

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Usource, LLC for Certification as an)	Case No. 13-1799-EL-AGG
Electric Aggregator/Power Broker in Ohio)	

MOTION FOR PROTECTIVE ORDER

Now comes Usource, LLC (“Usource”) seeking confidential treatment, pursuant to Rule 4901-1-24(D), Ohio Administrative Code, of a Notice of Change in Business Operations submitted under seal today in Case No. 13-1799-EL-AGG. The reasons underlying this motion are detailed in the attached Memorandum in Support. Two (2) unredacted copies of the Notice has been submitted under seal.

Respectfully submitted,

/s/ Gretchen L. Petrucci

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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

Today, Usource filed under seal in this proceeding a Notice of Change in Business Operations containing competitively sensitive and highly proprietary business information that constitutes trade secrets under Ohio law and the Commission's rules. State statutes and regulations recognize the need to protect information that is confidential in nature. Rule 4901-1-24(D), Ohio Administrative Code, provides in particular that the Public Utilities Commission of Ohio 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. These requirements of the rule have been met. State law recognizes the need to protect trade secrets such as the information in the notice filing. Also, the non-disclosure of the information will not impair the purposes of Title 49 because the Commission and its Staff have full access to the information in order to fulfill their statutory obligations. No purpose of Title 49 would be served by the public disclosure of the trade secret information in Usource's filing.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago 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 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 (Entry, February 17, 1982.) Likewise, the Commission has facilitated the protection of trade secrets in its rules. See Rule 4901-1-24(A)(7) and (D), Ohio Administrative Code.

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“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.

Section 1333.61(D), Revised Code (emphasis added).

In *State ex rel The Plain Dealer the Ohio Dept. of Ins.* (1997), 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 (Cuyahoga County 1983)).

Applying these factors to the confidential information in the notice of change in business operations that Usource seeks to protect, it is clear that a protective order should be granted. The notice information contains competitively sensitive and highly proprietary business information falling within the statutory definition of trade secret. Release of this information to the public would harm Usource by providing its competitors with proprietary information in relation to not only Usource's Ohio competitive energy services, but all the territories in which it operates by giving competitors insight into its financial activities and legal structures. Further, the efforts to protect the confidential information are reasonable under the circumstances. Such sensitive information has been guarded. Its disclosure could give competitors an undue advantage by gaining insight into the marketing plans and strategy of the parent of Usource, which would hinder the ability to compete in other states. In addition, public disclosure of this confidential information is not likely to assist the Commission or its staff in carrying out the duties under the competitive retail rules. The Commission has retained similar information under seal previously. *In the Matter of the Application of Stream Ohio Gas & Electric, LLC d/b/a Stream Energy for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 07-1283-GA-CRS, Entry at ¶9 (May 2, 2014) (finding that revealing corporate structure information in a renewal application would give competitors advance notice of where a supplier may be seeking to market services).

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the 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. N.Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to 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).

WHEREFORE, for the above reasons, Usource, LLC requests the Commission grant its motion for a protective order and thus maintain under seal the Notice of Change in Business Operation filed concurrently in this docket.

Respectfully submitted,

/s/ Gretchen L. Petrucci
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Summary: Motion Motion for Protective Order electronically filed by Mrs. Gretchen L. Petrucci on behalf of Usource, LLC