

FILE

# IceMiller

LEGAL COUNSEL

Arena District 250 West Street : Suite 700 Columbus, OH 43215-7509

February 28, 2014

Writer's Direct Number: 614 462-1071  
Direct Fax: 614 232-6849  
Internet: ruth.mcneil@icemiller.com

DELIVERED VIA COURIER

Ms. Tanowa Troupe  
Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 53215-3793

**Re: Case No. 12-175-EL-CRS  
AMENDED FORECAST FINANCIALS (Exhibit C-5) with  
MOTION FOR PROTECTIVE ORDER and,  
REQUEST FOR DOCUMENT RETURNED**

RECEIVED-DOCKETING DIV  
2014 MAR -3 AM 10:37  
PUCO

Dear Ms. Troupe:

Pursuant to the PUCO's request please find enclosed, from Clearview Electric, Inc., an amended Forecast Financial statement - Exhibit C-5 (labeled as "revised") for years 2014, 2015, and 2016 in Ohio. Additionally, we are filing a Motion for Protective Order to keep confidential this amended exhibit.

Finally we wish to state for the record that in submitting this amended Forecast Financial statement - Exhibit C-5, we still hold to our Motion for Protective Order on the original Exhibit C-5 that was filed with the renewal application. Further, if possible, we request having the original Exhibit C-5 Forecast Financial statement documents returned to us as it is not the correct statement for the filing.

Should you have any questions regarding this amended statement and the subsequent request, please don't hesitate to contact me.

Very Truly Yours,

ICE MILLER LLP



Ruth McNeil  
Practice Group Specialist

Enclosures

cc: Christopher Miller, Esq.

4565630

This is to certify that the above document is an accurate and complete reproduction of a document delivered in the regular course of business  
Technician Ann Date Processed 3/3/14

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE RENEWAL  
APPLICATION OF CLEARVIEW  
ELECTRIC, INC. FOR CERTIFICATION  
AS A COMPETITIVE RETAIL  
ELECTRIC GENERATION PROVIDER

CASE NO. 12- 175 -EL-CRS

**MOTION FOR PROTECTIVE ORDER**

Pursuant to O.A.C. § 4901-1-24(D), Clearview Electric, Inc. moves for a protective order to prevent public disclosure of confidential and proprietary financial information, as well as trade secrets included in the **Amended Exhibit C-5** of Clearview Electric, Inc.'s Renewal Application for Retail Generation Providers and Power Marketers. The reasons underlying this motion are detailed in the attached Memorandum in Support.

Respectfully submitted,



Christopher L. Miller (0063259)  
Ice Miller, LLP  
250 West Street  
Columbus, Ohio 43215  
(614) 462-5033 - Phone  
(614) 222-3886 - Fax  
E-mail: [cmiller@icemiller.com](mailto:cmiller@icemiller.com)

*Attorney for the Applicant*

RECEIVED - DOCKETING DIV  
2014 MAR -3 AM 10:37  
PUCO

## MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

### BACKGROUND

Clearview Electric, Inc. ("Clearview") has submitted a Renewal Application for Retail Generation Providers and Marketers ("Application"). As part of the Application, Clearview is required to provide audited financial statements and other sensitive financial information via Exhibit C-3. Clearview requests that the information contained in the **Amended Exhibit C-5** be protected from public disclosure.

### THE NEED FOR A PROTECTIVE ORDER

The information for which protection is sought covers the **Amended financial forecasts Exhibit (C-5)**. Due to the sensitive nature of this information, its release to the public would harm Clearview by providing Clearview's competitors with confidential information in what is designed by statute to be a competitive service. Therefore, the **Amended Exhibit C-5** should be used solely by the Public Utilities Commission of Ohio ("Commission") in exercising its governmental functions in considering Clearview's Application.

Pursuant to O.A.C. § 4901-1-24(D), the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in the documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Ohio Revised Code.

Although R.C. § 4905.07 provides that all facts and information in the possession of the Commission shall be public except as provided in R.C. § 149.43, R.C. § 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio and O.A.C. § 4901-1-24(D) make clear that the "state or

federal law" exception includes trade secrets. *See State ex rel. Besser v. Ohio State Univ.* (2008), 89 Ohio St.3d 396, 399.

The non-disclosure of the subject information will not impair the purposes of Title 49 of the Ohio Revised Code. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information. Contrarily, public disclosure of the information would only prove detrimental to Clearview.

There is further compelling legal authority supporting Clearview's requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission has also recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari material with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

*In re General Telephone Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982). Likewise, the Commission has further recognized the protection of trade secrets in its rules. *See* O.A.C. § 4901-1-24(A)(7).

The Uniform Trade Secrets Act prohibits the misappropriation of trade secrets without express or implied consent. R.C. 1333.61 *et seq.* Under the Act, a "trade secret" is defined 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 the following (emphasis added):

- (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.

R.C. 1333.61(D)(emphasis added). This definition clearly reflects the state policy favoring the protection of trade secrets such as the names and financial information that are the subject of this motion.

The Supreme Court of Ohio has adopted a six-factor analysis for determining whether information is a "trade secret" under R.C. 1333.61(D):

(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. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25 (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-35, 454 N.E.2d 588 (8<sup>th</sup> Dist. 1983)).

Applying these factors to the information contained in the Exhibits that Clearview has designated as confidential, it is clear that a protective order should be granted.

**Amended Exhibit C-5** contains Clearview's confidential financial forecasts. Disclosure of this financial information could give competitors an advantage that would hinder Clearview's ability to compete in the market. Clearview, a Texas Corporation authorized to do business in Ohio, is a privately held company and is not required to file financial information with the United States Securities and Exchange Commission. Consequently, Clearview does not otherwise disclose its financial information to the public.

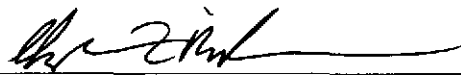
Further, public disclosure of Clearview's financial information is not likely to assist the Commission in carrying out its duties in considering the Application. Such information is often kept under seal in similarly filed applications, and Clearview respectfully request that its information be kept under seal due to its competitively sensitive nature. This information is confidential, proprietary and can be considered a trade secret as well per the law cited above.

Accordingly, Clearview respectfully requests that the Commission grant its Motion for Protective Order allowing Amended Exhibit C-5 the Application to be treated as confidential, thereby protecting the information contained in those documents from public disclosure.

### **CONCLUSION**

For the foregoing reasons, Clearview Electric, Inc. respectfully requests that its Motion for Protective Order of the **Amended Exhibit C-5** document related to the renewal application be granted,

Respectfully submitted,



---

Christopher L. Miller (0063259)  
Ice Miller, LLP  
250 West Street  
Columbus, Ohio 43215  
(614) 462-5033 - Phone  
(614) 222-3886 - Fax  
E-mail: [cmiller@szd.com](mailto:cmiller@szd.com)

*Attorney for the Applicant*