

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Legend Energy Advisors LLC, for Certification)	Case No. 14-1093-GA-AGG
as a Competitive Retail Natural Gas)	
Broker in Ohio.)	

LEGEND ENERGY ADVISORS LLC’S MOTION FOR PROTECTIVE ORDER

Legend Energy Advisors LLC (“Legend”), by and through its attorney, and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, moves for a protective order to keep confidential the confidential and/or proprietary information in Exhibits C3 and C5 to Legend’s Application for Certification as a Competitive Retail Natural Gas Broker for the State of Ohio. Pursuant to Rule 4901-1-24(D), Legend submits via mail three unredacted copies of Exhibits C3 and C5 that have been marked as “Confidential – Trade Secrets” and are to be filed under seal.

A memorandum in support of this Motion is filed herewith.

Date: June 16, 2014

Respectfully submitted,

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**LEGEND ENERGY ADVISORS LLC’S MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

I. Introduction

In support of Legend Energy Advisors LLC’s (“Legend”) Application for Certification as a Competitive Retail Natural Gas Broker for the State of Ohio (the “Application”), Legend submits under seal Exhibit C3: Financial Statements and Exhibit C5: Forecasted Financial Statements.

Exhibit C3 and Exhibit C5 contain competitively sensitive and highly proprietary business information that is not generally known or available to the public. Legend requests that the Commission enter an order protecting Exhibits C3 and C5 from public disclosure.

II. Argument

Exhibits C3 and C5 to the Application should be kept confidential because the information contained within those exhibits satisfies the requirements of Rule 4901-1-24(D) and constitutes trade secrets under Ohio law.

Rule 4901-1-24(D) provides that the Commission may issue any order necessary to protect the confidentiality of the information contained in an application when disclosure of the information is prohibited by state or federal law, and where nondisclosure is not inconsistent with the purposes of Title 49 of the Ohio Revised Code. Rule 4901-1-24(D) specifically notes

that trade secrets under Ohio law are a type of confidential information intended to be protected by the Rule.

Similarly, Section 4905.07 of the Revised Code, which provides that facts and information in the possession of the Commission shall be made public, includes an exception for “[r]ecords the release of which is prohibited by state or federal law.” R.C. 4905.07; R.C.

149.43(v). The Ohio Supreme Court has confirmed that trade secrets fall within this exception.

State ex rel. Besser v. Ohio State, 89 Ohio St. 3d 396, 399 (2000) (“Trade secrets are exempt from disclosure under the ‘state or federal law’ exemption of R.C. 149.43.”).

Section 1333.61(D) of the Revised Code defines “trade secret” as:

[I]nformation, 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). The Ohio Supreme Court has also identified six factors to consider when determining if information constitutes 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).

The financial statement and forecasted financial statement contained within Exhibits C3 and C5 to the Application are competitively sensitive and highly proprietary business and financial information, which derive independent economic value, actual or potential, from not being generally known to Legend's competitors and from not being reasonably ascertainable by its competitors, who could obtain economic value from its disclosure or use. Disclosure of this sensitive financial information would provide Legend's competitors with valuable insight into Legend's business activities. This information is treated as proprietary and confidential in Legend's ordinary course of business. Accordingly, after applying the *Plain Dealer* analysis and the definition of "trade secrets" contained in Section 1333.61(D), it is clear that the information contained within Exhibits C3 and C5 to the Application constitutes trade secrets.

III. Conclusion

Because Exhibits C3 and C5 meet the requirements of Rule 4901-1-24(D) and contain "trade secrets" as defined under Ohio law, Legend requests that Exhibits C3 and C5 now filed under seal be treated as confidential by the Commission.

Respectfully submitted,

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Summary: Motion for Protective Order and Memorandum in Support electronically filed by Mrs. Gretchen L Lange on behalf of Legend Energy Advisors LLC