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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Application of Direct)
Energy Services, LLC for a Transfer/Renewal) Case No. 02-1829-GA-CRS
of Certification as a Competitive Retail Natural)
Gas Supplier.)

MOTION FOR PROTECTIVE ORDER AND REQUEST FOR WAIVER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, Direct Energy Services, LLC ("Direct Energy") respectfully requests that the Public Utilities Commission of Ohio ("PUCO") or ("Commission") grant its Motion for a Protective Order with regard to Supplemental Exhibit C-6 offered in support of its Renewal Certification Application for the reasons set forth in the attached Memorandum in Support. In addition, Direct Energy requests that Rule 4901-1-24(F) of the O.A.C. be waived insofar as any granting of this motion for a protective order not be rescinded after 18 months.

WHEREFORE, Direct Energy respectfully requests that the Commission grant its motion for a protective order and waive the provisions of Rule 4901-1-24(F) of the Ohio Administrative Code.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

In addition to the motion for a protective order it filed on July 19, 2004 in this matter, Direct Energy seeks a protective order to protect the confidentiality of and to prohibit the disclosure of Supplemental Exhibit C-6 which contains competitively sensitive and highly proprietary business financial information which comprises a trade secret with respect to the nature of Direct Energy's interaction with its parent corporation. This exhibit has been clearly marked as confidential and is being submitted contemporaneously with this Motion, under seal, separate from the remainder of the materials that comprise the Application for a Transfer/Renewal of Certification.

Section 4929.23, Revised Code states that a retail natural gas supplier, "...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 considers necessary to carry out Section 4929.20 and 4929.24 of the Revised Code. The Commission shall take such measures as it considers necessary to protect the confidentiality of any such information."

(emphasis added). Thus, the General Assembly clearly recognized the importance of balancing the need to provide the Commission with adequate information to review an application for certification with the need to protect the confidential information of market participants. While certification is the gateway to participating in a competitive market, the disclosure of confidential information will bar the path.

Rule 4901-1-24(D) of the Ohio Administrative Code authorizes the Commission to issue an order protecting the confidentiality of information where it constitutes a trade secret and where disclosure is not inconsistent with Title 49 of the Ohio Revised Code. As discussed

above, Title 49 already addresses the concern of protecting proprietary information. Moreover, both Sections 4901.12 and 4905.07, Revised Code allow exceptions to the rule that all proceedings of the Public Utilities Commission of Ohio are public. Those exceptions are outlined in Section 149.43, Revised Code which excludes the release of records which are protected by state law. Under Section 149.43, Revised Code trade secrets are not subject to the public disclosure by government agencies, nor are they considered public records. Rule 4901-1-27(e) of the Ohio Administrative Code states that in hearings, the Attorney Examiner will, "[p]rotect public disclosure of trade secrets, proprietary business information, or confidential research, development or commercial materials and information."

The information Direct Energy seeks to protect falls under the ambit of trade secrets, proprietary business information, and, confidential research, development and commercial materials and information.

Trade Secret is defined in Section 1333.61(D), Revised Code as follows:

"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, or 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.

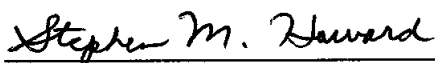
Direct Energy asserts that its financial information is confidential and is not generally known or available to the general public. Public disclosure of this information would

jeopardize Direct Energy's ability to negotiate and to compete in the market. Moreover, its financial arrangements with its corporate parent falls within the same category. Therefore, it should be protected.

Direct Energy also requests a waiver of Rule 4901-1-24(F) Ohio Administrative Code which would result in rescinding the protective order after eighteen months. Direct Energy asserts that the information it deems to be confidential today will not be any less so in eighteen months. It is and will be competitively sensitive information, which, if unleashed in a competitive market, will have an adverse impact on Direct Energy's ability to do business. Thus, it is imperative that the information remains confidential.

WHEREFORE, Direct Energy respectfully requests that the Commission grant its Motion for a Protective Order pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code and its Motion for a waiver of Rule 4901-1-24(F) of the Ohio Administrative Code for the reasons set forth above.

Respectfully submitted,



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Exhibit

Supplemental Exhibit C-6

Rationale

Public disclosure of its Financial Arrangement with its corporate parent could jeopardize Direct Energy's ability to negotiate and compete in the market.