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September 6, 2012

**Via Hand Delivery**

Public Utilities Commission of Ohio  
ATTN: Docketing  
180 E. Broad St.  
11<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

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PUCO

RE: Delta Energy, LLC  
Case No.: 08-1037-GA-CRS

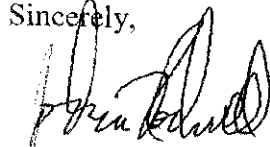
Dear Clerk:

Enclosed for filing in reference to the above mentioned matter are the original and two copies of the following, in the order of filing:

- ✓ 1) Motion for an Extension of Certificate Expiration Date;
- 2) Motion for Protective Order; and
- 3) Renewal Certification Application


Please file, and return a stamped copy to us in the self-addressed stamped envelope. If after your review you should have any questions, please do not hesitate to contact me.

Sincerely,



Joshua D. Rockwell

Enclosure

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
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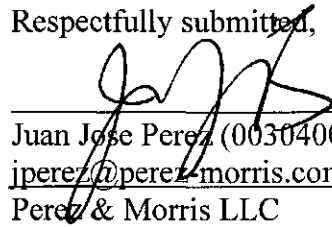
BEFORE THE PUBLIC  
UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Delta )  
Energy, LLC for Renewal Certification as a ) Case No. 08-1037-GA-CRS  
Competitive Retail Natural Gas Supplier. )

MOTION FOR A PROTECTIVE ORDER

Delta Energy, LLC, by its attorneys, and pursuant to Section 4901-1-24(D) of the Commission's rules (O.A.C. §4901-1-24(D)) moves for (i) a Protective Order keeping confidential Exhibit C-3 – Financial Statements – included as attachments to Delta Energy, LLC's Renewal Application for Certification as a Competitive Retail Natural Gas Supplier being filed simultaneously with this Motion in the captioned case; and (ii) a waiver from O.A.C. 4901-1.24(F) which causes any order prohibiting public disclosure of certain documents to automatically expire after a protective order is issued. The reasons underlying this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

  
\_\_\_\_\_  
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**MEMORANDUM IN SUPPORT OF MOTION FOR A PROTECTIVE ORDER  
AND TO EXTEND PREVIOUS PROTECTIVE ORDERS**

**I. BACKGROUND.**

Delta is filing a renewal application for certification as a competitive retail natural gas supplier simultaneously with this Motion in the captioned case. As part of the renewal certification, the Commission requested information regarding Delta's financial statements, which are being filed with this Motion. Delta has filed under seal Exhibit C-3 – Financial Statements for fiscal years ending June 30, 2011 and June 30, 2010 (hereafter, the “Financial Statements”). See Exhibit C-3 attached hereto being filed under seal.

The Financial Statements are competitively sensitive and highly proprietary business information comprising Delta's trade secrets. Because the Financial Statements are Delta's protected information and trade secrets eligible for proprietary treatment in accordance with Section 4901-1-24 of the Commission's rules, Delta files this Motion for Protective Order and for waiver from O.A.C. 4901-1.24(F) which causes any order prohibiting public disclosure of certain documents to automatically expire.

**II. DELTA'S FINANCIAL STATEMENTS SHOULD BE PROTECTED.**

**A. Delta's Financial Statements Comprise Delta's Trade Secrets Entitled to Protection for Disclosure.**

R.C. 4929.23 provides for the Commission to take such “measures as it considers necessary to protect the confidentiality” of information submitted to it. Division (D) of Section 4901-1-24 of the Commission's rules 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 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 Revised Code (hereafter “Title 49”). As described in this Motion and in the Affidavit of Sharon Tackett, President of Delta, attached hereto as Exhibit 1, the Financial Statements represent confidential business information which are Delta’s trade secrets and, therefore, should be protected from disclosure.

In support of this Motion, Delta submits the Affidavit of its President, Sharon Tackett. In her Affidavit, Ms. Tackett makes clear the Financial Statements are Delta’s trade secrets that contain sensitive business and financial information relating to Delta. (See Tackett Affidavit at ¶¶4-5.) Delta derives independent economic value from the information in the Financial Statements not being generally known to Delta’s competitors. (See *id.*) In fact, that is the reason Delta filed the Financial Statements under seal. Further, Ms. Tackett outlines the many efforts Delta makes to keep its financial information, including the Financial Statements, confidential. (See Tackett Affidavit at ¶6.)

Non-disclosure of the Financial Statements will not impair the purposes of Title 49. The Commission and its Staff had and have full access to the information in order to review and consider Delta’s application. No purpose of Title 49 would be served by the public disclosure of Delta’s Financial Statements.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

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). Likewise,

the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"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.

R.C. §1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the Financial Statements which are the subject of this Motion.

Further, in its Entries dated September 24, 2010, and September 30, 2010, this Commission already has held Delta's previously submitted Financial Statements comprise trade secret information subject to protection. Thus, the Commission issued a protective order with respect to the previously filed Financial Statements. The present filing simply supplements that previously filed sensitive information and should likewise be protected from disclosure.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect such trade secrets, the trade secret statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N. Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., 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).

In 1996, the Ohio General Assembly amended R.C. §§4901.12 and 4905.07 in order to facilitate the protection of trade secrets in the Commission's possession. The General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission's possession. By referencing R.C. §149.43, the Commission-specific statutes now incorporate the provision of that statute that excepts from the definition of "public record" records 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. R.C. §§1333.61(D) and 1333.62. The amended statutes also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 because the Commission and its Staff have access to the information. The protection of trade secret information as requested herein will not impair the Commission's regulatory responsibilities.

In Pyromatics, Inc. v. Petruziello, 7 Ohio App.3d 131,134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

(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.

With respect to the Financial Statements which are the subject of this Motion, Delta considers and has treated the information as trade secrets. In the ordinary course of Delta's business, this information is stamped confidential, and is treated as proprietary and confidential

by Delta employees. When such information is disclosed, measures are taken to assure its confidentiality. (See Tackett Affidavit at ¶6.)

**B. Waiver of OAC 4901-1-24(F) Will Conserve the Commission's and Delta's Resources.**

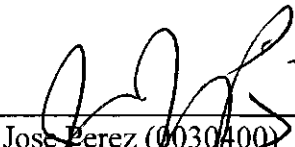
Additionally, Delta respectfully requests a waiver from OAC 4901-1-24(F), which causes any order prohibiting public disclosure of certain documents to automatically expire. Given the extremely sensitive nature of the requested documents and the risk of disclosure of the same, Delta believes that a waiver of this rule is necessary. Inasmuch as Delta is a small privately-held company, (see Tackett Affidavit at ¶1), the sensitive nature of this information will remain and the need to keep the information from public disclosure will not diminish. Therefore, the information is proprietary now and will continue to be. Thus, it will be imperative to maintain the information as confidential, and for the Commission to continue its protection from public disclosure.

Providing a waiver now would also conserve the Commission's resources, because it will avoid the Commission from re-issuing an extension of protective treatment, as it has previously done for similar requests. See In the Matter of the Application of Vectren Retail, LLC, d/b/a Vectren Source, for Certification as a Retail Natural Gas Supplier in the State of Ohio, Case No. 02-1668-GA-CRS; In the Matter of the Application of ShellEnergy Services Company, LLC, for Certification as a Retail Natural Gas Supplier in the State of Ohio, Case No. 02-1680-GA-CRS; In the Matter of the Application of Energy America, LLC, for Certification as a Competitive Retail Natural Gas Supplier in the State of Ohio, Case No. 02-1829-GA-CRS, Entry, January 22, 2004. As such, Delta respectfully requests that the Commission grant a waiver from OAC 4901-1-24(F) to prevent the information that has been filed under seal from being removed from protective status and placed in the public record of the proceeding.

### III. CONCLUSION.

For the reasons set forth above, Delta respectfully requests that the Commission grant this Motion for Protective Order and to Extend Protective Orders, which includes (i) the request for protective treatment of the information contained in Exhibit C-3 – Financial Statements, filed under seal and (ii) a waiver of OAC 4901-1-24(F).

Respectfully submitted,



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Counsel for Delta Energy, LLC



**BEFORE THE PUBLIC  
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<b>In the Matter of the Application of Delta</b>	)	
<b>Energy, LLC for Certification as a</b>	)	<b>Case No. 08-1037-GA-CRS</b>
<b>Competitive Retail Natural Gas Supplier.</b>	)	

**AFFIDAVIT OF SHARON TACKETT**

STATE OF OHIO

:

SS

COUNTY OF FRANKLIN

I, Sharon Tackett, swear, depose and say the following:

I am the President of Delta Energy, LLC, and as such, I have personal knowledge with respect to who is the proper entity to the within action.

1. Delta Energy, LLC ("Delta"), is a privately-owned, Ohio limited liability company.

2. Because Delta is privately owned, its financial records, including but not limited to Delta's Financial Statements for fiscal years ending June 30, 2011 and June 30, 2010 (the "Financial Statements") are not available to the general public.

3. Delta is filing a renewal application for certification as a competitive retail natural gas supplier concurrently with its Motion for Protective Order. With its application, Delta filed under seal the Financial Statements. The Financial Statement were designated as Exhibit C-3 to the application, but filed with Delta's Motion for Protective Order, and noted as being privileged and confidential.

4. Delta considers the Financial Statements to be company trade secrets which if disclosed would injure Delta's ability to compete.

5. Delta derives independent economic value because the Financial Statements and the information contained therein are not generally known or readily ascertainable by proper means to others. If disclosed, Delta's competitors would derive economic value from the information contained in the Financial Statements.

6. Because Delta considers the Financial Statements to be trade secrets, Delta has implemented certain steps to protect the information from disclosure. In addition to other measures taken by Delta, Delta (a) requires all its employees to sign confidentiality agreements promising not to disclose Delta's trade secrets, including Delta's financial information; (b) the Financial Statements and the information contained therein are not available to all company employees; rather, they are disclosed only on a "need to know" basis; (c) when financial information is disclosed to Delta employees, they are required to be bound by a separate and additional confidentiality agreement; (d) whenever Delta's financial information is disclosed to third parties such as Delta's lenders, etc., the disclosure is made under a Confidentiality Agreement and the third parties receiving Delta's financial information are required to keep the financial information confidential and to only disclose it within such organization on a "need to know" basis; (e) all electronic copies of Delta's financial information are password protected and not stored on shared or open access networks; (f) when paper copies of Delta's financial information are no longer needed, they are shredded; and (g) access to Delta's general ledger financial software package is restricted by passwords and access further restricted with individual user security profiles within the software.

7. For these reasons, Delta has filed a Motion for Protective Order requesting the Financial Statements remain sealed and not available to the public.

8. Additionally, given the extremely sensitive nature of the Financial Statement and the risk of disclosure of the same, Delta believes that a waiver from OAC 4901-1-24(F), which causes any order prohibiting public disclosure of certain documents to automatically expire, is necessary. Inasmuch as Delta is a small privately-held company, the sensitive nature of the Financial Statements will remain and the need to keep the information from public disclosure will not diminish upon the expiration of the protective order. Therefore, the information is proprietary now and will continue to be in the future. For these reasons, I believe a waiver from OAC 4901-1-24(F) is appropriate.

I have read the contents of this Affidavit and swear or affirm that what I have said in this Affidavit is true and correct to the best of my knowledge, information and belief.

Sharon (Shen) Tackett  
Sharon Tackett / *CEK*

Sworn and subscribed before me this 6<sup>th</sup> day of September, 2012

Melinda M Doane  
Notary Public



MELINDA M DOANE  
NOTARY PUBLIC - OHIO  
MY COMMISSION EXPIRES 06-01-15