

FILE

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of  
HB Hayes & Associates, LLC  
d/b/a Alternative Energy Source  
For Certification as a Natural Gas Aggregator

Case No. 09-1065-GA-AGG

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**MOTION TO EXTEND PROTECTIVE ORDER**

Pursuant to Ohio Admin. Code §4901-1-24, HB Hayes & Associates, LLC d/b/a Alternative Energy Source ("Alternative Energy") respectfully requests that the Public Utilities Commission of Ohio (the "Commission") extend the Protective Order, entered in this case on February 4, 2010 and expiring on December 6, 2011, for an additional twenty-four (24) months. Specifically, Alternative Energy seeks continuing protection from disclosure for the financial information submitted as Exhibit C-3 to its original application for certification in this matter, as well as protection from disclosure of the financial information submitted as Exhibit C-3 to its Renewal Certification Application for Competitive Retail Natural Gas Brokers/Aggregators, submitted simultaneously with this Motion.

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

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Respectfully submitted,

  
Jonathan M. Hanna (0084373)  
Lyden, Liebenthal & Chappell, Ltd.  
5470 Main Street, Suite 300  
Sylvania, OH 43560  
(419) 867-8900  
(419) 867-3647 (fax)  
jmh@lydenlaw.com  
Attorney for HB Hayes & Associates,  
LLC d/b/a Alternative Energy Source

**MEMORANDUM IN SUPPORT**

On January 7, 2010, HB Hayes & Associates, LLC d/b/a Alternative Energy Source (“Alternative Energy”) was issued Ohio Competitive Retail Natural Gas Aggregator/Broker Certificate Number 09-169G(1), for certification effective from December 6, 2009 through December 6, 2011. A copy of the Certificate is attached as **Exhibit 1**. In connection with its application, Alternative Energy submitted a Motion for Protective Order with respect to certain financial statements submitted as Exhibit C-3 to its certification application. The Commission granted Alternative Energy’s Motion for Protective Order by entry dated February 4, 2010 (the “Protective Order”), finding that the information comprising Exhibit C-3 constitutes trade secrets. A copy of the Protective Order is attached as **Exhibit 2**.

As stated above, Alternative Energy’s certification expires on December 6, 2011. Therefore, Alternative Energy is now filing a Renewal Certification Application, including financial statements for the previous two years of Alternative Energy’s operations as Exhibit C-3 to the renewal application. Because the Protective Order likewise expires on December

6, 2011, Alternative Energy submits the instant Motion seeking to extend the Protective Order for an additional twenty-four (24) months. Specifically, Alternative Energy seeks to protect from disclosure both the financial information submitted as Exhibit C-3 to its original certification application, as well as the financial information submitted as Exhibit C-3 to its renewal application (together, the original Exhibit C-3 information and renewal Exhibit C-3 information are referred to herein as the “Financial Statements”).

This Motion is made pursuant to Ohio Admin. Code §4901-1-24, which provides as follows:

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. §4901-1-24(D)

A party wishing to extend a protective order...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. §4901-1-24(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, or 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.

Alternative Energy asserts that the Financial Statements are competitively sensitive and highly proprietary business information, and that this information is not generally known or available to the general public. Alternative Energy makes concerted efforts to ensure that the information contained in the Financial Statements is known only to its principal officers, and is not disclosed to the public. Such disclosure would jeopardize Alternative Energy's ability to negotiate and to compete in the market, and would directly threaten Alternative Energy's financial viability. The documents submitted as Exhibit C-3 to the original certification application were found to be trade secrets, and their nature as such has not changed. Moreover, the documents now submitted as Exhibit C-3 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.*, (1997) 80 Ohio St.3d 513,524-525.

Furthermore, the nondisclosure of the 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 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.<sup>1</sup> Therefore, because the information Alternative Energy 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 this Motion.

Finally, the Financial Statements are permeated with trade secret information, and thus cannot be reasonably redacted to remove the confidential information. Again, a protective order for the whole of the Financial Statements is the appropriate means to protect Alternative Energy's trade secrets.

WHEREFORE, for the reasons set forth above, Alternative Energy respectfully requests that the Commission grant this Motion to Extend Protective Order, pursuant to Ohio Admin. Code §4901-1-24. Specifically, Alternative Energy requests that the Protective Order be extended for an additional twenty-four (24) months, to: (1) provide continuing protection from disclosure to the financial documents submitted as Exhibit C-3 to the original application for certification; and (2) to protect from disclosure the financial documents submitted as Exhibit C-3 to the renewal application for certification submitted simultaneously with this Motion.

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<sup>1</sup> The importance of protecting commercially sensitive information is reflected in the Ohio Administrative Code, as well. For example, Ohio Admin. Code §4901-1-27(E) states that in hearings, the Attorney Examiner will, "[p]rotect public disclosure of trade secrets, proprietary business information, or confidential research, development or commercial materials and information."

Respectfully submitted,



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Jonathan M. Hanna (0084373)  
Lyden, Liebenthal & Chappell, Ltd.  
5470 Main Street, Suite 300  
Sylvania, OH 43560  
(419) 867-8900  
(419) 867-3647 (fax)  
jmh@lydenlaw.com  
Attorney for HB Hayes & Associates,  
LLC d/b/a Alternative Energy Source