

5

In the Matter of the Application of)
HighPower Energy, LLC for Initial)
Certification to Provide Competitive Retail)
Natural Gas Service in Ohio)

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
Technician RE Date Processed NOV 10 2014

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

HighPower requests that certain information described below be considered as confidential and be protected from public disclosure. Rule 4901-1-24(D), O.A.C., provides that confidential information will be eligible for a protective order. Specifically, the rule provides that the Commission or certain designated members of its Legal Department may issue an order that is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent state or federal law prohibits the release of the information (including information deemed to constitute "trade secrets" under Ohio law) and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. The information described below represents confidential business information, qualifies as trade secrets under Ohio law, and is to be protected from public disclosure.

The confidential information consists of HighPower's financial statements (Exhibit C-3), financial arrangements (Exhibit C-4), and forecasted financial statements (Exhibit C-5). HighPower asserts that information concerning its financial position and arrangements is highly confidential and is not generally known or available to the general public. Forecasted financial statements are also proprietary because they offer a "snapshot" to potential competitors of HighPower's expected market plans.

The financial information sought to be protected is competitively sensitive and highly proprietary, and clearly falls within the statutory definition of "trade secrets":

"Trade secret" means information including the whole of any portion or phrase 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), Ohio Revised Code]

In *State ex rel The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 (1997), the Ohio Supreme Court identified six factors to be used in determining whether a trade secret claim meets the foregoing statutory definition:

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 affected and the value to the holder in having the information as against competitors;
5. The amount of effort or money expended in obtaining or developing the information; and
6. The amount of time and expense it would take for others to acquire and duplicate the information.

Exhibit C-3, C-4, and C-5 contain sensitive information known exclusively to the management of HighPower and only provided to employees on a "need-to-know" basis. The information, obtained and developed through a considerable investment in time and expense, is not known outside of HighPower. Disclosure could jeopardize HighPower's business position in negotiating with third-parties and potentially comprise HighPower's ability to compete. Clearly, the

information represents a "trade secret" under Ohio law. Conversely, non-disclosure of the information will not impair the purposes of Title 49 since the Commission and its Staff will have full access to the requested information to compete their review process.

In Case No. 12-925-GA-ORD, *Review of Rules for Competitive Retail Natural Gas Service*, Finding and Order entered December 18, 2013, the Commission has adopted Rule 4901:1-27-08, O.A.C. , a new procedural rule applicable to initial and renewal CRNGS certification applications. Under this new rule, if the applicant elects to file required financial statements (Exhibit C-3), financial arrangements (Exhibit C-4), and forecasted financial statements (Exhibit C-5) under seal, those exhibits will automatically be afforded protective treatment for a period of six (6) years from the date of the certificate issuance. Obviously, this new rule recognizes that motions for protective order are routinely filed and approved for these exhibits in initial and renewal certification applications. By Entry entered October 15, 2014, the Commission has advised that the new rule will be effective December 1, 2014. That Entry also implements a new process applicable to pending motions for protective order and existing protective orders providing, in effect, that the period of protective treatment will coincide with the six years afforded to filings after December 1, 2014. If its motion is approved, HighPower assumes that this new process will apply so that its financial information will be afforded protective treatment for a period of six years from the year of its certificate.

HighPower respectfully requests that the financial information contained in Exhibits C-3, C-4, and C-5 to its Initial Certification Application be deemed to include "trade secrets" as defined under Ohio law and Commission Rule and, thus, continue to be treated as confidential by the Commission and its Staff. For the foregoing reasons, HighPower requests that the designated

information be protected from public disclosure by granting the requested Motion for Protective Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Turano", with a long, sweeping horizontal line extending to the right.

David A. Turano (0025819)
BEERY & SPURLOCK CO., L.P.A.
275 East State Street
Columbus, Ohio 43215
(614) 228-8575
(614) 228-1408
Email: dturano@midohiolaw.com
Attorney for HighPower Energy, LLC