

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Dynegy)
Energy Services (East), LLC for Renewal of) Case No. 04-1323-EL-CRS
its Certification as a Retail Generation)
Provider and Aggregator.)
)

**DYNEGY ENERGY SERVICES (EAST), LLC’S
MOTION FOR PROTECTIVE ORDER**

Dynegy Energy Services (East), LLC (“Dynegy”), by and through its attorneys, and pursuant to Rule 4901:1-24-08 of the Ohio Administrative Code, moves for a protective order to keep confidential Exhibit C-5 to Dynegy’s Renewal Application for Retail Generation Providers and Aggregators because it contains confidential and/or proprietary information. Pursuant to Rule 4901-1-24(D), Dynegy submits via mail two unredacted copies of Exhibit C-5 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.

February 16, 2017

Respectfully submitted,

/s/ Kendall C. Kash

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**DYNEGY ENERGY SERVICES (EAST), LLC’S
MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

Dynegy Energy Services (East), LLC (“Dynegy”) is a provider of competitive retail electric services, certified by the Commission in the above-referenced proceeding under Certificate No. 04-124(E)(6).

Dynegy is filing with the Commission an application for renewal of its certification. Exhibit C-5 of the application contains competitively sensitive and highly proprietary business information that is not generally known or available to the public. Exhibit C-5 to the application should be kept confidential because it satisfies the requirements of Rule 4901-1-24(D) of the Ohio Administrative Code 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 (Ohio 1997).

The forecasted financial statements submitted in Exhibit C-5 to the application contain competitively sensitive, confidential and highly proprietary business and financial information, and derive independent economic value, actual or potential, from not being generally known to its 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 Dynegy's competitors with valuable insight into Dynegy's business activities. This information is treated as proprietary and confidential in the ordinary course of business of Dynegy. 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 C-5 to the application constitutes trade secrets. Further, because the information submitted under seal will be available to the Commission Staff, Staff's review may take place without the necessity of public disclosures of the confidential information.

Because Exhibit C-5 meets the requirements of Rule 4901-1-21(D) and contains "trade secrets" as defined under Ohio law, Dynegy requests that Exhibit C-5 to the application be treated as confidential by the Commission.

February 16, 2017

Respectfully submitted,

/s/ Kendall C. Kash

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Summary: Motion for Protective Order electronically filed by Kendall C Kash on behalf of
Dynergy Energy Services (East), LLC