

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO


In the matter of the Application of)	
Volunteer Energy Services, Inc. for)	
Renewal of Certification as a Competitive)	Case No. 03-1742-EL-AGG
Retail Electric Supplier.)	

MOTION FOR PROTECTIVE ORDER

Pursuant to Section 4901-1-24(D) Ohio Admin. Code, Volunteer Energy Services, Inc. ("VESI") respectfully requests that the Public Utilities Commission of Ohio ("PUCO" or "Commission") grant its Motion for a Protective Order with regard to Exhibits C-3 and C-5 for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Volunteer Energy Services, Inc. ("VESI") seeks a protective order to protect the confidentiality of and to prohibit the disclosure of certain financial information which contains competitively sensitive and highly proprietary business financial information and marketing plans which comprise trade secrets. Specifically, VESI desires to file the following under seal:

Exhibit C-3 Company Financial Statements
Exhibit C-5 Financial Forecast

This exhibit has been clearly marked as confidential and is being filed contemporaneously with this Motion under seal.

Sec. 4929.23 Ohio Rev. Code states that a retail natural gas supplier, "...shall provide the Public Utilities Commission with such information, regarding a competitive retail natural gas service for which it is subject to certification, as the Commission considers necessary to carry out Section 4929.20 and 4929.24 of the Revised Code. The Commission shall take measures as it considers necessary to protect the confidentiality of any such information." (emphasis added). Thus, the General Assembly clearly recognized the importance of balancing the need to provide the Commission with adequate information to review an application for certification with the need to protect the confidential information of market participants. While certification is the gateway to participating in a competitive market, the disclosure of confidential information will bar the path.

Rule 4901-1-24(D) Ohio Admin. Code authorizes the Commission to issue an order protecting the confidentiality of information where it constitutes a trade secret and where disclosure is not inconsistent with Title 49 of the Ohio Revised Code. As discussed above, Title 49 already addresses the concern of protecting proprietary information. Moreover,

both Section 4901-12 and 4905-07 Ohio Rev. Code allow exceptions to the rule that all proceedings of the Public Utilities Commission of Ohio are public. Those exceptions are outlined in Sec. 149.43 which excludes the release of records which are prohibited by state law. Under Sec. 149.43 Ohio Rev. Code, trade secrets are not subject to the public disclosure by government agencies, nor are they considered public records. Sec. 4901-1-27(e) Ohio Admin. Code states that in hearings, the Attorney Examiner will, "[p]rotect public disclosure of trade secrets, proprietary business information, or confidential research, development or commercial materials and information."

The information VESI seeks to protect falls under the ambit of trade secrets; proprietary business information; and, confidential research, development and commercial materials and information.

Trade Secret is defined in Sec. 1333.61(D) Ohio Code as follows:

"Trade secret" means information, including the whole or any portion of 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, or 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.

VESI asserts that its financial information is confidential and is not generally known or available to the general public. Public disclosure of this information would jeopardize VESI's ability to negotiate and to compete in the market.

VESI also requests a waiver of Rule 4901-1-24(f) Ohio Admin. Code which would result in rescinding the protective order after eighteen months. VESI asserts that the information it deems to be confidential today will not be any less so in eighteen months. It is and will be competitively sensitive information, which, if unleashed in a competitive market will have an adverse impact on VESI's ability to do business. Thus, it is imperative that the information remains confidential.

WHEREFORE, Volunteer Energy Services, Inc. respectfully requests that the Commission grant its Motion for a Protective Order pursuant to Sec. 4901-1-24(D) Ohio Admin. Code and its Motion for a waiver of Rule 4901-1-24(F) for the reasons set forth above.

Respectfully submitted,

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