

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of BlueStar Energy)
Services, Inc's Ten-Year Alternative Compliance) Case No. 11-2492-EL-ACP
Plan.)

AMENDED MOTION FOR A PROTECTIVE ORDER

On April 18, BlueStar Energy Service, Inc. (“BlueStar”), pursuant to Ohio Administrative Code (“OAC”) Rule 4901-1-24(D), filed a Motion for a Protective Order with the Public Utilities Commission of Ohio (“Commission”) to shield proprietary information from the public record and keep confidential its Ten-Year Alternative Compliance Plan, exhibit, and forecasted supply portfolio projections contained in the report (“The Plan”). This Amended Motion for Protective Order is intended to protect the confidentiality and prohibit disclosure of information in The Plan. These documents were clearly marked as confidential and filed under seal on April 18, 2011. For the reasons set forth in the Memorandum in Support below, BlueStar moves the Commission to enter a protective order directing that the designated information in The Plan not be disclosed to the general public or to other parties, including competitors and potential competitors of BlueStar.

MEMORANDUM IN SUPPORT

OAC Rule 4901-1-24(D) provides that the Commission or certain designated employees may issue an 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. . . 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.” BlueStar asserts that The Plan constitutes confidential and proprietary business information of the highest order as well as a trade secret, and as such, state law prohibits the release of the information.

Ohio Revised Code Sections (“R.C.”) 4901.12 and 4905.07 were amended in 1996 to facilitate the protection of trade secrets in Commission proceedings. By referencing R.C. 149.43 (Ohio’s Public Records Law), the Commission-specific statutes incorporate the definition of “public records,” as well as an exception to that definition that includes “[r]ecords the release of which is prohibited by state or federal law.” R.C. 149.43(A)(1). In turn, state law prohibits the release of information meeting the definition of a trade secret. See R.C. 1333.61(D) and 1333.62. For this reason, records containing trade secrets are prohibited from public disclosure.

The definition of “trade secret” is set forth in R.C. 1333.61(D)

“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.

As the Ohio Supreme Court recently explained:

Among the substantial and conflicting policies at play *** are the protection of employers’ rights in their trade secrets *** versus the right of the individual to exploit his talents. However, by adopting the Uniform Trade Secrets Act, with the express purpose to make uniform the law with respect to their subject among states, the General Assembly has determined that public policy in Ohio, as in the majority of other jurisdictions, favors the protection of trade secrets, whether memorized or reduced to some tangible form.

Al Minor & Associates, Inc. v. Martin, (2008) 117 Ohio St.3d. 58.

Furthermore, the Commission itself has recognized the need to protect trade secrets from public disclosure as consistent with its other statutory obligations:

The Commission is of the opinion that the “public records” statute must also be read *in pari materia* with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982). The Commission previously has carried out its obligation to protect the trade secret status of information from utilities and other regulated entities in numerous proceedings. *See, e.g., Cleveland Electric Illuminating Co.*, Case No. 07-171-EL-BTX (Entry dated August 14, 2008); *Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

BlueStar considers the information supplied in The Plan to be confidential and has treated the information as a trade secret. In the ordinary course of business of BlueStar, this information is deemed highly confidential, is treated as proprietary and confidential by BlueStar employees, and is not disclosed to anyone other than as part of a legal proceeding and, even then, only pursuant to a protective agreement. For these reasons, information contained in The Plan falls directly within the definition of “trade secret”—a definition that clearly reflects the state policy favoring the protection of trade secrets.

For the foregoing reasons BlueStar requests that its Ten-Year Compliance Report, exhibit, and forecasted supply portfolio projections contained in the report be kept confidential.

Respectfully submitted on behalf of
BLUESTAR ENERGY SERVICES, INC.



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Summary: Motion for Protective Order electronically filed by Teresa Orahod on behalf of BlueStar Energy Services, Inc.