

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

RE: AGERA ENERGY LLC.)
)
Renewal Application for Certification)
as a Competitive Retail Natural Gas Supplier.)
)
)
)

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GA-CRS
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Docket No. 15-0116

MOTION FOR PROTECTIVE ORDER

Agera Energy LLC. (hereinafter, "Applicant") respectfully moves the Commission for a protective order granting confidential treatment to certain materials submitted in the above-captioned proceeding, pursuant to Rule 4901:1-1-24 of the Ohio Administrative Code. In support of said motion, Applicant states as follows:

1. As part of its Application for certification as a Competitive Retail Natural Gas Supplier, Applicant has submitted to the Commission the consolidated financial statements of its related entities as well as certain other financial arrangements necessary for the operation of Agera Energy LLC.

2. These financial statements should be protected as confidential commercial information. Applicant is a privately held Limited Liability Company, and does not disclose this information to anyone outside of their corporate affiliates and representatives.

3. By this Motion, Applicant is seeking confidential treatment of this information, which is called for in the Application as Exhibit C-3, C-5, and Exhibit C-7, respectively.

4. Release of the information that Applicant seeks to protect is likely to result in a competitive disadvantage for Applicant. Competitors possessing the confidential information described above would be aware of the intimate details of both Applicant's finances and its strategic allocation of resources for Ohio's energy Customer Choice market.

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5. The Commission has the authority to treat the information described above as confidential, pursuant to Rule 4901:1-1-24 of the Ohio Administrative Code.

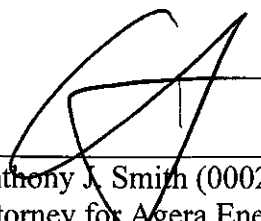
6. Applicant requests that the Commission issue an Order protecting from public disclosure the confidential commercial information described above. Copying, duplication, dissemination or disclosure in any form should be prohibited and the protected materials should be returned at the conclusion of the proceeding or destroyed on terms acceptable to Applicant.

WHEREFORE, Agera Energy LLC. respectfully requests that the Commission:

- A. Issue an order treating as confidential the exhibits submitted under seal; and
- B. Grant such other and further relief as may be just and equitable.

Date: December 11, 2018

Respectfully Submitted,

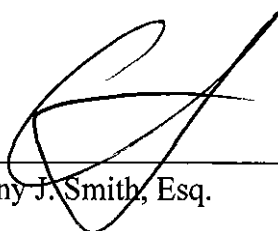


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VERIFICATION

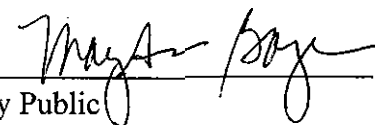
STATE OF OHIO)
COUNTY OF CUYAHOGA) ss:

Anthony J. Smith, being first duly sworn, deposes and says that he represents Applicant Agera Energy LLC. in this matter; that he has read the foregoing Motion for Protective Order (“Motion”); and that the statements contained in the Motion are true, correct and complete to the best of his knowledge, information and belief.



Anthony J. Smith, Esq.

Subscribed and sworn to before me
this 11th day of December, 2018.



Notary Public

[Stamp of Notary]

MARYANN BOYER
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires May 26, 2019

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RE: AGERA ENERGY LLC.)	
)	Docket No.15-0116-GA-CRS
Application for Certification)	
as a Competitive Retail Natural Gas Supplier.)	
_____)	

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

Agera Energy LLC. requests that the information designated be kept as confidential (along with any and all copies, including electronic copies) be protected from public disclosure. The information is set forth in Exhibits C-3, C-5 and to C-7 to the Application of Agera Energy LLC. as submitted. The exhibit contains confidential information regarding Agera Energy LLC. Release of such information would harm Agera Energy LLC. in the competitive energy supply market if it were made available to Agera Energy LLC's competitors.

Section 4901-1-24(D) of the Commission's rules provides that the Commission or its staff may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division in cases where: (1) Ohio or federal law prohibits release of the information, and (2) non-disclosure of the information is consistent with the purposes of Title 49 of the Revised Code. As set forth herein, Ohio law prohibits the release of the Information. Moreover, non-disclosure of the Information will not impair the purposes of Title 49.

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

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

R. C. § 1333.61(D). The above definition clearly demonstrates the state policy favoring the protection of trade secrets such as the Information which is the subject of the instant Motion.

The Ohio Supreme Court has held that the Commission has a duty under Section 4901-1-24(D)(1), to redact confidential information when reasonable without rendering the remaining document incomprehensible or of little meaning. *Ohio Consumers' Counsel v. Public Util. Comm'n*, 121 Ohio St.3d 362, 370, 904 N.E.2d 853 (2009) (Commission's redaction and sealing of certain records held reasonable and appropriate). Furthermore, not only does the Commission have the authority to protect the trade secrets of a public utility, the Uniform Trade Secrets Act creates a **duty** to protect the trade secrets. *Id.*

In 1996, the Ohio General Assembly amended R. C. 4901.12 and 4905.07 in order to facilitate the Commission's protection of trade secrets. The General Assembly carved out an exception to the general rule which previously favored public disclosure of information by the Commission. The Commission-specific statutes now incorporate the provision that excepts from the definition of "public record" those records whose release is prohibited by Ohio or federal law. See R. C. 149.43(A)(1). In turn, Ohio law prohibits the release of information that is deemed a trade secret. R. C. 1333.61(D)-1333.62. The amended statutes also reference the purposes of Title 49 of the Revised Code.

In *Pyromatics, Inc. v. Petruziello*, the court of appeals identified the following factors to be considered in recognizing a trade secret: (1) the extent to which the information is known outside the business, (2) the extent to which it is known inside the business, i.e., by 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 or developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information. 7 Ohio App. 3d 131, 134-35 (Cuyahoga App. 1983). The Ohio Supreme Court has adopted these factors as appropriate. *State ex rel. Perrea v. Cincinnati Pub. Sch.*, 123 Ohio St.3d 410, 414, 901 N.E.2d 820 (2009).

The Information that is the subject of this Motion provides specific data about the financial workings of Agera Energy LLC. Agera Energy LLC. has treated this Information as proprietary, confidential business information. Agera Energy LLC. considers and has treated the Information as a trade secret. As a privately held company, Agera Energy LLC. treats its financial information, market revenue projections and projected renewable energy procurement benchmarks as confidential, and carefully protects such information from disclosure to the public, particularly to competitors in the energy supply market. Agera Energy LLC. has taken significant efforts to prevent the disclosure of the Information to others: the company requires all employees nationwide to execute a written confidentiality agreement at the outset of their employment as a condition of employment. Indeed, the Information is only made available internally to a select few employees. The Information is not contained in any materials that are made available to the general public or to other government agencies.

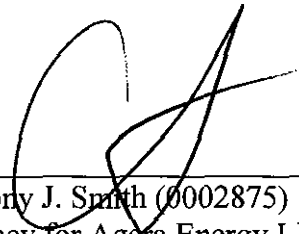
Release of Agera Energy LLC's Information is likely to result in a competitive disadvantage for Agera Energy LLC. Competitors possessing the Information would gain an understanding of and an ability to exploit Agera Energy LLC's financial status.

The necessity of protecting this Information from disclosure is crucial given Agera Energy LLC's status as a competitive retail energy supplier. As the Ohio Supreme Court has noted, the Commission has a duty to encourage competitive providers of energy. *Ohio*

Consumers' Council, 121 Ohio St.3d at 370. The Court explained that in the competitive and relatively new market in which energy providers operate, “[e]xposing a competitor’s business strategies ... would likely have a negative impact on that provider’s viability.” *Id.*

Finally, no purpose of Title 49 would be served by public disclosure of the information. The Commission and its staff will have full access to the information filed under seal in order to fulfill their statutory obligations.

Respectfully Submitted,



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