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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. 02-1829-GA-CRS
Competitive Retail Natural Gas Supplier.)

MOTION FOR EXTENSION OF COMMISSION'S PROTECTIVE ORDER

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

Respectfully submitted,



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MEMORANDUM IN SUPPORT

On July 19, 2002, Energy America filed a Motion for a Protective Order with respect to certain exhibits included in its application for Certification. Among the Exhibits for which Energy America requested protective treatment were the following:

Exhibit C-3 Company Financial Statements

Exhibit C-4 Financial Arrangements

Exhibit C-5 Forecasted Financial Statements

Energy America also requested that pursuant to Ohio Admin. Code Sec. 4901-1-24(F), that a waiver be granted such that the above-referenced information would be afforded confidential treatment subject to a protective order after the initial eighteen-month period expired.

In an Entry dated July 14, 2002, the Attorney Examiner, relying on precedents established in Commission rulings, granted the request for a protective order with respect to Exhibits C-3, C-4, and C-5. *Id.* at 4. In that same Entry, the Attorney Examiner denied the request to extend the protective order beyond eighteen months and ordered parties seeking such an extension to file at least forty-five days in advance of the expiration. *Id.* The protective order for Energy America is scheduled to expire on January 14, 2004 in accordance with that Entry. Energy America wishes to maintain the confidentiality of the materials contained in Exhibits C-3, C-4 and C-5, which are currently on file under seal at the Commission. Energy America maintains that this information continues to be relevant and deserving of the protective treatment as the Commission initially recognized.

Sec. 4929.23 Ohio Rev. Code states that a retail natural gas supplier "...shall provide the Public Utilities Commission which 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 exceptions 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.

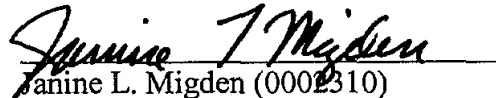
(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Energy America asserts that its financial information continues to be relevant, current and 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 and continue to be. 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.”

Energy America asserts that the information it deemed to be confidential at the time of its filing continue to be so. It is 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 remain confidential.

WHEREFORE, pursuant to Sec 4901-1-24(F) Ohio Admin. Code, Energy America requests a waiver such that the protective order for Exhibits C-3, C-4 and C-5 continue in effect.

Respectfully submitted,



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