**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Renewal Application of )

Nordic Energy Services, LLC for Re-Certification ) Case No. 12-2611-GA-CRS

As a Retail Natural Gas Supplier )

**MOTION OF NORDIC ENERGY SERVICES, LLC FOR PROTECTIVE ORDER**

Now comes Nordic Energy Services, LLC (“Nordic”), by its attorneys, Thompson Hine LLP, through Bryce A. Lenox, and Philip B. Sineneng, pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, and moves for a protective order keeping the designated exhibits to its renewal application confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Redacted copies of this confidential information have been filed concurrently in the public docket. Three unredacted copies of the exhibits are submitted under seal.

Respectfully submitted,

**NORDIC ENERGY SERVICES, LLC**

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

Now comes Nordic Energy Services, LLC (“Nordic”), by its attorneys, Thompson Hine LLP, through Bryce A. Lenox and Philip B. Sineneng, and requests that the information designated as confidential and/or proprietary in the accompanying filing be protected from public disclosure. The confidential information consists of Exhibits B-4 (Disclosure of Liabilities and Investigations), C-3 (Financial Statements), C-4 (Financial Arrangements) and C-5 (Forecasted Financial Statements) of its Application for Renewal Certification as a Competitive Retail Natural Gas Supplier.

The information in Exhibit B-4 describes information that should not be made public by the Ohio PUC. Generally, the Illinois Commerce Commission provides protection for confidential and proprietary information furnished, delivered or filed with it. See 220 ILCS 5/4-404. The information identified in B-4 relates to information Nordic deems to be confidential at this time. As such, it should be afforded protection in this matter. Section 4901-1-24(D) of the Commission’s rules provides that the Commission shall protect from disclosure information to the extent state or federal law prohibits disclosure of same. As such, Nordic maintains that the aforementioned information should not be made public by the Commission.

The remaining information for which protection is sought describes Nordic’s financial information and results of operations, financial arrangements with third parties, and projected financial information. That information is clearly competitively sensitive trade secret information. Public disclosure of this information would impair Nordic’s ability to respond to competitive opportunities in the marketplace, and would provide competitors with an unfair competitive advantage.

Section 4901-1-24(D) of the Commission’s rules provides that the Commission or certain designated individuals 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 release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.” As set forth herein, state law prohibits the release of the information which is the subject of this motion. Moreover, the non-disclosure of the information will not impair the purposes of Title 49. The Ohio Supreme Court has clarified that the “state or federal law” exemption of Section 4901-1-24(D) is intended to cover trade secrets. State ex rel. Besser v. Ohio State, 89 Ohio St.3d 396, 399 (2000). The Commission and its staff have full access to the information in order to fulfill its statutory obligations; thus no purposes of Title 49 would be served by the public disclosure of the information.

Ohio law defines a trade secret as “information . . . 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” and “(2) [i]t is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Ohio Revised Code, Section 1333.61(D). The Ohio Supreme Court has adopted the following six factors to be used in analyzing a claim that information is a trade secret under that section: (1) the extent the information is known outside the business; (2) the extent the information is known to those inside the business (i.e., by employees); (3) the precautions taken by the holder of the trade secrets to guard their secrecy; (4) the savings effected and value to the holder of the trade secrets in having the information protected 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 (1997). The information in Exhibits C-3, C-4 and C-5 which is the subject of this motion is considered a trade secret by Nordic. The information is not shared outside of the company, and only Nordic’s managerial and executive staff and employees are aware of the information. Nordic takes great precaution to protect its trade secrets, the trade secrets are of great value to Nordic, and sharing them would affect Nordic’s competitiveness in the market. It would take other companies great time and expense to duplicate the information.

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 preferences 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 1333.13, 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 (O.A.C. § 4901-1-24(A)(7)).

All of the information discussed herein should be protected from disclosure. The Commission has protected Nordic’s financial information in its November 15, 2012 rulings on Nordic’s motion submitted with its original application, and the matter concerning Nordic’s electric application (Case No. 12-2701-EL-CRS). The information outlined in this motion and memorandum is precisely the type of information which companies go to great length to keep private. Knowledge by a competitor would do great harm to Nordic in the marketplace.

For the foregoing reasons, Nordic requests that the designated information be protected from public disclosure and kept under seal.

Respectfully submitted,

**NORDIC ENERGY SERVICES, LLC**

**­** /s/ Philip B. Sineneng

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