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12-2659-GA-AGG⁵

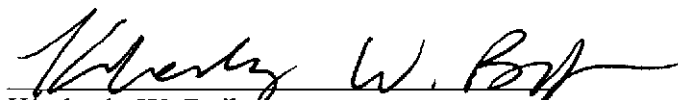
BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Blue)
Flame Energy LLC for Certification as) Case No. 12- -GA-AGG
a Competitive Retail Natural Gas)
Broker and Aggregator.)

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code ("O.A.C."), Blue Flame Energy LLC ("Blue Flame Energy") hereby moves for a protective order to keep confidential, and not offer as part of the public record, two financial exhibits (Exhibits C-3 and C-5) to its application for certification to provide competitive retail natural gas services. The reasons underlying this motion are set forth in the attached Memorandum in Support. Consistent with the requirements of Rule 4901-1-24(D), O.A.C., three unredacted copies of the exhibits are submitted herewith under seal.

Respectfully Submitted,



Kimberly W. Bojko
(Counsel of Record)
Colleen O'Donnell
Carpenter Lipps & Leland LLP
280 North High Street, #1300
Columbus, Ohio 43215
Telephone: 614.365-4100
Fax: 614.365.9145
Bojko@carpenterlipps.com
ODonnell@carpenterlipps.com

Attorneys for Blue Flame Energy LLC

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Blue)	
Flame Energy LLC for a Certificate to)	Case No. 12-
Provide Competitive Retail Electric)	-GA-AGG
Services in Ohio.)	

MEMORANDUM IN SUPPORT

Blue Flame Energy hereby respectfully requests that confidential treatment be given to the information attached to its application for certification to provide competitive retail natural gas services, which Blue Flame Energy has designated as confidential. The information for which protection from public disclosure is sought concerns financial statements (Exhibit C-3) and financial forecasts (Exhibit C-5). Such information constitutes confidential trade secrets, and if released to the public, would harm Blue Flame Energy by providing its competitors with proprietary information.

Rule 4901-1-24(D), O.A.C., provides that the Commission or certain designated Commission employees "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 . . . 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." In recognizing the need for competitive retail natural gas service providers subject to certification under Section 4929.20, Revised Code, to provide the Commission with the necessary information for the Commission to satisfy its obligations under Sections 4929.20 to 4929.24, Revised Code, the statute specifically authorizes the Commission

to grant confidentiality to competitively sensitive information provided by competitive retail natural gas service providers. Section 4929.23(A), Revised Code.

Section 1333.61(D), Revised Code, defines “trade secret” 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, 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.

Moreover, the Ohio Supreme Court has delineated factors to be considered in analyzing a trade secret claim:

- (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. (1997), 80 Ohio St.3d 513, 524-525.

Specifically in the context of competitive retail natural gas service providers seeking broker or aggregator certificates, the Commission has deemed it necessary to protect these trade secrets. For example, in a recent certification proceeding, the attorney examiner reviewed American Utility Management Inc.’s motion for a protective order, seeking to keep confidential its financial statements and forecasts. *In the Matter of the Application of American Utility Management Inc. for Certification as a Competitive Retail Natural Gas Broker/Aggregator*, Case

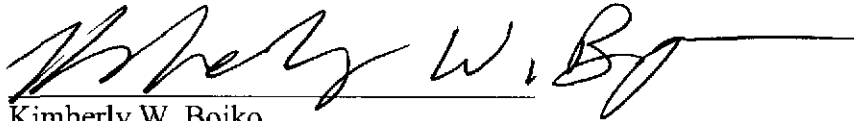
No. 12-1925-GA-AGG, Entry (August 23, 2012). The motion was granted after the attorney examiner determined that the information had independent economic value, was the subject of reasonable efforts to maintain its secrecy, and met the six-factor test set forth by the Supreme Court of Ohio. *Id.* As such, the attorney examiner noted, “the information contained in exhibits C-3 and C-5 of American Utility’s applications constitutes trade secret information. Release of these documents is, therefore, prohibited under state law.” *Id.* The attorney examiner also found that “nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code.” *Id.* at 2; See also, *In the Matter of Little Deep, LLC for Certification as a Competitive Retail Natural Gas Broker and Aggregator*, Case No. 12-1278-GA-AGG, Entry (June 19, 2012); *In the Matter of the Application of Consumer Energy Solutions, Inc. for Certification as a Competitive Retail Natural Gas Service Aggregator/Broker*, Case No. 11-3277-GA-AGG, Entry (July 12, 2011).

Similarly, Blue Flame Energy asserts that its financial information submitted in Exhibits C-3 and C-5 is competitively sensitive information, and constitutes confidential and proprietary business information, as well as a trade secret. As such, these two exhibits should be protected from public disclosure. The information for which Blue Flame Energy seeks protection is private information that has never appeared in the public record, is not generally known by the public or its employees, and is held in confidence in the normal course of business. Any public dissemination of such information or any portion thereof would harm Blue Flame Energy, and could provide an undue advantage to its competitors. Additionally, the non-disclosure of the information that is the subject of this motion will not impair the purposes of Title 49 of the Revised Code, as the Commission and its Staff will have full access to the information.

For the reasons stated herein, the financial information provided in Exhibits C-3 and C-5 to Blue Flame Energy's certification application satisfies the definition of a trade secret. As such, state law prohibits the release of the information. Section 1333.61(D) and 1333.62, Revised Code.

WHEREFORE, Blue Flame Energy respectfully requests that the Commission grant its motion for a protective order and to maintain Exhibits C-3 and C-5 to its certification application under seal.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Kimberly W. Bojko', with a long horizontal line extending to the right.

Kimberly W. Bojko
(Counsel of Record)
Colleen O'Donnell
Carpenter Lipps & Leland LLP
280 North High Street, #1300
Columbus, Ohio 43215
Telephone: 614.365-4100
Fax: 614.365.9145
Bojko@carpenterlipps.com
ODonnell@carpenterlipps.com

Attorneys for Blue Flame Energy LLC

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