

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of MPower)	
Energy NJ, LLC for Renewal of its Certification)	Case No. 17-2122-GA-CRS
As a Competitive Retail Natural Gas Marketer)	

MPOWER ENERGY NJ, LLC’S MOTION FOR PROTECTIVE ORDER

MPower Energy NJ, LLC (“MPower”), pursuant to OAC 4901:1-27-08, hereby moves for a protective order to keep confidential Exhibits C-3 and C-5 to MPower’s Renewal Certification Application for Competitive Retail Natural Gas Marketer because they contain confidential, commercially sensitive, and/or proprietary information. Accordingly, as set forth in the attached Memorandum in Support, MPower seeks a protective order preventing public disclosure of Exhibits C-3 and C-5 and requests that the Commission maintain Exhibits C-3 and C-5 under seal.

Respectfully submitted,

/s/ Kari D. Hehmeyer

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**MPOWER ENERGY NJ, LLC’S MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

MPower Energy NJ, LLC (“MPower”), is a provider of competitive retail natural gas services, certified by the Commission in the above-referenced proceeding under Certificate No. 17-628G(1).

MPower is filing with the Commission an application for renewal of its certification. As part of its application, MPower filed with the Commission, under seal, Exhibits C-3 and C-5. Exhibit C-3 contains MPower’s financial statements. Exhibit C-5 are MPower’s forecasted financial projections that contain nonpublic and proprietary information about MPower’s finances. Exhibits C-3 and C-5 of the application contain competitively sensitive and highly proprietary business information that is not generally known or available to the public. MPower respectfully requests that the Commission enter an order protecting Exhibits C-3 and C-5 from public disclosure.

OAC Rule 4901-1-24(D) provides that the Commission may issue any order necessary to protect the confidentiality of the information contained in an application when disclosure of the information is prohibited by state or federal law, and where nondisclosure is not inconsistent with the purposes of Title 49 of the Ohio Revised Code. OAC 4901-1-24(D) specifically notes that trade secrets under Ohio law are a type of confidential information intended to be protected by the Rule.

Similarly, Section 4905.07 of the Revised Code, which provides that facts and information in the possession of the Commission shall be made public, includes an exception for “[r]ecords the release of which is prohibited by state or federal law.” R.C. 4905.07; R.C. 149.43(v). The Ohio Supreme Court has confirmed that trade secrets fall within this exception. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399 (2000) (“Trade secrets are exempt from disclosure under the ‘state or federal law’ exemption of R.C. 149.43.”).

Section 1333.61(D) of the Revised Code defines “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.

R.C. 1333.61(D). The Ohio Supreme Court has also identified six factors to consider when determining if information constitutes trade secrets:

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. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-525 (Ohio 1997).

Furthermore, the Commission’s instructions to the Renewal Certification for Competitive Retail

Natural Gas Marketers specifically provide that “[a]n applicant may file financial statements, financial arrangements, and forecasted financial statements under seal,” echoing the language in OAC 4901:1-27-08.

Exhibits C-3 and C-5 to the application should be kept confidential because they satisfy the requirements of OAC 4901-1-24(D). Exhibits C-3 and C-5 are confidential financial statements and financial projections that contain confidential information on MPower’s finances. Exhibits C-3 and C-5 also contain competitively sensitive and highly proprietary business information that is not generally known or available to the public. The competitively sensitive, confidential and highly proprietary business and financial information in Exhibits C-3 and C-5 derives independent economic value, actual or potential, from not being generally known or reasonably ascertainable to MPower’s competitors, who could obtain economic value from its disclosure or use.

Disclosure of the sensitive information in Exhibits C-3 and C-5 would provide MPower’s competitors with valuable insight into MPower’s business activities. This information is treated as proprietary and confidential in the ordinary course of MPower’s business. Accordingly, the information contained within Exhibits C-3 and C-5 should be protected from public disclosure. Further, because the information submitted under seal will be available to the Commission Staff, Staff’s review may take place without the necessity of public disclosure of the confidential information.

For the foregoing reasons, MPower requests that Exhibits C-3 and C-5 be placed under a protective order to prevent them from being disclosed publicly, and that the Commission maintain Exhibits C-3 and C-5 under seal.

Respectfully submitted,

/s/ Kari D. Hehmeyer

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 26th day of November, 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record.

/s/ Kari D. Hehmeyer

An Attorney for MPower Energy NJ, LLC

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Summary: Motion Motion for Protective Order and Memorandum in Support electronically filed by Ms. Kari D Hehmeyer on behalf of MPower Energy NJ, LLC