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ALTERNATIVE
Energy Source
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November 22, 2011

09-1065-GA-A66

PUCO – Docketing Division
180 E. Broad Street
Columbus, Ohio 43215-3793

ATTN: Ms. Donielle Hunter

RE: HB Hayes & Associates LLC dba Alternative Energy Source
Renewal Application for Natural Gas Broker/Aggregator Case NO: **09-1065-GA-AGG**

Dear Ms. Hunter:

Please find attached an amendment to our renewal application for Natural Gas Broker/Aggregator. This amendment is to include forecasted Statements of Income and Expense. Also included is a Motion to Extend the Protective Order for Exhibit C-5.

Should you have any questions, please contact me at the number listed above.

Sincerely,

ALTERNATIVE ENERGY SOURCE



Julie V. Hayes
Vice President/CFO

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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 Alternative Energy Source
For Certification as a Natural Gas Aggregator

Case No. 09-1065-GA-AGG


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-5 to its original application for certification in this matter, as well as protection from disclosure of the financial information submitted as Exhibit C-5 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,



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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-5 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-5 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-5 to its original certification application, as well as the financial information submitted as Exhibit C-5 to its renewal application (together, the original Exhibit C-5 information and renewal Exhibit C-5 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-5 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.¹ 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-5 to the original application for certification; and (2) to protect from disclosure the financial documents submitted as Exhibit C-5 to the renewal application for certification submitted simultaneously with this Motion.

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(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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LLC d/b/a Alternative Energy Source

EXHIBIT 1

FILE

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The Public Utilities Commission of Ohio

Ohio Competitive Retail Natural Gas Aggregator/Broker Certificate

Issued pursuant to Case Number(s):

09-1065-GA-AGG

Is

Ohio Competitive Retail Natural Gas Aggregator/Broker Certificate Number:

09-169G(1)

Granted to:

HB Hayes & Associates LLC dba Alternate Energy Source

Whose office or principal place of business is located at:

8225 Farnsworth Road, A-10, Waterville, Ohio 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:

December 6, 2009 Through December 6, 2011

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: January 7, 2010

By Order of

The Public Utilities Commission of Ohio



Renee J. Jenkins, Secretary

Betty McCauley, Acting Secretary

Mariuth C Wright, Acting Secretary

Form No. CRNGS/AGGB-06

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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 Source for) Case No. 09-1065-GA-AGG
Certification as a Competitive Retail)
Natural Gas Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On November 5, 2009, HB Hayes & Associates, LLC d/b/a Alternative Energy Source (AES) filed an application for certification as a competitive retail natural gas broker/aggregator.
- (2) On the same day, AES also filed a motion for a protective order, requesting that exhibits C-3 and C-5 of its application be kept under seal. These exhibits contain financial statements and financial forecasts. In support of its motion for protective order, AES explains that exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information, as well as marketing plans. It argues that the information it seeks to have protected constitutes trade secrets under Section 1333.61(D), Revised Code. AES asserts that its financial information is confidential and is not generally known or available to the general public. AES further contends that release of this sensitive information would jeopardize its ability to negotiate and to compete in the market, and would directly threaten its financial viability. AES argues that non-disclosure of this information is consistent with the purposes of Title 49, Revised Code. Therefore, AES requests that the information found in exhibits C-3 and C-5 be treated as confidential.
- (3) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, 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. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.

- (4) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), 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." Ohio law defines a trade secret as "information . . . 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), Revised Code.
- (5) The attorney examiner has examined the information covered by the motion for protective order filed by AES, as well as the assertions set forth in the supportive memorandum. The attorney examiner initially notes that while AES seeks protection of exhibits C-3 and C-5, AES did not file an exhibit C-5 with its application, because that exhibit seeks information about an applicant's operations conducting competitive natural gas service as a business activity. As AES applied for certification as a broker and as an aggregator, AES was not required to file an exhibit C-5 with its application. Thus, the attorney examiner finds that it is not necessary to consider the request filed by AES for protective treatment of exhibit C-5.
- (6) Turning now to exhibit C-3, when applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in exhibit C-3 of the application filed by AES constitutes 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 Title 49 of the Revised Code.

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

Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that the motion for protective order filed by AES is reasonable with regard to exhibit C-3 of its application and should be granted.

- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification renewal applications to expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketers' certification 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 exhibit C-3 for a period ending 24 months from the effective date of the certificate issued to AES, or until December 6, 2011. Until that date, the docketing division should maintain, under seal, exhibit C-3, which was filed under seal in this docket on November 5, 2009.
- (8) Rule 4901-1-24(F), O.A.C., 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 AES 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 AES.

It is, therefore,

ORDERED, That, in accordance with finding (6), the motion for protective order filed by AES be granted with regard to the information contained in exhibit C-3 of the application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibit C-3, which was filed under seal in this docket on November 5, 2009, for a period of 24 months, ending on December 6, 2011. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Henry H. Phillips-Gary
Attorney Examiner

grt
/dah

Entered in the Journal

FEB 04 2010



Renee J. Jenkins
Secretary