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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE APPLICATION)
OF TERM POWER & GAS, LLC FOR)
COMPETITIVE RETAIL NATURAL GAS)
SUPPLIER CERTIFICATION)

Case No. 12-1603--GA-CRS

**AMENDED MOTION FOR PROTECTIVE ORDER OF
TERM POWER & GAS, LLC**

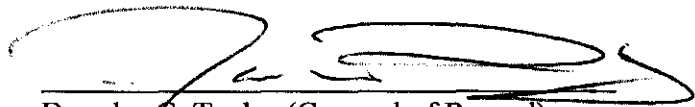
Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), TERM Power & Gas, LLC ("TERM P&G") hereby files this Amended Motion for Protective Order to preserve the confidentiality of competitively-sensitive information filed as part of TERM P&G's Application For Competitive Retail Natural Gas Supplier Certification ("Application") with the Public Utilities Commission of Ohio ("Commission").

On May 18, 2012, TERM P&G filed its Application, including Exhibits A-17, C-3, C-4, and C-5, which contain highly sensitive confidential information pertaining to TERM P&G's operational and financial arrangements to provide competitive retail electric services. Contemporaneous with the filing of its Application, TERM P&G also filed a Motion for Protective Order to protect the confidentiality of the information contained in those exhibits. This purpose of this Amended Motion is to revise the relief requested in order to protect the confidentiality of not only the original information filed by TERM P&G in support of its Application but also any additional confidential information filed by TERM P&G in this proceeding, including the Supplemental Exhibit C-4 that is being filed contemporaneously with this Amended Motion (collectively, "Protected Material").

The basis for this Amended Motion is set forth in the accompanying Memorandum in Support. As required by Rule 4901-1-24(D)(2), O.A.C., TERM P&G has filed under seal three copies of confidential Supplemental Exhibit C-4, and will file any additional information sought to be covered by this Amended Motion as appropriate.

WHEREFORE, TERM P&G respectfully requests that this Amended Motion for Protective Order be granted.

Respectfully submitted,



Douglas C. Taylor (Counsel of Record)
Registration No. 0037962
TERM Power & Gas, LLC
8847 W. Sam Houston Pkwy N.
Houston, Texas 77040
(713) 341-7300
(713) 341-7303 (Facsimile)
dtaylor@termna.com

James E. Guy (PHV-2657-2012)
SUTHERLAND ASBILL & BRENNAN LLP
701 Brazos Street, Suite 970
Austin, Texas 78701-3232
(512) 721-2652
(512) 721-2656 (Facsimile)
james.guy@sutherland.com

Attorneys for TERM Power & Gas, LLC

May 30, 2012

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE APPLICATION)
OF TERM POWER & GAS, LLC FOR)
COMPETITIVE RETAIL NATURAL GAS)
SUPPLIER CERTIFICATION)

Case No. 12-1603-GA-CRS

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**MEMORANDUM IN SUPPORT OF AMENDED
MOTION FOR PROTECTIVE ORDER OF TERM POWER & GAS, LLC**

TERM Power & Gas, LLC ("TERM P&G"), by counsel and in accordance with Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), hereby files this memorandum in support of its Amended Motion for Protective Order (the "Amended Motion").

I. STATEMENT OF FACTS

On May 18, 2012, TERM P&G filed its Application, including Exhibits A-17, C-3, C-4, and C-5, which contain highly sensitive confidential information pertaining to TERM P&G's operational and financial arrangements to provide competitive retail electric services. Contemporaneous with the filing of its Application, TERM P&G also filed a Motion for Protective Order to protect the confidentiality of the information contained in those exhibits. This purpose of the Amended Motion is to revise the relief requested in order to protect the confidentiality of not only the original information filed by TERM P&G in support of its Application but also any additional confidential information filed by TERM P&G in this proceeding, including the Supplemental Exhibit C-4 that is being filed contemporaneously with this Amended Motion (collectively, "Protected Material").

Pursuant to the Application instructions, TERM P&G provided the Protected Material to the Commission in support of its Application. The Protected Material contains highly confidential information pertaining to TERM P&G's operational and financial arrangements to

provide competitive retail natural gas services. In addition, as necessary, TERM P&G may file additional confidential and proprietary information in support of its Application that should be protected by a Commission order and included as part of the Protected Material. TERM P&G is a privately held limited liability company, and the Protected Material is not publicly available.

II. ARGUMENT

Rule 4901-1-24(D), O.A.C., provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Ohio Revised Code ("O.R.C."). The non-disclosure of the information provided in the Protected Material will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

State law recognizes the need to protect certain types of information which are the subject of this Amended Motion. Rule 4901-1-24(D), O.A.C., explicitly allows confidential treatment of any information deemed to "constitute a trade secret under Ohio law" Rules 4901.12 and 4905.07, O.R.C., further facilitate the protection of trade secrets in the Commission's possession and except such information from Ohio's Open Records Act.

Under Ohio law, a "trade secret" includes "any business information or plans [or] financial information" that "derives independent economic value, actual or potential, from not being generally known to . . . other persons who can obtain economic value from its disclosure or use" and that "is the subject of efforts that are reasonable under the circumstances to maintain its

secrecy.” Rule 1333.61(D), O.R.C. The Ohio Supreme Court has established a six-factor test for identifying trade secrets:

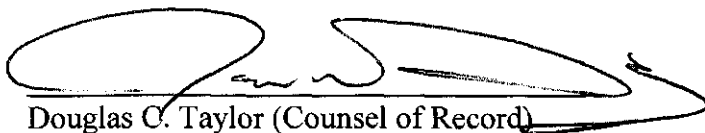
(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, *i.e.*, by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

State ex rel The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 3d 513, 524-525 (1997) (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Here, TERM P&G seeks to protect exactly these kinds of business plans and financial information. The Protected Material contains TERM P&G’s operating agreements and detailed financial and strategic documents, such as credit agreements, financial forecasts, certified financial statements, and financial plans. Such information is not known outside of TERM P&G’s business and is not available to every employee inside TERM P&G’s business. Such information, if released to the public, would harm TERM P&G by providing its competitors proprietary information in what is designed by statute to now be a competitive service. Additionally, public disclosure of this Protected Material is not likely to assist the Commission in carrying out its duties pursuant to Title 49. Confidential treatment of the Protected Material is therefore appropriate and required by Ohio law and the Commission’s rules. *See* Rule 4901-1-24(D), O.A.C.; Rules 4905.07, 4901.12 and 149.43, O.R.C.

WHEREFORE, pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, TERM Power & Gas, LLC respectfully requests that the Commission grant its Amended Motion for Protective Order and issue an order directing that the Protected Material be afforded confidential treatment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Douglas C. Taylor', is written over a horizontal line.

Douglas C. Taylor (Counsel of Record)

Registration No. 0037962

TERM Power & Gas, LLC

8847 W. Sam Houston Pkwy N.

Houston, Texas 77040

(713) 341-7300

(713) 341-7303 (Facsimile)

dtaylor@termna.com

James E. Guy (PHV-2657-2012)

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701 Brazos Street, Suite 970

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(512) 721-2652

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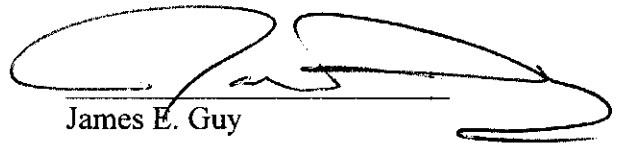
james.guy@sutherland.com

*Attorneys for TERM Power & Gas, LLC (d/b/a
ENCOA)*

May 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Amended Motion for Protective Order and Memorandum in Support thereof was served by electronic mail upon Commission Staff this 30th day of May, 2012.



James E. Guy