

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Direct Energy Services, LLC for) Case No. 02-1829-GA-CRS
Certification as a Retail Natural)
Gas Supplier.)

SUPPLEMENTAL MOTION FOR PROTECTIVE ORDER

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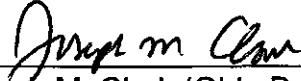
Case No. 02-1829-GA-CRS

SUPPLEMENTAL MOTION FOR PROTECTIVE ORDER

Pursuant to the provisions of Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), Direct Energy Services, LLC ("DES, LLC") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a protective order to protect the confidentiality of and prohibit the disclosure of certain documents filed simultaneously with this motion in the above-captioned docket. This Supplemental Motion for Protective Order supersedes the Motion for Protective Order filed earlier in this proceeding on August 20, 2012. The documents in Exhibits C-4 Financial Arrangements ("Exhibit C-4") and C-5 Forecasted Financial Statements ("Exhibit C-5"), contain competitively sensitive and highly proprietary business financial information comprising of trade secrets. These documents have been clearly marked as confidential and are hereby filed under seal, separate from the remainder of the materials that comprise DES, LLC's Renewal Certification Application filed simultaneously with this Supplemental Motion for Protective Order.

The grounds for the instant Supplemental Motion for Protective Order are set forth in the attached Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

DES, LLC filed its Renewal Certification Application for Competitive Retail Natural Gas Suppliers ("CRNGS") on August 17, 2012. The Application contains all of the required information and materials in accordance with the Commission's Renewal Certification Filing Instructions for Competitive Retail Natural Gas Suppliers and Rule 4901-1-24, O.A.C. As part of the Application materials, the Commission requested information regarding DES, LLC's financial arrangements (Exhibit C-4) and forecasted financial statements (Exhibit C-5). Direct Energy Services, LLC has submitted the requested information under seal because the documents contain competitively sensitive and highly proprietary business financial information, which require confidential treatment. Consequently, DES, LLC requests that the Commission maintain the confidential nature of these documents and the information contained therein, and protects 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 law 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 Exhibits C-4, and C-5. Section 4929.23(A), R.C., specifically permits the Commission to grant confidentiality to competitive information.¹ Sections 4901.12 and 4905.07, R.C., facilitate the protection of trade secrets in the Commission’s possession.² Sections 4901.12 and 4905.07, R.C., reference Section 149.43, R.C., and therefore incorporate the provision that accepts from the public record information and records of which the release is prohibited by law.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 documents and information contained in Exhibits C-4 and C-5 are comprised of competitively sensitive and highly proprietary business 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:

² Section 4929.23(A), R.C., provides: “A retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code 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 such measures as it considers necessary to protect the confidentiality of any such information.”

³ 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.”

⁴ 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.”

"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.

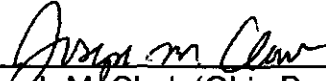
(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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

Clearly, financial arrangements and forecasted financial statements contain proprietary data and are confidential as trade secrets. Public disclosure of this information would jeopardize DES, LLC's business position in negotiations with other parties and its ability to compete. DES, LLC asserts that this information is not generally known by the public and is held in confidence in the normal course of business. Therefore, DES, LLC reasonably requests that the identified financial information contained in Exhibits C-4 and C-5 in this certificate renewal Application be deemed to contain trade secrets, and thus, be treated as confidential by this Commission and its Staff.

WHEREFORE, DES, LLC respectfully requests that this Supplemental Motion for Protective Order be granted for the reasons set forth herein.

Respectfully submitted,



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