

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Linde Energy Services Inc.)
Annual Alternative Energy Portfolio Status) Case No. 14-473-EL-ACP
Report and Plan for Compliance with)
Future Annual Advanced and Renewable)
Energy Benchmarks)

**MOTION OF LINDE ENERGY SERVICES INC. TO EXTEND
PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT**

Frank P. Darr (Reg. No. 0025469)
Counsel of Record
Matthew R. Pritchard (Reg. No. 0088070)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
(willing to accept service by e-mail)
mpritchard@mwncmh.com
(willing to accept service by e-mail)

December 20, 2016

Attorneys for Linde Energy Services Inc.

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**MOTION OF LINDE ENERGY SERVICES INC.
TO EXTEND PROTECTIVE ORDER**

Pursuant to Rule 4901-1-24, Ohio Administrative Code ("O.A.C."), Linde Energy Services Inc. ("LESI") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue an order extending the Protective Order issued by the Commission on February 19, 2015. An extension of the Protective Order is necessary to protect the confidentiality and prohibit the disclosure of the confidential information contained in LESI's Annual Alternative Energy Portfolio Status Report and Plan for Compliance with Future Annual Advanced and Renewable Energy Benchmarks filed in this proceeding. The confidential information is not subject to disclosure and includes competitively sensitive and highly proprietary business information comprising trade secrets. The grounds for this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Matthew R. Pritchard

Frank P. Darr (Reg. No. 0025469)

Counsel of Record

Matthew R. Pritchard (Reg. No. 0088070)

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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

On March 27, 2014, LESI filed its Annual Alternative Energy Status Report and Plan for Compliance with Future Annual Advanced and Renewable Energy Benchmarks (“Annual Report”). As part of that annual report, LESI filed certain information under seal and sought protective treatment of that information through a Motion for Protective Order. In its February 19, 2015 Finding and Order, the Commission granted protective treatment of LESI’s confidential information contained in Table 3 of LESI’s Annual Report.¹ In that decision, the Commission held that the protective order would extend for a period of 24 months, and if LESI wished to extend the protective order it should file a motion to extend the protective order at least 45 days prior to its expiration.² Through this motion, LESI seeks to extend the protective order for another 24 months.

¹ Finding and Order at 4-5.

² *Id.* at 5.

II. ARGUMENT

The information in Table 3 of the Annual Report contains the load that LESI projects it will serve over the following 10 years and the renewable energy requirement based on this projection. This information is competitively sensitive and highly proprietary business information that constitutes trade secrets under Ohio law and the Commission's rules. State law recognizes the need to protect information that is confidential in nature. Accordingly, the General Assembly granted the Commission statutory authority to exempt certain documents from disclosure.³ Pursuant to this statutory grant of authority, the Commission promulgated Rule 4901-1-24, O.A.C. Rule 4901-1-24(D), O.A.C., provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal law prohibit the release of such information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.⁴ A trade secret is defined by R.C. 1333.61(D) 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.

³ See R.C. 4901.12 and 4905.07.

⁴ R.C. 149.43(A)(1)(v); *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St.3d 513, 530 (1997).

- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(emphasis added).

The LESI-related information contained in Table 3 is competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.⁵ Public disclosure of LESI's forecasted information in Table 3 would jeopardize LESI's business position and its ability to compete. The forecasted information in Table 3 derives independent economic value from not being generally known and not being readily ascertainable by proper means by LESI's competitors. Further, the efforts to protect the confidential pricing information are reasonable under the circumstances. Finally, the Commission has already determined in this proceeding that this information is confidential and protected from disclosure.⁶

The non-disclosure of the actual usage and pricing information will not impair the purposes of Title 49 of the Revised Code, as the Commission and its Staff will have full access to the confidential information in order to complete its review process. Because LESI's information constitutes a trade secret, it should be accorded protected status.

III. CONCLUSION

LESI respectfully requests that the Commission grant this motion and extend the protective order for 24 months for the reasons set forth herein.

⁵ R.C. 1333.61(D).

⁶ Finding and Order at 4-5.

Respectfully submitted,

/s/ Matthew R. Pritchard

Frank P. Darr (Reg. No. 0025469)

Counsel of Record

Matthew R. Pritchard (Reg. No. 0088070)

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mpritchard@mwncmh.com

Attorneys for Linde Energy Services Inc.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion of Linde Energy Services Inc. to Extend Protective Order and Memorandum in Support* was sent by, or on behalf of, the undersigned counsel for Linde to the following parties of record this 20th day of December 2016, *via* electronic transmission.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

William L. Wright
Chief, Public Utilities Section
Office of Attorney General
30 East Broad Street, 16th Floor
Columbus, OH 43215
william.wright@ohioattorneygeneral.gov

**COUNSEL FOR THE STAFF OF THE PUBLIC
UTILITIES COMMISSION OF OHIO**

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Summary: Motion to Extend Protective Order of Linde Energy Services Inc. electronically filed by Mr. Matthew R. Pritchard on behalf of Linde Energy Services Inc.