Code 4901-1-24(F) is intended to synchronize the expiration of protective orders related to electric and gas marketers' certification

¹ See *State ex-rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

applications with the expiration of their certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment shall be afforded to exhibits C-3 and C-5, for a period ending 24 months from the effective date of the certificate issued to Alternative, or until May 22, 2016. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, both filed under seal in this case.

- (8) Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Alternative wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Alternative.

It is, therefore,

ORDERED, That, in accordance with Finding (6), the motion for protective order filed by Alternative be granted, with regard to the information contained in exhibits C-3 and C-5, filed under seal as part of Alternative's April 21, 2014 certification application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3 and C-5, which were filed under seal on April 21, 2014, for a period of 24 months, ending May 22, 2016. It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Daniel Fullin

By: Daniel E. Fullin
Attorney Examiner

JRJ/sc

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7/3/2014 8:49:49 AM

in

Case No(s). 14-0743-GA-AGG

Summary: Attorney Examiner Entry granting protective order. - electronically filed by Sandra Coffey on behalf of Daniel Fullin, Attorney Examiner, Public Utilities Commission of Ohio

FILE

Ohio

**Public Utilities
Commission**

John R. Kasich, Governor
Andre T. Porter, Chairman

Exhibit 3

Commissioners

Asim Z. Haque
Lynn Slaby
M. Beth Trombold
Thomas W. Johnson

CONFIDENTIAL

Confidential treatment has been requested for the following document:

Case Number: 14-0743-GA-AGG

Page Count: 3

Date Filed: April 25, 2016

Filed By: J. Hayes

On Behalf Of: HB Hayes & Associates LLC dba Alternative Energy Source

Summary of Document: Exhibit C-7

Staff Initials: memo

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Exhibit 4

The Public Utilities Commission of Ohio
Ohio Competitive Retail Natural Gas Aggregator/Broker Certificate
Renewal

Issued pursuant to Case Number(s):
14-0743-GA-AGG

is
Ohio Competitive Retail Natural Gas Aggregator/Broker Certificate Number:
14-354G(3)

Granted to:
HB Hayes & Associates LLC dba Alternate Energy Source

Whose office or principal place of business is located at:
8225 Farnsworth Rd, Suite A-10, Waterville, OH 43566

And is hereby certified to provide:
Retail Natural Gas Aggregator/Broker Services
within the state of Ohio, for a two-year period.

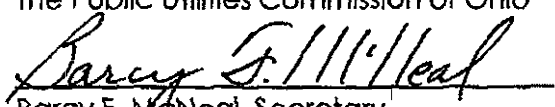
Certification Effective:
May 22, 2018 through May 22, 2020

The certification of Ohio competitive retail natural gas aggregators/brokers is governed by Chapter 4901:1-27 of the Ohio Administrative Code and section 4929.20 of the Ohio Revised Code.

This Certificate is revocable if all of the conditions set forth in the aforementioned case(s) as well as those under law, are not met.

Certified entity is subject to all rules and regulations of the commission, now existing or hereafter promulgated.

Witness the seal of the Commission affixed at Columbus, Ohio
Dated: **May 25, 2018**

By Order of
The Public Utilities Commission of Ohio

Barcy F. McNeal, Secretary
Tanowa M. Troupe, Acting Secretary
Susan Patterson, Acting Secretary
Beverly Hoskinson, Acting Secretary

Form No. CRNGS/AGG/B-06

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Technician RE Date Processed 5/25/18

CRNGS AUTOMATIC CASE ACTION FORM

Date: **5/24/18**

Case Number: **14-0743-GA-AGG**

Company Name and Company Name d/b/a: **HB Hayes & Associates LLC dba
Alternate Energy Source**

Company Address: **8225 Farnsworth Rd, Suite A-10**

Company City/State/Zip: **Waterville, Ohio 43566**

Regulatory Contact: **Huck Hayes**

Phone: **866-646-7322**

Email: **huckhayes@aes-energ.com**

Address: **8225 Farnsworth Rd, Suite A-10**

City/State/Zip: **Waterville, OH 43566**

☒ **Renewal**

Action Needed:

☐ Issue Certificate Number: _____ to: _____
Effective Date of Certificate: _____ Certificate Expires: _____

☒ Renew Certificate Number from: **14-354G (2)** to: **14-354G (3)**
Effective Date of Certificate: **5/22/2018** Certificate Expires: **5/22/2020**

☒ Certified To Provide the Following Services:

- ☒ Retail Natural Gas Aggregator
- ☒ Retail Natural Gas Broker
- ☐ Retail Natural Gas Supplier/Marketer
- ☐ Natural Gas Governmental Aggregator

☐ Revise Certificate Number: _____ to (check all applicable):

- ☐ Reflect name change from: _____ to _____
- ☐ Reflect address change from: _____ to _____
- ☐ Correct Administrative Error:
- ☐ Reflect Change of Ownership to:

☐ Cancel Certificate Number:

☐ Protect Un-redacted copies until:

☐ Close Case File, Case Withdrawn at Applicant's Request

☐ Close Case File

CASE NUMBER: 14-0743-GA-AGG
CASE DESCRIPTION: HB HAYES & ASSOCIATES LLC DBA ALTERNATIVE ENERGY SOURCE
DATE OF SERVICE: 5/25/2018
DOCUMENT SIGNED ON: 5/25/18

Sign Here: _____

Sandy

APPLICANT

PARTY OF RECORD
HB HAYES &
ASSOCIATES LLC DBA
ALTERNATIVE ENERGY SOURCE
HUCK B. HAYES
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Phone:567-202-2728
Fax:419-878-5099
Email:HUCKHAYES@AES-
ENERG.COM

ATTORNEY

ATTORNEY

PARTY OF RECORD
none

ATTORNEY

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