

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of
WGL Energy Services, Inc.
For Retail Electric Generation Provider
Certification

Case No. 18-1798-EL-C/22

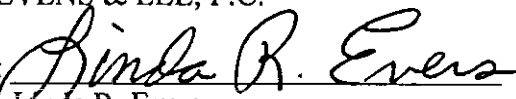
MOTION FOR A PROTECTIVE ORDER
SUBMITTED ON BEHALF OF WGL ENERGY SERVICES, INC.

WGL Energy Services, Inc. ("WGLES") hereby moves for a Protective Order pursuant to O.A.C. Rule 4901-1-24 to maintain the confidentiality of two Exhibits that accompany its Competitive Retail Electric Generation Providers Certification Application, such that the two Exhibits are not made a part of the un-redacted public record. The two Exhibits in question contain confidential financial and operational information about WGLES as described in the attached memorandum in support. WGLES respectfully requests that a Protective Order be issued to guard the confidentiality of confidential information contained therein because such information is competitively sensitive and would cause WGLES competitive harm if publicly disclosed.

Respectfully Submitted,

STEVENS & LEE, P.C.

By:


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WGL Energy Services, Inc.	:	Case No. _____
For Retail Electric Generation Provider	:	
Certification	:	

MEMORANDUM IN SUPPORT

Contemporaneously herewith, WGL Energy Services, Inc. ("WGLES") is filing an Application for a Competitive Retail Electric Service Certification ("Application") with the Public Utilities Commission of Ohio ("Commission"). The Application included a total of five Exhibits that were marked as "Confidential" and for which confidential treatment is sought pursuant to O.A.C. Rule 4901-1-24. The five Exhibits in question are:

- B-3: Experience and Plans (Confidential portions redacted)
- C-3: Financial Statements (Entire document Confidential)
- C-4: Financial Arrangements (Entire document Confidential)
- C-5: Forecasted Financials (Entire document Confidential); and
- C-10: Corporate Structure (Entire document Confidential)

Exhibits C-3, C-4, and C-5 are automatically deemed to be Confidential by the Commission, according to the CRES Application Instructions. WGLES respectfully requests that the Commission issue a Protective Order directing that the Confidential portion of Exhibit B-3 and the entire Exhibit C-10 also be afforded full confidential treatment under the law and the Commission's regulations.

Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under

state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399, 732 N.E. 2d 373 (2000). Similarly, Rule 4901-1-24, O.A.C., allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “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.”

Ohio law defines a trade secret as “information . . . that satisfies both of the following: (a) 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 (b) it is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Section 1333.61(D), Revised Code. The Ohio Supreme Court has established a six-factor test for determining whether information is a trade secret under the statute.¹ Those six factors are: (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.

¹ See *State ex-rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

By applying these six factors to the two Exhibits for which WGLES seeks protective treatment, it is clear that a protective order should be granted. The relevant portion of Exhibit B-3 contain detailed information regarding WGLES' operations in multiple states, and specifically, current customer base and load served in multiple utility areas. The Commission routinely issues protective order to prevent the disclosure of confidential financial and operations information contained in Competitive Retail Electric Supplier Applications.² Exhibit C-10 contains charts showing WGLES's internal corporate structure, which is not a matter of public record and which WGLES consistently seeks to preserve as externally confidential for a variety of business, operational and information security reasons.

Full versions of Exhibits B-3 and C-10 are being provided under seal, and redacted versions are being provided for the public record. While WGLES welcomes the staff's review of this confidential information and believes it is helpful in demonstrating WGLES successful operations in other states, the redacted information could cause harm to WGLES if released to competitors. The material in question constitutes a trade secret under Ohio law, and nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

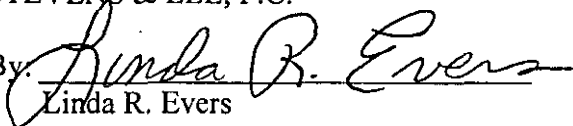
This request for a Protective Order is reasonable, necessary and will not prejudice any other party or individual. WGLES respectfully requests that a Protective Order be issued in this case to guard against the disclosure of this confidential and competitively sensitive information. WGLES also requests that its responses to any subsequent requests for additional information or clarification which Staff might make with regard to this same

² See, e.g. *In the Matter of the Application of Alpha Gas and Electric, LLC for Certification as a Competitive Retail Power Marketer*, Case No. 13-1205-EL-CRS (Order entered July 17, 2013)

request also be permitted to be filed under seal, pursuant to the same Protective Order requested herein.

Respectfully Submitted,

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