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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Energy)
America, LLC. for Certification as a) Case No. 02-¹⁸⁰⁹ -GA-CRS
Competitive Retail Natural Gas Supplier.)

MOTION FOR PROTECTIVE ORDER

Pursuant to Section 4901-1-24(D) Ohio Admin. Code, Energy America, LLC ("Energy America") respectfully requests that the Public Utilities commission of Ohio ("PUCO" or "Commission") grant its Motion for a Protective Order with regard to Exhibit C-1, C-3, C-4 and C-5 for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,

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REGISTRATION DIV

ATTORNEY FOR ENERGY AMERICA, LLC

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MEMORANDUM IN SUPPORT

Energy America seeks a protective order to protect the confidentiality of and to prohibit the disclosure of certain documents which contain competitively sensitive and highly proprietary business financial information and marketing plans which comprise trade secrets. These documents are as follows:

- Exhibit B-2 Confidential Marketing/Customer Care Information
- Exhibit C-3 Company Financial Statements
- Exhibit C-4 Financial Arrangements
- Exhibit C-5 Forecasted Financial Statements

All of these exhibits have been clearly marked as confidential and are being filed contemporaneously with this Motion, under seal, separate from the remainder of the materials that comprise the Application for Certification.

Sec. 4929.23 Ohio Rev. 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) Ohio Admin. 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 Section 4901.12 and 4905.07 Ohio Rev. Code allow exceptions to the rule that all proceedings of the Public Utilities Commission of Ohio are public. Those exception are outlined in Sec. 149.43 Ohio Rev. Code, which excludes the release of records which are protected by state law. Under Sec. 149.43 Ohio Rev. Code, trade secrets are not subject to the public disclosure by government agencies, nor are they considered public records. Sec. 4901-1-27(e) Ohio Admin. 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 Energy America 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 Sec. 1333.61(D) Ohio Rev. 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.

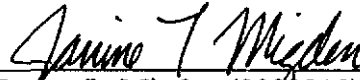
Energy America asserts that its financial information is confidential and is not generally known or available to the general public. Public disclosure of this information would jeopardize

Energy America's ability to negotiate and to compete in the market. Moreover, its financial arrangements with lending institutions falls within the same category. The projected financial statements are also proprietary because they offer a road map to potential competitors of what Energy America's marketing plans are. With respect to Exhibit B-2, the business plan, it contains confidential information relating to market strategies that if made public, would adversely affect Energy America's competitive position. As noted above, Sec. 4901-1-27(E) Ohio Admin. Code requires the Attorney Examiner in a proceeding to protect disclosure of "proprietary business information, or confidential research, development or commercial materials and information." The information in Exhibit B-2 contains business plans with respect to marketing including customer acquisition and retention. This information includes research information which was conducted for the purpose of improving and furthering Energy America's business and is competitively sensitive. Therefore it should be protected.

Energy America also requests a waiver of Rule 4901-1-24(f) Ohio Admin. Code which would result in rescinding the protective order after eighteen months. Energy America 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 Energy America's ability to do business. Thus, it is imperative that the information remains confidential.

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

Respectfully submitted,



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