# BEFORE

# THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Linde )

Energy Services, Inc. for Certification ) Case No. 08-1055-EL-CRS

as a Competitive Retail Electric Service )

Provider. )

## MOTION TO EXTEND PROTECTIVE ORDER

Joseph E. Oliker (Counsel of Record)

McNees Wallace & Nurick LLC

Fifth Third Center

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

 joliker@mwncmh.com

**August 21, 2012 Attorney for Linde Energy Services, Inc.**

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## MOTION TO EXTEND PROTECTIVE ORDER

# On January 5, 2011, the Public Utilities Commission of Ohio (“Commission”) issued an Entry granting the Motions for Protective Order filed by Linde Energy Services, Inc. (“LESI”) to protect the confidentiality and prohibit disclosure of the Exhibits filed under seal with LESI’s 2008 Competitive Retail Electric Service (“CRES”) provider Certification Application and 2010 CRES Renewal Application. The Entry stated, “[i]f LESI wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date.” The confidential treatment is set to expire on October 4, 2012.

# Pursuant to the provisions of Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C.") and the Commission’s January 5, 2011 Entry, LESI respectfully moves the Commission to extend the protective order issued on January 5, 2011, to protect the confidentiality and prohibit the disclosure of the Exhibits filed under seal with LESI’s 2010 CRES Renewal Application on September 2, 2010. Exhibit C-3, containing financial statements, and Exhibit C-5, containing forecasted financial statements, contain competitively sensitive and highly proprietary business financial information comprised of trade secrets. Exhibits C-3 and C-5 were clearly marked as confidential and filed under seal, separate from the remainder of the materials that comprised LESI's Renewal Application.

 Additionally, LESI again moves for protective treatment of the Exhibits filed under seal with its 2008 CRES provider Certification Application filed on September 3, 2008, as accompanied by the appropriate Motion for Protective Order. The confidential materials in these Exhibits also contain competitively sensitive and highly proprietary business financial information comprised of trade secrets.

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

Respectfully submitted,

/s/ Joseph E. Oliker

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## MEMORANDUM IN SUPPORT

LESI previously filed its Renewal Application for retail generation provider and power marketer for LESI’s renewal certificate as a CRES provider. The Renewal Application contained all of the required information and materials in accordance with the Commission's filing instructions for CRES providers and Rule 4901-1-24, O.A.C. As part of the Renewal Application materials, the Commission requested information regarding LESI’s financial statements in Exhibit C-3 and forecasted financial statements in Exhibit C-5. LESI submitted the requested information under seal because the financial statements and forecasted financial statements contain competitively sensitive and highly proprietary business and financial information that requires confidential treatment. Consequently, LESI requests that the Commission maintain the confidential nature of Exhibits C-3 and C-5 and the information contained therein and protect the documents from public disclosure.

Rule 4901-1-24(D), O.A.C., provides for the issuance of an order that is necessary 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 non-disclosure of the information is not inconsistent with the purposes 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 information contained in Exhibit C-3. Section 4928.06(F), R.C., specifically permits the Commission to grant confidentiality to competitive information.[[1]](#footnote-1) Sections 4901.12 and 4905.07, R.C., facilitate the protection of trade secrets in the Commission’s possession.[[2]](#footnote-2) Sections 4901.12 and 4905.07, R.C., reference Section 149.43, R.C., and thereby incorporate the provision that excepts from the public record information and records of which the release is prohibited by law.[[3]](#footnote-3) State law prohibits the release of information meeting the definition of a trade secret. Additionally, non-disclosure 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 in order to complete their review process.

The confidential information in Exhibits C-3 and C-5 are comprised of competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret, as defined by Section 1333.61(D), R.C. The definition of trade secret contained in Section 1333.61(D), R.C., is 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.

Section 1333.61(D), R.C. (emphasis added).

Clearly, financial statements as set forth in Exhibit C-3 and forecasted financial statements in Exhibit C-5 contain proprietary data and are confidential. The financial statements derive independent economic value, actual or potential, from not being generally known to, or readily ascertainable by proper means by competitors who can obtain economic value from its disclosure or use. LESI asserts that this information is not generally known by the public and is held in confidence in the normal course of business. The information is not readily obtainable by competitors and the release of this information would provide competitors of the businesses under Linde LLC valuable insight into the health and magnitude of the business activities undertaken by Linde LLC, including LESI. Therefore, LESI reasonably requests that the financial information in Exhibits C-3 and C-5 continue to be deemed to contain trade secrets, and thus, be treated as confidential by this Commission and its Staff.

Finally, LESI requests that the Commission continue to maintain confidential treatment of Exhibits C-3 and C-5 as well as Exhibit C-4 (“Financial Arrangements”) submitted with its initial Certification Application in this docket on September 3, 2008. LESI asserts that the information in Exhibits C-3, C-4, and C-5 in the 2008 Certification Application constituted trade secrets when submitted and remain trade secrets that should be protected under Ohio law. The public release of these Exhibits from the 2008 Certification Application would harm LESI’s business position and its ability to compete. The confidential nature of this information has not diminished since the Motion was initially approved in 2011, remains competitively sensitive, and continues to hold independent economic value from not being generally known to, or readily ascertainable by, proper means by competitors who can obtain economic value from its disclosure or use.

WHEREFORE, LESI respectfully requests that this Motion To Extend Protective Order be granted for the reasons set forth herein.

Respectfully submitted,

/s/ Joseph E. Oliker

Joseph E. Oliker

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**Certificate of Service**

I hereby certify that a copy of the foregoing *Motion to Extend Protective Order* was served upon the following parties of record this 21st day of August 2012, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

 /s/ Joseph E. Oliker

 Joseph E. Oliker

William Wright

Attorney General’s Section

Public Utilities Commission of Ohio

180 East Broad Street, 9th Floor

Columbus, OH 43215

1. Section 4928.06(F), R.C., provides: “An electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code shall provide the commission with such information, regarding a competitive retail electric service for which it is subject to certification, as the commission considers necessary to carry out this chapter. An electric utility shall provide the commission with such information as the commission considers necessary to carry out divisions (B) to (E) of this section. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information.” [↑](#footnote-ref-1)
2. Section 4901.12, R.C., provides: “Except as otherwise provided in section 149.43 of the Revised Code and as consistent with the purposes 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.”

Section 4905.07, R.C., provides: “Except as provided in section 149.43 of the Revised Code and as consistent with the purposes 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.” [↑](#footnote-ref-2)
3. Section 149.43(A)(1)(v), R.C., provides in part: “‘Public record’ does not mean records the release of which is prohibited by state or federal law.” [↑](#footnote-ref-3)