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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of
Energy 95 LLC for Certification as a
Competitive Retail Natural Gas
Supplier.

Case No. 12-1023-GA-CRS

ENERGY 95 LLC'S MOTION FOR PROTECTIVE TREATMENT


Pursuant to Ohio Administrative Code ("O.A.C.") Section 4901-1-24(D), Energy 95 LLC d/b/a Quake Energy, LLC ("Energy 95") respectfully moves for an extension of the order protecting from disclosure confidential, proprietary, and trade secret information contained in Energy 95's Application for Certification as a Competitive Retail Natural Gas Supplier ("CRNGS") filed with the Public Utilities Commission of Ohio ("Commission") on March 19, 2012 and amended on March 29, 2012 ("2012 Application").

Additionally, Energy 95 respectfully moves the Commission for a new order protecting from disclosure confidential, proprietary, and trade secret information contained in Energy 95's Renewal Application for Certification as a CRNGS ("2014 Renewal Application"). Specifically, Energy 95 requests protective treatment over the following documents: Exhibit B-3 Summary of Experience, Exhibit C-3 Financial Statements, C-4 Financial Arrangements, and C-5 Forecasted Financial Statements (collectively "Confidential Documents"). Energy 95 requests that the protective treatment of the Confidential Documents in the 2012 Application and the 2014 Renewal Application extend for twenty-four months beginning on the date of re-certification. Consistent with the requirements of Section 4901-1-24(D) of the Commission's Rules, three unredacted copies of the Confidential Documents have been simultaneously filed

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under seal. The reasons underlying this motion are fully set forth in the attached Memorandum in Support.

Respectfully submitted,



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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	:	
Energy 95 LLC for Certification as a	:	Case No. 12-1023-GA-CRS
Competitive Retail Natural Gas	:	
Supplier.	:	

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE TREATMENT**

I. Introduction.

Pursuant to O.A.C. § 4901:1-24(D), Energy 95 requests protective treatment of the confidential information in its 2012 Application and 2014 Renewal Application. Specifically, in the 2012 Application and the 2014 Renewal Application, Energy 95 seeks protective treatment over Exhibit C-3 Financial Statements, C-4 Financial Arrangements, and C-5 Forecasted Financial Statements (collectively "Confidential Documents"). The information for which protection is sought includes competitively sensitive information and proprietary business and financial information relating to Energy 95's business operations, which is comprised of trade secrets. The public release of this information would cause harm to Energy 95, its future operations, and it would compromise Energy 95's ability to compete with other competitive retail electric suppliers on an equal basis.

II. Law and Argument.

A. The Commission's Rules Permit Protective Treatment over Confidential Information and Trade Secrets.

The Commission's Rules allow for protective treatment of certain confidential information filed at the Commission in order to prevent disclosure of such information. OAC 4901-1-24(D) states in part:

“(D) 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. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.”

(emphasis added).

Ohio law recognizes the need to provide protective treatment to information such as the Confidential Documents. Under R.C. 1333.61(D), “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.”

Expounding upon the definition of “trade secret,” the Ohio Supreme Court has delineated factors to be considered when 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 of others to acquire and duplicate information.

State ex. rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, 524-525. The Commission regularly grants motions for protective orders to protect the confidential trade secret status of exhibits to competitive retail service provider power broker/aggregator applications. See e.g. *Palmer Energy Corporation*, Case No. 10-1081-EL-AAG (Entry October 21, 2010); *RD Energy, Inc.* Case No. 10-72-EL-AGG (Entry March 26, 2010); see also *Buckeye Energy Brokers, Inc.*, Case No. 02-1676-GA-AGG (Entry July 15, 2003)(explaining that “income statements and balance sheet information can be considered a trade secret and afforded confidential treatment”).

B. The Confidential Documents Contained in the 2012 Application and the 2014 Application Are Trade Secrets.

The definition of “trade secret” clearly reflects the state policy favoring the protection of trade secrets such as the financial information, customer numbers, and gas throughputs, which are the subject of this motion. The Confidential Documents consist of financial statements, financial arrangements, and forecasted financial statements that are proprietary, confidential and that constitute trade secrets. Public disclosure of this information would jeopardize Energy 95’s business position and its ability to compete. By examining the Confidential Documents, competitors could reasonably estimate Energy 95’s potential growth, market share and margins. Based on the sensitive financial information contained in Exhibits C-3, C-4, and C-5, Energy 95’s competitors could use the Confidential Documents to make strategic decisions whether to enter or exit the markets in the geographic regions in which Energy 95

operates. Similarly, Energy 95's market share, including customer numbers and gas throughput, that is detailed in Exhibit B-3 is confidential information that competitors could use to evaluate market conditions to Energy 95's detriment. All of this confidential information is treated as highly sensitive, private information by Energy 95.

Extension of the protective treatment over the Confidential Documents in the 2012 Application is also necessary because the financial information remains highly competitive. Energy 95's business model in the electric industry, including margins, pricing, financial forecasts, and relationship with creditors has not changed significantly since the filing of the 2012 Application. Furthermore, the information contained in the Confidential Documents in the 2012 Application and 2014 Renewal Application is not generally known by the public, is held in confidence in the normal course of business, and has never appeared in the public record. The Confidential Information sought to be protected is disclosed to only a few key personnel at Energy 95. In addition, Energy 95 is a privately-held company and, therefore, would be especially vulnerable if protective treatment was not granted. The Commission has previously found the need for protective treatment to be especially "persuasive for the privately held companies."¹

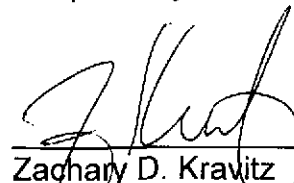
Lastly, granting confidential treatment to the information in the 2012 Application

¹ See *In the Matter of the Applications of the Following Entities for a Certificate to Provide Competitive Retail Natural Gas Service in Ohio: NICOR Energy L.L.C., Vectren Retail LLC, d.b.a. Vectren Source, Shell Energy Services Co. L.L.C., Volunteer Energy Services Inc., ACN Energy Inc., Energy America LLC, FirstEnergy Solutions Corp., AEP Ohio Retail Energy LLC, Energy Cooperative of Ohio, MidAmerica Energy Company, ProLiance Energy LLC, Metromedia Energy Inc., and UGI Energy Services Inc., d.b.a. GASMARK*, Case Nos. 02-1654-GA-CRS, 02-1668-GA-CRS, 02-1680-GA-CRS, 02-1786-GA-CRS, 02-1828-GA-CRS, 02-1829-GA-CRS, 02-1864-GA-CRS, 02-1889-GA-CRS, 02-1891-GA-CRS, 02-1893-GA-CRS, 02-1909-GA-CRS, 02-1926-GA-CRS, 02-1968-GA-CRS, Entry, (June 14, 2003); See *Id.*, at para. 3, p. 2. See also *In the Matter of the Applications of: Vectren Retail, LLC, d/b/a Vectren Source, Interstate Gas Supply, Inc., Shell Energy Services Co., L.L.C., and FirstEnergy Solutions Corp. for Certification as Retail Natural Gas Suppliers in the State of Ohio; In the Matter of the Application of Direct Energy Services, LLC for Renewal of Certification as a Competitive Retail Natural Gas Supplier and for Approval to Transfer that Certification*, Case Nos. 02-1668-GA-CRS, 02-1683-GA-CRS, 02-1680-GA-CRS, 02-1864-GA-CRS, 02-1829-GA-CRS, Entry (Aug. 11, 2004).

and the 2014 Renewal Application will not impair the purposes of Ohio Revised Code Title 49, because the documents have been filed under seal allowing the Commission and Staff to have full access to the information.

The reasons set forth above demonstrate that the information contained in the Confidential Documents in the 2012 Application and the 2014 Renewal Application has actual, substantial independent economic value from not being generally known, and not being ascertainable by proper means by persons who would derive economic value from disclosure. Public disclosure of the Confidential Documents will cause substantial harm to Energy 95's business and competitive interests. Thus, Energy 95 respectfully requests the Commission to issue an order that (1) extends the protective treatment of the Confidential Documents in the 2012 Application for twenty-four (24) months and (2) grants protective treatment to the Confidential Documents in the 2014 Renewal Application for twenty-four (24) months.

Respectfully submitted,



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