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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Scioto Energy, LLC for Certification)
As a Competitive Retail Electric Service)
Power Broker/Aggregator)

Case No. 09-869-EL-AGG

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**MOTION FOR EXTENSION OF PROTECTIVE ORDER
CONCERNING CERTAIN FINANCIAL RECORDS**

Scioto Energy, LLC ("Scioto") respectfully moves the Public Utilities Commission of Ohio, pursuant to Rule 4901-1-24 (F) of the Ohio Administrative Code ("O.A.C."), for an Order to extend the Protective Order granted in response to the Motion for Protective Order filed on September 24, 2013 and extended in 2015. Such Protective Order solely concerns the two financial exhibits (Exhibits C-3 and C-5) submitted as part of Scioto's application to renew its certificate as a competitive retail electric service power broker/aggregator. Applicant respectfully requests that such Exhibits continue to be maintained as confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Scioto is not a publicly traded company and, accordingly, its financial information is not publicly available. Therefore, as set forth in greater detail below, Scioto requests that the Protective Order which was filed on September 24, 2013 and extended in 2015, and which provided for the keeping of certain information designated as confidential under seal (specifically, Exhibits C-3 and C-5 in its Renewal Certification Application filed September 24, 2013), be hereby extended an additional two (2) years under the authority of Rule 4901-1-24 (F).

The information for which protection is sought covers financial statements (C-3) and forecasted financial statements (C-5). Such information, if released to the public, would harm Scioto by providing its competitors proprietary information in what is designated by statute to now be a competitive service.

Rule 4901-1-24(D) of the O.A.C. provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in 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 Revised Code.

Rule 4901-1-24(F) of the O.A.C. provides for the ability of the Commission, upon motion, to renew this protective order for an additional two (2) years.

In the present case, the non-disclosure of the subject information will not impair the purposes of Title 49 as applied to Scioto. Likewise, the Commission and its Staff have full access to the information in order to fulfill its statutory obligations. Thus, no purpose of Title 49 would be served by the public disclosure of the information.

Conversely, if released to the public such information would harm Scioto by providing competitors with proprietary information concerning Scioto's ownership, management, and capitalization. Such disclosure hinders Scioto's ability to compete.

The continued need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested extension of the protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligation with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read *in pari materia* 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 (February 17, 1982). Similarly, the Commission has promulgated and facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)).

The information in Exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret as defined by Section 1333.61(D), Ohio Revised Code:

"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, 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.

The above definition clearly reflects the codified policy favoring the protection of trade secrets such as the financial information which is the subject of this Motion.

In *State ex rel The Plain Dealer the Ohio Dept. of Ins.* (1977) 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six factor test to analyze whether information is a trade secret under the statute:

(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.

Id. at 524-525 (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Entry, Cuyahoga County 1983)).

In the instant case, the two financial exhibits Scioto seeks to protect contain confidential trade secrets, the information of which has not previously been disclosed to the public. Considering the competitive environment in which Scioto operates, the financial information requested in Exhibits C-3 and C-5 of the application is highly proprietary, confidential and commercially sensitive. Such sensitive financial information is generally not disclosed in cases such as the one *sub judice*. Its disclosure could give competitors an advantage that would hinder Scioto's ability to compete. On the other hand, public disclosure of this financial information is not likely to further assist the Commission in carrying out its duties under CRES rules. Applying the above factors to such exhibits, it is clear that an extension of the protective order should be granted.

Courts of other jurisdictions have held that, not only does a public utilities commission have the authority to protect trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. NY.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power, through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. *See, e.g., Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

For the foregoing reasons, Scioto Energy requests the Commission grant its Motion for Extension of Protective Order and continue to maintain Exhibits C-3 and C-5 of its Renewal Certification Application to provide aggregation and power broker services under seal.

Respectfully submitted,



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