

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Annual Alternative Energy
Portfolio Status Report of Nordic Energy
Services, LLC.

In the Matter of the Report of Nordic Energy
Services, LLC, Concerning its Plan for
Compliance with Advanced and Renewable Energy.)

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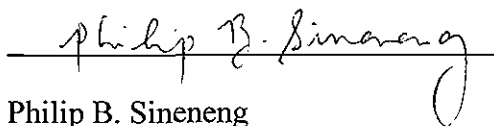
Case No. 17-0973 -EL-ACP

MOTION OF NORDIC ENERGY SERVICES, LLC FOR PROTECTIVE ORDER

Now comes Nordic Energy Services, LLC ("Nordic"), by its attorneys, Thompson Hine LLP, through Philip B. Sineneng, pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, and moves for a protective order keeping its Ten Year Forecast provided in the above-referenced reports confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. A redacted copy of this confidential information has been filed concurrently in the public docket. An unredacted copy of the information is submitted under seal.

Respectfully submitted,

NORDIC ENERGY SERVICES, LLC



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In the Matter of Annual Alternative Energy)
Portfolio Status Report of Nordic Energy)
Services, LLC.)

Case No. 17-_____-EL-ACP

In the Matter of the Report of Nordic Energy)
Services, LLC, Concerning its Plan for)
Compliance with Advanced and Renewable Energy.)

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

Now comes Nordic Energy Services, LLC (“Nordic”), by its attorneys, Thompson Hine LLP, through Philip B. Sineneng, and requests that its Ten Year Forecast provided in the above-referenced reports, designated as confidential and/or proprietary in the accompanying filing, be protected from public disclosure.

Nordic’s Ten Year Forecast is, in Nordic’s opinion, highly sensitive, confidential, trade secret, and proprietary information. It is appropriate to protect such information from disclosure. Knowledge of projected sales and projected RECs can be used to determine Nordic’s business plan, projections and future marketing strategies. Nordic does not disclose this information to any person or entity in the public domain.

Section 4901-1-24(D) of the Commission’s rules provides that the Commission or certain designated individuals may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission’s Docketing Division “to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.” As set forth herein, state law prohibits the release of the information which is the subject of this motion. Moreover, the non-disclosure of the information will not impair the purposes of Title 49. The

Ohio Supreme Court has clarified that the “state or federal law” exemption of Section 4901-1-24(D) is intended to cover trade secrets. State ex rel. Besser v. Ohio State, 89 Ohio St.3d 396, 399 (2000). The Commission and its staff have full access to the information provided by Nordic necessary to monitor Nordic’s compliance with applicable rules; thus no purposes of Title 49 would be served by the public disclosure of the information.

Ohio law defines a trade secret as “information . . . 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” and “(2) [i]t is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Ohio Revised Code, Section 1333.61(D). The Ohio Supreme Court has adopted the following six factors to be used in analyzing a claim that information is a trade secret under that section: (1) the extent the information is known outside the business; (2) the extent the information is known to those inside the business (i.e., by employees); (3) the precautions taken by the holder of the trade secrets to guard their secrecy; (4) the savings effected and value to the holder of the trade secrets in having the information protected 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 information provided here is considered a trade secret by Nordic. The information is generally not shared outside of the company, except with the Ohio Public Utilities Commission; and internally, only Nordic’s managerial and executive staff and employees are aware of the information. Nordic takes great precaution to protect its trade secrets, the trade secrets are of great value to Nordic, and sharing

them would affect Nordic's competitiveness in the market. The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preferences for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.13, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)).

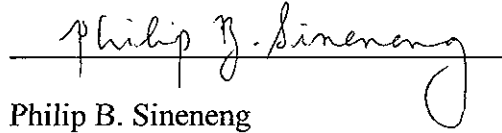
The information is privileged and confidential commercial information, the disclosure of which to competitors or potential competitors would cause competitive harm to Nordic. Included in the information is projected sales data that could be used to derive confidential trade information and market sensitive information regarding Nordic's intended provision of services to customers in Ohio. This information is not publicly available, and it is not information Nordic would willingly share with its competitors. No public interest would be served by the disclosure of the confidential information submitted by Nordic.

Nordic's Ten Year Forecast should be protected from disclosure. That information is precisely the type of information which companies go to great length to keep private. Knowledge by a competitor would do great harm to Nordic in the marketplace.

For the foregoing reasons, Nordic requests that the designated information be protected from public disclosure and kept under seal.

Respectfully submitted,

NORDIC ENERGY SERVICES, LLC

A handwritten signature in cursive script, reading "Philip B. Sineneng", is written over a horizontal line. The signature is fluid and extends slightly to the right of the line.

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