

FILE

8

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE
APPLICATION OF CHOICE ENERGY
SERVICES RETAIL, LP FOR
CERTIFICATION AS A COMPETITIVE
RETAIL ELECTRIC GENERATION
BROKER

CASE NO. 12-3197-EL-AGG

MOTION FOR PROTECTIVE ORDER

Pursuant to O.A.C. § 4901-1-24(D), Choice Energy Services Retail, LP moves for a protective order to prevent public disclosure of confidential and proprietary financial information included in Exhibit C-3 of Choice Energy Services Retail, LP's Renewal Application for certification as a Competitive Retail Electric Service ("CRES") Provider (to provide aggregator and power broker services). The reasons underlying this motion are detailed in the attached Memorandum in Support. Pursuant to O.A.C. § 4901-1-24(D)(2), two (2) unredacted copies of Exhibit C-3 are being submitted under seal as Exhibit A.

Respectfully submitted,



Christopher L. Miller (0063259)
Gregory J. Dunn (007353)
Ice Miller, LLP
250 West Street
Columbus, Ohio 43215
(614) 462-5033 - Phone
(614) 222-3886 - Fax
E-mail: christopher.miller@icemiller.com
E-mail: Gregory.dunn@icemiller.com

Attorneys for the Applicant

RECEIVED-DOCKETING DIV

2014 NOV 14 PM 2:43

PUCO

COV4748127.1

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 SM Date Processed NOV 14 2014

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

BACKGROUND

On January 15, 2013, the Public Utilities Commission of Ohio ("Commission") issued Certificate No. 13-624E(1) (the "Certificate") to Choice Energy Services Retail, LP ("CESR") pursuant to CESR's Certification Application for Aggregator/Power Broker ("Application"). The Certificate became effective January 12, 2013 and is set to expire on January 12, 2015.

CESR has recently filed a Renewal Application for certification to continue as a CRES Provider (to provide aggregator and power broker services) in the State of Ohio ("Renewal Application"). Pursuant to the Renewal Application, CESR is required to provide information regarding sensitive financial information, including audited financial statements via Exhibit C-3. CESR requests that the information contained in this Exhibit be protected from public disclosure.

THE NEED FOR A PROTECTIVE ORDER

The information for which protection is sought covers CESR's financial statements Exhibit (C-3). Due to the sensitive nature of this information, its release to the public would harm CESR by providing CESR's competitors with confidential information in what is designed by statute to be a competitive service. Therefore, the Exhibit should be used solely and exclusively by the Public Utilities Commission of Ohio ("Commission") in exercising its governmental functions in considering CESR's Renewal 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, the statute (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 the required statutory obligations. No purpose of Title 49 is served by the public disclosure of the information. Public disclosure of the information will only prove detrimental to CESR.

There is further compelling legal authority supporting CESR'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 (8th Dist. 1983)).

Applying these factors to the information contained in the Exhibits that CESR has designated as confidential, it is clear that a protective order should be granted. Exhibit C-3 contains CESR's confidential financial statements. Disclosure of this financial information could give competitors an advantage that would impair CESR's ability to compete in the market. CESR, a Texas Limited Partnership is authorized to do business in Ohio as a foreign corporation, is a privately held company and is not required to file financial information with the United

States Securities and Exchange Commission. Consequently, CESR does not otherwise disclose its financial information to the public.

Further, public disclosure of CESR's financial information is not likely to assist the Commission in carrying out its duties in considering CESR's Renewal Application. Such information is often kept under seal in similarly filed applications, and CESR respectfully requests 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 per the law cited above.

Finally, it should be noted that the Commission has protected substantially similar categories of CESR's sensitive financial information filed with the Commission on December 12, 2012 in connection with CESR's original Application.

Accordingly, CESR respectfully requests that the Commission grant its Motion for Protective Order allowing Exhibit C-3 of the Renewal Application to be treated as confidential, thereby protecting the information contained in those documents from public disclosure.

CONCLUSION

For the foregoing reasons, CESR respectfully requests that its Motion for Protective Order be granted.

[Signatures appear on following page.]

Respectfully submitted,



Christopher L. Miller (0063259)

Gregory J. Dunn (007353)

Ice Miller, LLP

250 West Street

Columbus, Ohio 43215

(614) 462-5033 - Phone

(614) 222-3886 - Fax

E-mail: christopher.miller@icemiller.com

E-mail: gregory.dunn@icemiller.com

Attorneys for the Applicant

EXHIBIT A

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE	:	
APPLICATION OF CHOICE ENERGY	:	
SERVICES RETAIL, LP FOR	:	
CERTIFICATION AS A COMPETITIVE	:	CASE NO. 12-3197-EL-AGG
RETAIL ELECTRIC GENERATION	:	
BROKER	:	

Confidential Information Submitted Under Seal

Exhibit C-3

C-3 Exhibit: C-3 "Financial Statements"

The following financial statements of Choice Energy Services Retail, LP are to remain confidential with no end date to this request. The financial statements include 2012 to 2013 Balance Sheet, Income Statement, and any other statements of the company deemed to be financial statements. Choice Energy Services Retail, LP is a privately held company and all financial standings and other information are to be treated as private and in no way shall any information be shared to the public. Our financial statements are not publicly available and should remain as such. Our investors have decided that all information and the company as a whole are to remain private and confidential. Due to competition in our market of business the release of any information could result in harm to the company as others may use such information to their business advantage.