

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Renewal Certification)	
Application of MC Squared Energy Services,)	Case No. 11-3144-EL-CRS
LLC to be a Competitive Retail Electric)	
Generator and Power Broker and Marketer)	

MOTION FOR PROTECTIVE ORDER

Applicant MC Squared Energy Services, LLC, (“MC Squared”) by and through counsel, hereby moves the Public Utilities Commission of Ohio (“PUCO” or “Commission”), Pursuant to O.A.C. 4901-1-24 for the entry of a Protective Order designating as confidential the C-3, C-4 and C-5 Exhibits required in the Renewal Certification Application (“Application”) for Retail Generation Provider, Power Broker, Power Marketer, and Aggregator. The Application is being submitted concurrently with the above-named exhibits removed and filed under seal. As required by Rule 4901-1-24(D)(2), MC Squared filed under seal two copies of the confidential and unredacted material along with this Motion for Protective Order in the above-captioned case.

The basis for this Motion is set forth in the accompanying Memorandum in Support of this Motion for Protective Order. Public disclosure of this information would harm MC Squared’s competitive position as a Retail Generation Provider and Power Broker.

MC Squared understands that filing this Protective Order with its Application in accordance with Ohio Administrative Code 4901:1-24-07, shall be automatically approved on the thirty-first day after the date of filing and the information shall be afforded protective

treatment for a period of six years from the date of the certificate for which the information is being provided, unless the commission or an attorney examiner appointed by the commission rules otherwise.

WHEREFORE, MC Squared Energy Services, LLC, respectfully requests that its motion for Certification Renewal Application be granted and that this material is granted a protective order by the Commission.

Respectfully Submitted,

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L.L.C. to be a Competitive Retail Electric)	
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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

MC Squared, by and through counsel, hereby files this Memorandum in Support of its Motion for a Protective Order pursuant to Ohio Administrative Code 4901-1-24. The Motion for Protective Order requests that the Commission designate as confidential financial information that MC Squared has provided for their Certification Renewal Application.

I. LEGAL STANDARD

Section 4905.07 of the Ohio Revised Code provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43 of the Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43 of the Revised Code specifies that the term “public records” excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *See, In the Matter of the Application for North American Power and Gas, LLC for Certification as a Competitive Retail Electric Marketer*, Case No. 11-5566-EL-CRS, Entry (Dec. 16, 2011) (citing *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d, 396, 399 (2000)).

Similarly, the Commission’s Procedural Rules contemplate that certain information required to be submitted before the Commission which constitutes a trade secret or is otherwise

prohibited from release by state or federal law, will need to be protected from public disclosure. Specifically, the Ohio Administrative Code 4901-1-24(D) provides:

Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code....

Ohio law defines a "Trade Secret" as:

[I]nformation, 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. (*Emphasis Added*). Ohio Rev. Code § 1333.61(D).

The Commission facilitates the protection of such trade secrets in its Rules in the Administrative Code as well. *See* Ohio Admin. Code 4901-1-24(A) (7). The Ohio Supreme Court has adopted the following six factor test to analyze whether information is a trade secret under Ohio Revised Code § 1331:

- (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. Plain Dealer v. Ohio Dep't of Ins., 80 Ohio St. 3d 513, 534-525, 687 N.E.2d 661, 672 (1998) (citing *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-135, 454 N.E.2d 588, 592 (1983)).

II. ARGUMENT

MC Squared requests to be kept confidential in this Application Renewal case financial and other information that is not publicly available. Therefore, disclosure of this information would harm MC Squared's competitive position in the marketplace, hamper MC Squared's ability to conduct related business, and falls within the statutory characterization of a trade secret.

Furthermore, MC Squared respectfully submits that public disclosure of this information is not likely to assist the Commission in carrying out its duties pursuant to Title 49 of the Ohio Revised Code. Rather, the protection of this information will better serve Ohio consumers by facilitating fair competition among businesses that provide certain retail electric and natural gas services. Finally, the Commission's protection of this information from disclosure would be consistent with prior precedent and would not prejudice any other parties.

Because MC Squared is a privately held company, the above-described information submitted under seal in this filing is confidential information that is not publicly available. Public disclosure of this information would create an undue hardship on the Company because the disclosure would cause substantial harm to MC Squared's competitive position in the marketplace. Therefore, this information falls within the statutory characterization of a trade secret as defined by Section 1333.61(D) of the Revised Code.

Furthermore, the Commission has provided protective orders for similar information in prior proceedings. *See In the Matter of the Application of BlueStar Energy Services, Inc. for Certification as a Competitive Retail Electric Supplier*, Case No. 10-384-EL-CRS, Entry (May 3, 2010) (granting confidential protection for information provided in response to Sections C-3, C4, C-5, and C-7 of the Application); *In the Matter of Application of T.E.S. Energy Services, L.P. for Certification as a Competitive Retail Electric Service Broker/Aggregator*, Case No. 11-2541-EL-AGG, Entry (June 20, 2011) (granting confidential protection for information provided in response to Sections C-3, C-5, and C-7 of the Application).

III. CONCLUSION

For the reasons stated above, confidential treatment of the financial information and forecast information of MC Squared is appropriate and required by Ohio law and the Commission's Rules. *See* Ohio Rev. Code § 1333.61(D); Ohio Admin. Code 4901-1-24(D). Accordingly, MC Squared, respectfully requests that a Protective Order be issued.

In compliance with Ohio Administrative Code 4901-01-24(D)(2), two unredacted copies of MC Squared's confidential information are being submitted under seal in this case with this Motion.

Respectfully Submitted,

/s/Robert Dove
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Summary: Motion for a Protective Order electronically filed by Mr. Robert Dove on behalf of MC Squared Energy Services, LLC