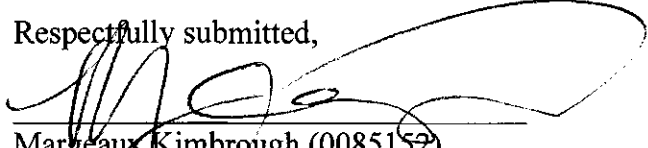


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Case No.11-3144-EL-CRS **PUCO**

Respectfully submitted,



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*Counsel for Applicant,
MC Squared Energy Services, LLC*

MEMORANDUM IN SUPPORT

MC Squared is an Illinois limited liability company and is registered with the Ohio Secretary of State to do business in Ohio.

In the Renewal Application, Exhibit C-3 requests “copies of the applicant’s two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement)”; Exhibit C-4 requests “copies of applicant’s financial arrangements to conduct CRES as a business activity (guarantees, bank commitments, contractual arrangements, credit agreements, etc.)”; Exhibit C-5 requests “two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant’s CRES operation, along with a list of assumptions, and the name, address, e-mail address, and telephone number of the preparer.”

MC Squared requests that the information designated as confidential (Exhibits C-3, C-4 and C-5) to its Renewal Application for Certification as a Competitive Retail Electric Supplier be protected from public disclosure. If said information is released to the public, MC Squared

would suffer substantial harm as its competitors would have access to MC Squared's proprietary information.

Ohio Admin. Code 4901-1-24(D) provides:

Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission... the attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by ... the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The need to protect the types of information that are the subject of this Motion is recognized under Ohio law. The Commission would have full access to the information in order to fulfill its statutory obligations and the nondisclosure of said information will not frustrate the purposes of Title 49 of the Revised Code.

Ohio Law defines a "Trade Secret" as:

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, 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.

Rev. Code §1333.61(D). The Commission facilitates the protection of such trade secrets in its Rules in the Administrative Code as well. *See* Ohio Admin. Code 4901-1-24(A)(7).

The Ohio Supreme Court has adopted a six factor test to analyze whether information is a trade secret under Rev. Code § 1331:

(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 for others to acquire and duplicate the information.

State ex rel. Plain Dealer v. Ohio Dep't of Ins., 80 Ohio St. 3d 513, 687 N.E. 2d 661 (1998) (citations omitted).

MC Squared gladly provides the information requested in Exhibits C-3, C-4 and C-5 to the Commission, but asks that it be subject to Protective Order due to the confidential, proprietary nature of this information and because its public disclosure might be injurious to the company's competitive position. Given the intense competition in the Competitive Retail Electric Service arena, this information is a legitimate trade secret, access to which could negatively affect MC Squared's competitive position.

This request for a Protective Order is reasonable, necessary and will not prejudice any other party or individual. In fact, to the extent MC Squared's ability to compete effectively is preserved, Ohio consumers will be better served. Fair competition is the philosophical basis for the CRES statute and implementing regulations.

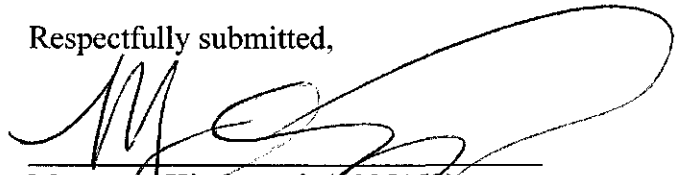
Further, Applicant notes that similar motions for protective order with respect to Exhibits C-3, C-4 and C-5 are being granted routinely by recent Attorney Examiner Entries based on their determination that such information constitutes a trade secret, meeting the six factor test adopted by the Ohio Supreme Court in the *Plain Dealer* decision quoted above.¹ MC Squared submits that the basis for the Attorney Examiner to grant the Motion with respect to MC Squared's pending Application is equally compelling here as it was in that proceeding.

¹ For example, see Entry by Attorney Examiner K. Sheets on November 15, 2012, *In the Matter of the Application of Nordic Energy Services, LLC for Certification as a Competitive Retail Electric Supplier*, Case No. 12-2701-EL-CRS, Finding No. 6.

For all of the foregoing reasons, MC Squared Energy Services, LLC respectfully requests that a Protective Order be issued which permits it to file its responses to the Commission's Renewal Application for Certification as a Competitive Retail Electric Supplier, Exhibits C-3, C-4 and C-5, under seal and requires those with access to those responses to treat them in a confidential manner for a period of twenty-four (24) months from the effective date of the certificate issued in this proceeding. MC Squared Energy Services, LLC further requests that should Staff seek any additional information or clarification with respect to Exhibits C-3, C-4 and C-5, those also be permitted to be filed under seal and subject to the same Protective Order.

In compliance with Ohio Administrative Code 4901-01-24(D)(2), three (3) unredacted copies of the confidential information in response to Exhibits C-3, C-4 and C-5 are being submitted under seal with this Motion.

Respectfully submitted,



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