

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Tenaska) | |
| Power Management, LLC for Certification as a) | |
| Competitive Retail Electric Service Provider) | Case No. 16-1965-EL-CRS |
| Certificate.) | |

**MOTION TO EXTEND PROTECTIVE TREATMENT AND MEMORANDUM IN
SUPPORT OF TENASKA POWER MANAGEMENT, LLC**

Pursuant to Ohio Administrative Code (“O.A.C.”) 4901:1-24-8(D) and O.A.C. 4901-1-24(F), Tenaska Power Management, LLC (“TPM”) hereby moves the Public Utilities Commission of Ohio (the “Commission”) to extend confidential treatment of the following exhibits:

- Exhibits C-3 (financial statements) and C-5 (forecasted financial statements) that were filed under seal on September 29, 2016 with TPM’s 2016 original application for certification as a competitive retail electric service (“CRES”) provider;
- Exhibits C-3 (financial statements), C-5 (forecasted financial statements), and C-7 (credit report) that were filed under seal on September 11 and October 1, 2018 with TPM’s 2018 renewal application; and
- Exhibits C-2 (federal tax returns), C-3 (financial statements), and C-5 (forecasted financial statements) that were filed under seal on September 3, 2020 with TPM’s 2020 renewal application (collectively referred to as (“Confidential Documents”).

TPM respectfully moves the Commission for an order extending protective treatment of confidential, proprietary and trade secret documents referenced above for a period of an additional two years. Extending protective treatment of these documents is consistent with the purposes of Title 49 of the Revised Code. In accordance with O.A.C. 4901:1-24-08(A) the Confidential

Documents were clearly marked as confidential, and filed under seal, separate from the remainder of the materials that comprise TPM's 2016, 2018 and 2020 applications.

The reasons supporting this motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted on behalf of
TENASKA POWER MANAGEMENT, LLC



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Pursuant to 4901:1-24-8(D) and O.A.C. 4901-1-24(F), TPM respectfully moves to extend confidential treatment of the following exhibits for two additional:

- Exhibits C-3 (financial statements) and C-5 (forecasted financial statements) that were filed under seal on September 29, 2016 with TPM’s 2016 original application for certification as a competitive retail electric service (“CRES”) provider;
- Exhibits C-3 (financial statements), C-5 (forecasted financial statements), and C-7 (credit report) that were filed under seal on September 11 and October 1, 2018 with TPM’s 2018 renewal application; and
- Exhibits C-2 (federal tax returns), C-3 (financial statements), and C-5 (forecasted financial statements) that were filed under seal on September 3, 2020 with TPM’s 2020 renewal application (collectively referred to as “Confidential Documents”).

As was the case when TPM initially filed the above referenced Confidential Documents, TPM considers the information to be, and has treated it as, a trade secret. The need to continue protecting this information from disclosure continues today because the information remains

accurate, has not become outdated or stale, and TPM's competitors could unfairly benefit from its public disclosure.

II. LAW & ARGUMENT

The Commission routinely provides protective treatment for information that constitutes a "trade secret". R.C. 1333.61(D) defines a "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.

Expounding upon the definition of "trade secret," the Ohio Supreme Court has delineated factors to be considered when analyzing a trade secret claim:

(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 of others to acquire and duplicate information.

State ex. rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 3d 513, 524-525, 687 N.E.2d 661 (1997). The Commission regularly grants motions for protective orders to protect the confidential trade secret status of exhibits to competitive retail service provider applications.

Furthermore, the protection of trade secrets from public disclosure is consistent with the underlying purpose of R.C. Chapter 4928. More specifically, R.C. 4928.06(F) grants the Commission broad discretionary powers to “take such measures as it considers necessary to protect the confidentiality of any such information [necessary to effect competition],” including the granting of this motion under O.A.C. 4901-1-24(F). Thus, the Commission allows TPM and other CRES providers to protect their confidential business information, while at the same time allowing the Commission and its Staff access to such information.

An extension of protective treatment for the Confidential Documents is appropriate because the information in the Confidential Documents is not generally known by the public and is held in confidence in the normal course of business. The Confidential Documents consist of information that is proprietary and confidential. Public disclosure of this sensitive information would jeopardize TPM’s business position in negotiations with other parties and its ability to compete. By examining the Confidential Documents, competitors could reasonably estimate TPM’s growth rates, market share and margins. Competitors could use the Confidential Documents to make strategic decisions to compete against TPM. Therefore, the Confidential Documents derive independent economic value from not being generally available to the public. Because of the independent value of these documents, public disclosure of this information will cause substantial harm to TPM’s business and competitive interests.

Moreover, by comparing TPM’s financial results from year to year, competitors could potentially determine the areas in which TPM’s business is expanding and contracting. As such, the Confidential Documents continue to have independent value just they did when they were initially filed with the Commission.

Finally, TPM is a privately held company, and therefore, would be especially vulnerable if protective treatment were not granted.¹ Indeed, the Commission has previously found the need for protective treatment to be especially “persuasive for the privately held companies.”² Thus, unlike a publicly held company—with potentially thousands of dispersed and anonymous shareholders—the financial information of TPM has the potential to disclose personal financial data of individuals and not just company data. As a matter of public policy, financial data of individuals should receive heightened protection.

III. CONCLUSION

For the foregoing reasons, TPM respectfully urges the Commission to extend the protective treatment for the Confidential Documents filed as part of TPM’s 2016, 2018 and 2020 applications.

Respectfully submitted on behalf of
TENASKA POWER MANAGEMENT, LLC



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¹ *In the Matter of the Application of Stand Energy Corporation for Certification as a competitive retail natural Gas Supplier*, Entry on Rehearing at 5-6 (Jun. 14, 2017) (providing protective treatment for a ten-year period).

² See *In the Matter of the Applications of the Following Entities for a Certificate to Provide Competitive Retail Natural Gas Service in Ohio: NICOR Energy L.L.C, Vectren Retail LLC, d.b.a. Vectren Source, Shell Energy Services Co. L.L.C, Volunteer Energy Services Inc., ACN Energy Inc., Energy America LLC, FirstEnergy Solutions Corp., AEP Ohio Retail Energy LLC, Energy Cooperative of Ohio, MidAmerican Energy Company, ProLiance Energy LLC, Metromedia Energy Inc., and UGI Energy Services Inc., d.b.a. GASMARK*, Case Nos. 02-1654-GA-CRS, 02-1668-GA-CRS, 02-1680-GA-CRS, 02-1786-GA-CRS, 02-1828-GA-CRS, 02-1829-GA-CRS, 02-1864- GA-CRS, 02-1889-GA-CRS, 02-1891-GA-CRS, 02-1893-GACRS, 02-1909-GA-CRS, 02-1926-GA-CRS, 02- 1968-GA-CRS, Entry at para. 3 (July 14, 2003).

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Summary: Motion to Extend Protective Treatment and Memorandum in Support of
Tenaska Power Management, LLC electronically filed by Teresa Orahod on behalf
of Devin D. Parram