

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT  
APPLICATION OF ISQ COOLCo, LLC  
AND HS COOLCo, LLC FOR APPROVAL  
OF PROPOSED MEMBERSHIP INTEREST  
TRANSFER.

CASE NO. 19-1622-CC-UNC

## FINDING AND ORDER

Entered in the Journal on November 21, 2019

### I. SUMMARY

{¶ 1} The Commission approves the joint application filed by ISQ CoolCo, LLC and HS CoolCo, LLC and finds that the proposed membership interest transfer is reasonable and should not adversely impact Ohio customers.

### II. DISCUSSION

{¶ 2} Pursuant to R.C. 4905.04, 4905.05, and 4905.06, the Commission is vested with the power and jurisdiction to supervise and regulate public utilities.

{¶ 3} ISQ CoolCo, LLC (ISQ) is a cooling company and a public utility as defined in R.C. 4905.03(H) and R.C. 4905.02, respectively. ISQ operates and maintains a chilled water system serving 13 large commercial and governmental customers in the downtown central business district in Cincinnati, Ohio (the City) pursuant to a franchise agreement between the City and ISQ. That agreement permits ISQ to service customers through negotiated contracts, and the Commission has previously determined that the City has primary jurisdiction over the rates charged to ISQ's customers under R.C. 4909.34. *In re Cinergy Cooling Corp.*, Case No. 97-445-CC-AIS, Finding and Order (June 5, 1997). As a cooling company and public utility, ISQ is subject to the jurisdiction of the Commission.

{¶ 4} Cube District Energy Partners, LLC (Cube) is a Delaware limited liability company that currently holds 100 percent of the membership interests of ISQ's holding company, which is also named ISQ CoolCo, LLC (ISQ Parent). ISQ Parent has no assets,

liabilities, or business operations other than those related to owning the membership interests of ISQ.<sup>1</sup>

{¶ 5} HS CoolCo, LLC (HS CoolCo), a Delaware limited liability company, is an indirect subsidiary of Harrison Street Social Infrastructure Fund, L.P., a Delaware limited partnership and its parallel vehicles (collectively, the Fund). The Fund is a long-term, open-ended investment vehicle that invests primarily in utility and social infrastructure assets. The Fund is managed by Harrison Street, an investment management fund headquartered in Chicago, Illinois, with approximately \$21.5 billion of assets under its management.

{¶ 6} On August 23, 2019, ISQ and HS CoolCo (Applicants) filed a joint application for approval of a proposed transfer of membership interests. Applicants inform the Commission that HS CoolCo has entered into a membership interest purchase agreement (MIPA) to purchase from Cube 100 percent of the membership interests of ISQ Parent. The application explains that, following the close of the sale, ISQ will continue to exist and to provide the same quality of service to customers. Applicants state that the transfer of ownership will be seamless and transparent, and the legal entity and regulatory status of ISQ will not change as a result of the transaction. Applicants represent that ISQ will continue to provide adequate service; will continue to own, operate, and maintain the facilities necessary to provide that service; will continue to possess the requisite managerial, technical, and financial expertise to operate as a cooling company and public utility; and will continue to employ existing operating personnel to provide day-to-day operations after the transaction is completed. Applicants further represent that the change in ownership will not adversely affect its existing financial ability to provide adequate service nor will it have adverse effects on ISQ or its customers.

{¶ 7} In addition to seeking approval of the transfer of ownership, Applicants request that the Commission recognize and approve two prior transactions by which ISQ's membership interest changed. Applicants submit that although the Commission was made

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<sup>1</sup> As holding companies, neither Cube nor ISQ Parent is a public utility as defined in R.C. 4905.02.

aware of the changes via the filing of Annual Reports for each calendar year from 2014 through 2018, ISQ inadvertently failed to make formal applications for review under the Commission's general supervisory powers. Applicants clarify that these previous ownership changes, which occurred in 2012 and 2014, did not harm customers or negatively affect negotiated customer contracts; rather, ISQ continued operations as an individual entity providing utility service to its customers who were timely notified of the changes.

{¶ 8} On October 21, 2019, Staff filed its review and recommendation (Recommendation) regarding the joint application. Staff relates that it reviewed the application, supporting documentation, and the MIPA. During that review, HS CoolCo confirmed that Veolia Energy Operating Services, LLC (Veolia) currently provides operations and asset management services to ISQ and will continue to do so after the anticipated close of the MIPA, at least until the expiration of the current contract with Veolia in June 2020. Staff states that HS CoolCo further confirmed its intent to continue to contract ISQ's operations and asset management with Veolia, or an equivalent operator, through the life of the investment. Staff asserts that these operators, whether Veolia or an equivalent, will be held to a prudent operator standard and will have demonstrated experience in the utility sector. Based on its review, Staff submits that the current request to transfer ownership interests appears reasonable and is in the public interest. Staff explains, however, that because it has not conducted a thorough review of the two prior membership interests changes, Staff is not providing a recommendation regarding the Applicants' request for recognition and approval of those prior transactions.

{¶ 9} Upon review of the joint application and Staff's Recommendation, the Commission approves the joint application filed by ISQ and HS CoolCo. In this, the Commission finds that the proposed transfer of membership interests identified in the MIPA is reasonable and should not adversely impact Ohio customers. The Commission additionally finds that Applicants' request for approval of the 2012 and 2014 transfers of ownership is moot. Further, the Commission concludes that it is not necessary to hold a hearing in this matter.

{¶ 10} With the August 23, 2019 joint application, HS CoolCo also filed a motion for protective order by which it seeks to protect and prevent public exposure of certain confidential information submitted to the Commission in connection with the application. Specifically, HS CoolCo seeks to protect its projected financial statements, which are attached to the application as Exhibit A (Confidential Information). The motion is unopposed.

{¶ 11} Under R.C. 4905.07, “all facts and information in the possession of the [Commission] shall be public \* \* \* [and] open to inspection by interested parties or their attorneys,” except as provided in R.C. 149.43. In turn, R.C. 149.43 specifies that a record prohibited from release under state or federal law is not a “public record.” R.C. 149.43(A)(1)(v). This exemption includes trade secrets. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 737 (2000) (“Trade secrets are exempt from disclosure under the ‘state or federal law’ exemption of R.C. 149.43.”).

{¶ 12} Ohio law defines a “trade secret” as information that both “derives independent economic value \* \* \* from not being generally known to, and not being readily ascertainable by \* \* \* other persons who can obtain economic value from its disclosure or use” and “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D). In analyzing whether a trade secret claim meets the statutory definition codified in R.C. 1333.61(D), one must consider: (1) the extent to which the information is known outside the business; (2) the extent to which it is known within the business; (3) the precautions taken by its holder to guard the secrecy of the information; (4) the savings effected and 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 it. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 13} HS CoolCo’s motion for a protective order is filed pursuant to Ohio Adm.Code 4901-1-24(D), which permits a party to request, and the Commission to issue, any order necessary to protect the confidentiality of any information contained within a document “to the extent that state or federal law prohibits the release of the information, including where the information is deemed \* \* \* to constitute a trade secret under Ohio law \* \* \*.” In support of its motion, HS CoolCo explains that it and its direct parent, the Fund, are not publicly traded companies and, therefore, their financial information—including the Confidential Information—is not publicly available. HS CoolCo states that the Confidential Information is competitively sensitive and highly proprietary trade secret information, the public disclosure of which would impair its ability to respond to competitive opportunities in the marketplace and would provide competitors with an unfair competitive advantage. HS CoolCo additionally states that it considers and treats the documents and information comprising the Confidential Information as trade secret, which it protects during the ordinary course of business and does not disclose to anyone unless required by a legal proceeding. Finally, HS CoolCo alleges that non-disclosure of the information will not impair the purposes of Title 49.

{¶ 14} Upon review of the information designated as confidential, HS CoolCo’s arguments in support of retaining that confidentiality, and the legal standards discussed above, the Commission concludes that the Confidential Information constitutes a trade secret. As such, release of the information is prohibited. The Commission further finds that nondisclosure of the information is not inconsistent with the purposes of R.C. Title 49. Accordingly, the Commission finds that HS CoolCo’s August 23, 2019 motion for a protective order should be granted. A party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date pursuant to Ohio Adm.Code 4901-1-24(F).

### III. ORDER

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the joint application be approved as stated in Paragraph 9. It is, further,

{¶ 17} ORDERED, That the motion for protective order filed by HS CoolCo be granted as stated in Paragraph 14. It is, further,

{¶ 18} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 19} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

PAS/hac

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Summary: Finding & Order Finding and Order that the Commission approves the joint application filed by ISQ CoolCo, LLC and HS CoolCo, LLC and finds that the proposed membership interest transfer is reasonable and should not adversely impact Ohio customers. electronically filed by Docketing Staff on behalf of Docketing