

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Viridian)
Energy PA, LLC for Renewal of its) Case No. 13-1836-EL-CRS
Certification as a Retail Power Marketer)

VIRIDIAN ENERGY PA, LLC’S MOTION FOR PROTECTIVE ORDER

Viridian Energy PA, LLC (“VEPA”), 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 C-4 and C-5 to VEPA’s Renewal Application as a Retail Power Marketer because they contain confidential, commercially sensitive, and/or proprietary information. Accordingly, as set forth in the attached Memorandum in Support, VEPA seeks a protective order preventing public disclosure of Exhibits C-4 and C-5, and requests that the Commission maintain Exhibits C-4 and C-5 under seal.

Dated: September 23, 2019

Respectfully submitted,

/s/ David F. Proaño

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**VIRIDIAN ENERGY PA, LLC’S
MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

Viridian Energy PA, LLC (“VEPA”) is a provider of competitive retail electric services, certified by the Commission in the above-referenced proceeding under Certificate No. 13-742E (3).

VEPA is filing with the Commission an application for renewal of its certification. As part of its application, VEPA filed with the Commission, under seal, Exhibits C-4 and C-5. Exhibit C-4 provides a copy of VEPA’s current financial arrangements. Exhibit C-5 are VEPA’s financial projections that contain nonpublic and proprietary information about VEPA’s finances. Exhibits C-4 and C-5 of the application contain competitively sensitive and highly proprietary business information that is not generally known or available to the public. VEPA respectfully requests that the Commission enter an order protecting Exhibits C-4 and C-5 from public disclosure.

Rule 4901-1-24(D) of the Ohio Administrative Code 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).

Furthermore, the Commission’s instructions to the Renewal Application for Power Marketers

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. 4901:1-24-08.

Exhibits C-4 and C-5 to the application should be kept confidential because they satisfy the requirements of Rule 4901-1-24(D) of the Ohio Administrative Code. Exhibits C-4 and C-5 are confidential financial arrangements and projections that contains confidential information on VEPA’s finances. Exhibits C-4 and C-5 of the application contain competitively sensitive and highly proprietary business information that is not generally known or available to the public. The competitively sensitive, confidential and highly proprietary business and financial information in Exhibits C-4 and C-5 derives independent economic value, actual or potential, from not being generally known or reasonably ascertainable to VEPA’s competitors, who could obtain economic value from its disclosure or use.

Disclosure of the sensitive information in Exhibits C-4 and C-5 would provide VEPA’s competitors with valuable insight into VEPA’s business activities. This information is treated as proprietary and confidential in the ordinary course of VEPA’s business. Accordingly, after applying the *Plain Dealer* analysis, it is clear that the information contained within Exhibits C-4 and C-5 should be protected from public disclosure. 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 disclosure of the confidential information.

For the foregoing reasons, VEPA requests that Exhibits C-4 and C-5 be placed under a protective order to prevent them from being disclosed publicly and that the Commission maintain them under seal.

Dated: September 23, 2019

Respectfully submitted,

/s/ David F. Proaño

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Summary: Motion for Protective Order electronically filed by Mr. David F. Proano on behalf of Viridian Energy PA, LLC