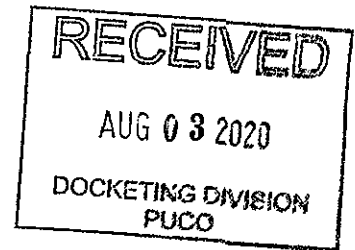


FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO



In the Matter of the Application of )  
Infinite Energy, Inc. for a Certificate to ) Case No. 18-1260-GA-CRS  
Provide Competitive Retail Natural Gas )  
Service in Ohio )

---

MOTION FOR PROTECTIVE ORDER

---

Now comes Infinite Energy, Inc. seeking certification to continue providing competitive retail natural gas service and pursuant to Ohio Administrative Code 4901-1-24(D), respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a protective order to protect the confidentiality of and prohibit the disclosure of certain information applicable to Exhibit C-7 of its application for certification.<sup>1</sup> The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of Rule 4901-1-24(D), two (2) unredacted copies of the exhibit have been clearly marked as confidential and are hereby filed under seal.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard F. Paez".

---

Richard F. Paez  
Manager, Regulatory Affairs | Infinite Energy, Inc.  
(352) 225-7558 | RFPaez@InfiniteEnergy.com

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician TK Date Processed AUG 03 2020

---

<sup>1</sup> O.A.C. § 4901-1-24(D) provides: "Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure."

## MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

---

Infinite Energy requests that the information designated as confidential – Exhibit C-7 – of its Application for Certification to provide competitive retail natural gas services be protected from public disclosure. The information for which protection is sought covers information related to mergers, dissolution, or acquisitions. Such information if released to the public would harm Infinite Energy. Specifically, under rule 4901-1-24(D) of the Ohio Administrative Code, Infinite Energy requests that:

- (6) Discovery be conducted with no one present except persons designated by the commission, the legal director, the deputy legal director, or the attorney examiner.
- (7) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.
- (8) Information acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees 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 the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code ("R.C"). State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

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 preference for open proceedings, the Commission also recognizes its statutory obligations with regard to trade secrets. R.C. 4929.23(A) specifically permits the Commission to grant confidentiality to competitive information.<sup>2</sup> R.C. § 4901.12 and 4905.07 facilitate the

---

<sup>2</sup> R.C. § 4929.23(A) provides: "A retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall provide the public utilities commission with such information, regarding a competitive retail natural gas service for which it is subject to certification, as the commission

protection of trade secrets in the Commission's possession.<sup>3</sup> R.C. §§ 4901.12 and 4905.07 reference R.C. §149.43, and therefore incorporate the provision that accepts from the public record information and records of which the release is prohibited by law.<sup>4</sup> State law prohibits the release of information meeting the definition of a trade secret.

Trade secrets as defined in R.C. 1333.61(D), which includes "information, including...any business information or plans, financial information, or listing of names" that 1) Derives actual or potential independent economic value 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) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. R.C. 1333.61(D) clearly reflects the state policy favoring the protection of trade secrets which is the subject of this motion.

The Ohio Supreme Court has adopted the following factors in analyzing a trade secret claim:

1. The extent to which the information is known outside the business;
  - a. The details of Infinite Energy's response to C-7 are not known outside the business.
  - b. To the extent that Infinite Energy is required by law to disclose the information, such as in this Ohio Competitive Retail Natural Gas Service (CRNGS) Provider Application, Infinite Energy is making every effort to secure trade secret or confidential status for the information.
2. The extent to which it is known to those inside the business, i.e., by the employees;
  - a. Within the business, the details are known only to executives and select members of management.
3. The precautions taken by the holder of the trade secret to guard the secrecy of the information;
  - a. The employees aware of the details are under strict requirements to guard the secrecy of the information.

---

considers necessary to carry out sections 4929.20 to 4929.24 of the Revised Code. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information."

<sup>3</sup> R.C. § 4901.12 provides: "Except as otherwise provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records."

R.C. § 4905.07 provides: "Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys."

<sup>4</sup> R.C. § 149.43(A)(1)(v) provides in part: "Public record does not mean records the release of which is prohibited by state or federal law."

- b. To the extent that Infinite Energy is required by law to disclose the information, such as in this Ohio Competitive Retail Natural Gas Service (CRNGS) Provider Application, Infinite Energy is making every effort to secure trade secret or confidential status for the information.
  - c. Parties involved in any discussions regarding the type of information covered by C-7 are bound by strict non-disclosure agreements.
- 4. The savings effected and the value to the holder in having the information as against competitors;
  - a. Information regarding the subject matter of C-7 is, prima facie, of high competitive value; early release of the information will negatively impact the business' value.
  - b. State ex rel. Luken v. Corp. for Findlay Market, 135 Ohio St.3d 416, 2013-Ohio-1532, ¶¶ 19-25 (determining that information met the two requirements of Besser because 1) rental terms had independent economic value and 2) corporation made reasonable efforts to maintain secrecy of information);
- 5. The amount of effort or money expended in obtaining and developing the information;
  - a. Any activity contemplated under C-7 would require significant effort and expense, and would be functionally similar to the items discussed in the two cases below:
  - b. Fred Siegel Co., L.P.A. v. Arter & Hadden, 85 Ohio St.3d 171, 181 (1999) (finding that time, effort, or money expended in developing law firm's client list, as well as amount of time and expense it would take for others to acquire and duplicate it, may be among factfinder's considerations in determining if that information qualifies as a trade secret).
  - c. Salemi v. Cleveland Metroparks, 145 Ohio St.3d 408, 2016-Ohio-1192 (holding that, after applying the Besser factors, customer lists and marketing plan of Metroparks' public golf course were trade secrets because: 1) the information was not available to the public or contractual partners, 2) the golf course had taken measures to protect the list from

disclosure and limited employee access, 3) the customer list was of economic value to the golf course, and 4) the golf course expended money and effort in collecting and maintaining the information);

6. The amount of time and expense it would take for others to acquire and duplicate the information.


- a. The information covered by C-7 is not subject to duplication; however, it is highly confidential information that is vigorously protected by Infinite Energy, and as such others would be unable to acquire the information.

By applying these factors to the information for which Infinite Energy seeks to protect in Exhibit C-7, it is clear that a protective order should be granted.

Exhibit C-7 contains confidential information and such sensitive information is generally not disclosed. Its disclosure could give competitors an advantage that would hinder Infinite Energy's ability to compete.

WHEREFORE, for the above reasons Infinite Energy requests the Commission to grant its motion for a protective order and to maintain Exhibit C-7 of its Application for Certification as a Competitive Retail Natural Gas Service Provider under seal.

Respectfully submitted,



---

Richard F. Paez  
Manager, Regulatory Affairs | Infinite Energy, Inc.  
(352) 225-7558 | RFPaez@InfiniteEnergy.com



---

Stacy Benfield, FL Bar No. 84119  
General Counsel | Infinite Energy, Inc.  
(352) 313-4490 | SDBenfield@InfiniteEnergy.com