

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of EDF)	
ENERGY SERVICES, LLC for Certification)	Case No. 18-1536-GA-CRS
as a Competitive Retail Natural Gas Service)	
Supplier)	
)	

**EDF ENERGY SERVICES, LLC'S
MOTION FOR PROTECTIVE ORDER**

EDF Energy Services, LLC (“EDF”), 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 Exhibits A-16, B-2, B-4, C-3, C-4, and C-5 (collectively, the “Proprietary and Confidential Exhibits”) because they contain confidential, commercially sensitive, and/or proprietary information. Accordingly, as set forth in the attached Memorandum in Support, EDF seeks a protective order preventing public disclosure of the Proprietary and Confidential Exhibits, and requests that the Commission maintain the Proprietary and Confidential Exhibits under seal.

October 12, 2018

Respectfully submitted,

/s/ Kendall C. Kash

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**EDF ENERGY SERVICES, LLC’S
MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

I. Introduction

EDF Energy Services, LLC (“EDF”) has filed a public application for certification as a Competitive Retail Natural Gas Supplier to supply natural gas to the public in Ohio. As part of its application, EDF filed with the Commission, under seal: (i) Exhibit A-16; (ii) Exhibit B-2; (iii) Exhibit B-4; (iv) Exhibit C-3; (v) Exhibit C-4; and (vi) Exhibit C-5 (collectively, the “Proprietary and Confidential Exhibits”). EDF respectfully requests that the Commission enter an order protecting the Proprietary and Confidential Exhibits from public disclosure.

II. Argument

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, and the Commission and Ohio law have long protected trade-secret information.

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).

Furthermore, the Commission’s instructions to the Competitive Retail Natural Gas Supplier Certification Application specifically provide that “[a]n applicant may file financial statements, financial arrangements, and forecasted financial statements under seal,” echoing the language in O.A.C. 4901:1-27-08. Plus, the Commission explains an applicant may request protective

treatment for other information included in an application. *See id.*; Initial Certification Filing Instructions Competitive Retail Natural Gas Suppliers VI.

The Proprietary and Confidential Exhibits include nonpublic and proprietary information about: (i) EDF's formation and operation (Exhibit A-16); (ii) EDF's sample contracts and invoices to be used with Ohio customers (Exhibit B-2); (iii) interactions and communications with regulatory agencies, some of which are ongoing (Exhibit B-4); (iv) EDF's finances (Exhibits C-3 and C-5); and (v) EDF's credit rating, which is protected by copyright and other law (Exhibit C-4). The Commission should protect the Proprietary and Confidential Exhibits because each contains competitively sensitive, confidential and highly proprietary business and financial information. In that regard, the Proprietary and Confidential Exhibits derive independent economic value, actual or potential, from not being generally known to EDF's competitors and from not being reasonably ascertainable by its competitors, who could obtain economic value from their disclosure or use. Disclosure of this sensitive information would provide EDF's competitors with valuable insight into EDF's business activities. Further, this information is treated as proprietary and confidential in the ordinary course of EDF's 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 the Proprietary and Confidential Exhibits to the Application constitutes trade secrets, the value of which can only be protected if guarded from public disclosure and maintained under seal.

III. Conclusion

For the foregoing reasons, EDF requests that the Proprietary and Confidential Exhibits be placed under a protective order to prevent them from being disclosed publicly and that the Commission maintain them under seal.

October 12, 2018

Respectfully submitted,

/s/ Kendall C. Kash

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Summary: Motion for Protective Order electronically filed by Kendall C Kash on behalf of EDF
ENERGY SERVICES, LLC