

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of MP2)
Energy NE LLC for a Certificate to Provide) Case No. 13-2211-EL-CRS
Competitive Retail Electric Service in Ohio)

MOTION TO EXTEND PROTECTIVE ORDER

In accordance with Ohio Adm. Code 4901-1-24(F), MP2 Energy NE LLC (MP2 Energy NE) moves to extend the Public Utilities Commission of Ohio's (Commission) June 30, 2014, protective order placing under seal two financial exhibits (Exhibits C-4 and C-5) to the Application for a Certificate to Provide Competitive Retail Electric Service in Ohio (Application). The basis for this Motion is set forth in the accompanying Memorandum in Support.

Respectfully submitted,



Kimberly W. Bojko (0069402)
Ryan P. O'Rourke (0082651)
Carpenter Lipps & Leland LLP
280 N. High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4110
Email: bojko@carpenterlipps.com
o'rourke@carpenterlipps.com

Counsel for MP2 Energy NE LLC

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of MP2)
Energy NE LLC for a Certificate to Provide) Case No. 13-2211-EL-CRS
Competitive Retail Electric Service in Ohio)

MEMORANDUM IN SUPPORT

On June 30, 2014, the Commission granted MP2 Energy NE's motion for a protective order which sought to designate as confidential and protect from public disclosure Exhibits C-4 and C-5 to the Application.¹ The Commission explained that the information would remain under seal for 24 months from the effective date of the competitive retail electric supplier (CRES) certificate and that any motion to extend the protective order must be filed at least 45 days in advance of the expiration date of that certificate as provided by Ohio Adm. Code 4901-1-24(F).² The Commission issued a CRES certificate to MP2 Energy NE with an effective date of December 15, 2013, and an expiration date of December 15, 2015.³ Through this timely motion,⁴ MP2 Energy NE seeks an order from the Commission extending the timeframe of its June 30, 2104 entry which granted MP2 Energy NE's motion for a protective order with respect to Exhibits C-4 and C-5. If released to the public, the information contained in those two

¹ *In the Matter of the Application of MP2 Energy NE, LLC for Certification as a Competitive Retail Power Marketer, et al.*, Case No. 13-2211-EL-CRS, et al., Entry at 4 (June 30, 2014).

² *Id.* at 3-4.

³ See Certificate #13-763E(1), available at:
<https://dis.puc.state.oh.us/TiffToPdf/A1001001A13L17B50025G86158.pdf>

⁴ The 45th day prior to the expiration date of the CRES certificate fell on October 31, 2015, which is a Saturday. By operation of Ohio Adm. Code 4901-1-07(A) and (D), the next available filing day becomes Monday, November 2, 2015.

exhibits would harm MP2 Energy NE, as it would provide its competitors with sensitive, proprietary information which is not generally known or available to the public.

Ohio Adm. Code 4901-1-24(D) permits an attorney examiner to issue an order to protect the confidentiality of information contained in a document filed at the Commission "to the extent that state or federal law prohibits release of the information, including where the information is deemed to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." Likewise, Ohio Adm. Code 4901-1-24(F) authorizes a party to seek an extension of a previously-existing protective order. The motion to extend a protective order must be filed at least 45 days in advance of the expiration date of the existing order and contain a detailed discussion of the need to continue protective treatment. *Id.*

R.C. 1333.61(D) defines a trade secret as information which "(1) 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[; and] (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Further, Section 149.43, Revised Code, states that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has opined that this "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399. Moreover, in *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, the Supreme Court of Ohio adopted the following six factor test to determine whether information constitutes a "trade secret" under Section 1333.61, Revised Code:

- (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;
- (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.

Applying these factors to the information contained in the exhibits that MP2 Energy NE seeks to protect on an extended basis, the Commission should grant MP2 Energy NE's motion in its entirety. Exhibit C-4 covers confidential information relating to MP2 Energy NE's financial arrangements. This information is not widely known outside the business, and further, is not known by those inside the business who are employed in capacities other than those that encompass financial and accounting services. Exhibit C-5 covers the Company's forecasted financial statements. Information of the nature contained in this exhibit is not generally disclosed, as such disclosure would give competitors an advantage that could damage MP2 Energy NE's ability to compete in a number of important markets. Further, extended confidential treatment of the information contained in Exhibits C-4 and C-5 is not inconsistent with the purposes of Title 49 of the Revised Code.

In light of the nature of the exhibits for which MP2 Energy NE seeks extended confidential treatment and the competitive advantage which disclosure of the information contained in the exhibits may provide to its competitors, the Commission should grant MP2 Energy NE's motion to extend the protective order.

WHEREFORE, MP2 Energy NE respectfully requests that the Commission grant this motion and extend its June 30, 2014 protective order covering Exhibits C-4 and C-5 to the Application.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'K. Bojko', with a horizontal line drawn underneath it.

Kimberly W. Bojko (0069402)
Ryan P. O'Rourke (0082651)
Carpenter Lipps & Leland LLP
280 N. High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4110
Email: bojko@carpenterlipps.com
o'rourke@carpenterlipps.com

Counsel for MP2 Energy NE, LLC

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/2/2015 5:00:17 PM

in

Case No(s). 13-2211-EL-CRS

Summary: Motion Motion to Extend Protective Order electronically filed by Ms. Cheryl A Smith on behalf of MP2 Energy NE LLC