

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2011 APR 15 PM 5:00
PUCO

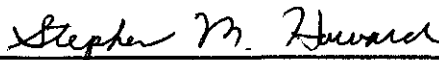
In the Matter of the Application of Commerce)
Energy, Inc. for a Renewal of Certification as a) Case No. 02-1828-GA-CRS
Competitive Retail Natural Gas Supplier.)

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, Commerce Energy, Inc. d/b/a Just Energy ("Commerce Energy") respectfully requests that the Public Utilities Commission of Ohio ("PUCO") or ("Commission") grant its Motion for a Protective Order with regard to the Quarterly Report. A redacted version of this Quarterly Report has been publicly filed. Three (3) copies of the unredacted Quarterly Report have been submitted under seal.


WHEREFORE, Commerce Energy respectfully requests that the Commission grant its motion for a protective order.

Respectfully submitted,



M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Tel: (614) 464-5401
Fax: (614) 719-4772
E-mail: smhoward@vssp.com

Attorneys for Commerce Energy, Inc.
d/b/a Just Energy

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  Date Processed **APR 18 2011**

MEMORANDUM IN SUPPORT

On November 22, 2010, the Commission issued an Opinion and Order approving a Stipulation with limited changes in this case. As part of the Stipulation, Commerce Energy agreed to file a Quarterly Report with the Commission as to the progress in managing the sales force.

Commerce Energy no longer allows sales agents to be at the customer's door during the third party verification ("TPV") process. This process started in November, 2010. As part of the Stipulation, the Staff requested a monthly breakdown of the TPV calls which were not processed as a result of the call. This Quarterly Report contains a monthly breakdown of TPV calls processed and TPV calls not processed. If this information were made public, it would lead to the discovery of sales information which is confidential, competitively sensitive, highly proprietary and a trade secret. Thus, Commerce Energy seeks a protective order for the number of TPV calls that were processed and those that were not processed.

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 Commerce 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:

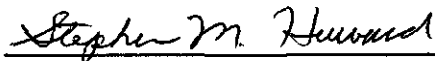
(1) It derives independent economic value, actual or potential, from not being generally known to, or not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use.

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

Commerce Energy asserts that the number of TPV calls processed and the number of TPV calls not processed in any given month is confidential and is not generally known or available to the general public. Public disclosure of this information would provide an undue competitive disadvantage to Commerce Energy.

WHEREFORE, Commerce 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 for the reasons set forth above.

Respectfully submitted,



M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Tel: (614) 464-5401
Fax: (614) 719-4772
E-mail: smhoward@vssp.com

Attorneys for Commerce Energy, Inc.
d/b/a Just Energy

Exhibit


Quarterly Report – Number of TPV Calls
Processed and Number of TPV Calls Not
Processed in Any Given Month

Rationale

Public disclosure of the number of TPV calls
processed and the number of TPV calls not
processed in any given month would put
Commerce Energy at an undue competitive
disadvantage.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons this 15th day of April, 2011 via electronic mail.



Stephen M. Howard

John Jones
Assistant Attorney General
Public Utilities Section
180 E. Broad Street, 6th Floor
Columbus, OH 43215
John.jones@puc.state.oh.us

Joseph Serio
Larry Sauer
Office of Ohio Consumers' Counsel
10 W. Broad Street, 18th Floor
Columbus, OH 43215
serio@occ.state.oh.us
sauer@occ.state.oh.us