

FILE

9



November 29, 2011

09-1845-EL-AGG

Public Utilities Commission of Ohio
Docketing Division
13th Floor
180 East Broad Street
Columbus, OH 43215-3793

Re: Motion for Protective Order and Supporting Memorandum
Metromedia Power, Inc. CRES Renewal Application (Broker/Aggregator)

Enclosed herein is Metromedia Power's Motion for Protective Order and Supporting Memorandum for Exhibit C-3 of its renewal application. Also enclosed are 3 redacted copies of Exhibit C-3 and, under seal, 3 unredacted copies.

If there are any questions regarding this filing, please contact Scott Spiewak, Vice President and Counsel at (201) 871-0427 (or sspeiwak@mmenergy.com) or the undersigned at (732) 318-3658 (or gpozza@mmenergy.com).

Sincerely,

A handwritten signature in cursive script, appearing to read "Gordon Pozza".

Gordon Pozza
Director of Regulatory Affairs
Metromedia Power, Inc.

RECEIVED-DOCKETING DIV
2011 NOV 30 PM 12:01
PUCO

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician PL Date Processed NOV 30 2011

**STATE OF OHIO
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF

METROMEDIA POWER, INC.

Case No. 09-1845-EL-AGG

**RENEWAL APPLICATION FOR CERTIFICATION AS A
POWER BROKER/AGGREGATOR**

**MOTION SEEKING PROTECTIVE ORDER DESIGNATING
EXHIBIT C-3 OF THE RENEWAL APPLICATION OF
METROMEDIA POWER, INC. AS CONFIDENTIAL**

Metromedia Power, Inc. ("MMP") filed its renewal application on or about November 25, 2011 for certification to provide aggregation and power broker services, as defined in Rule 4901-1-24-01. Pursuant to Rule 4901-1-24 and Rule 4901-1-12 of the Ohio Administrative Code and Section V of the Certification Filing Instructions for Aggregators/Power Brokers, MMP hereby applies for a protective order designating Exhibit C-3 of its application as confidential to be retained by the PUC under seal. Redacted copies of the exhibit are attached. Three un-redacted copies are submitted under seal, with each page marked "Confidential." Also submitted herewith is the required memorandum to support the need for the protective order.

Respectfully submitted,

Scott Spiewak

A handwritten signature in cursive script, appearing to read "S. Spiewak", written in black ink.

By: _____
Scott Spiewak

Vice President and Counsel
Metromedia Energy, Inc.
405 Highview Road
Englewood, NJ 07631
Phone: (201) 871-0427
Fax: (253) 663-7224
sspiewak@mmenergy.com

**STATE OF OHIO
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF

METROMEDIA POWER, INC.

Case No. 09-1845-EL-AGG

**RENEWAL APPLICATION FOR CERTIFICATION AS A
POWER BROKER/AGGREGATOR**

**MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE
ORDER DESIGNATING EXHIBIT C-3 OF THE RENEWAL
APPLICATION OF METROMEDIA POWER, INC. AS CONFIDENTIAL**

Pursuant to Rule 4901-1-24 of the Ohio Administrative Code, Metromedia Power, Inc. ("MMP") hereby submits this memorandum in support of its motion seeking a protective order designating as confidential Exhibit C-3 of its renewal application for CRES certification as an aggregator/power broker.

MMP filed its renewal application on or about November 25, 2011. Exhibit C-3 was filed under separate cover and the Commission requested to designate the exhibit confidential. A copy of the transmittal letter is appended hereto as Attachment A. Also attached are redacted copies of Exhibit C-3, as required by Rule 4901-1-24(D) (1); and three un-redacted copies, submitted under seal with each page marked "confidential", as required by Rule 4901-1-24(D) (2).

The Commission's Certification Filing Instructions for CRES Aggregators/Power Brokers provide in Section V, Confidentiality:

"If any of an applicant's answers require the applicant to disclose what the applicant believes to be privileged or confidential information not otherwise available to the public, the applicant should designate at each point in the application that the answer requires the applicant to disclose privileged and confidential information. Applicant

must still provide that privileged and confidential information (separately filed and appropriately marked). Applicant must fully support any request to maintain the confidentiality of the information it believes to be confidential or proprietary in a motion for protective order, filed pursuant to Rule 4901:1-1-24 of the Ohio Administrative Code.”

Rule 4901-1-24 (D) provides that upon the motion of a party filing a document with the docketing division of the Commission:

“the commission, the legal director, the deputy legal director or the attorney examiner assigned to the case 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, or the attorney examiner assigned to the case 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. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.”

MMP is seeking a proprietary order to protect the confidentiality of Exhibit C-3, which contains the Company’s unaudited 2010 profit & loss statement and balance sheet.

MMP is a privately held corporation and does not release its financial statements or provide information about its finances to the public. Disclosure of the highly sensitive information contained in Exhibit C-3 would provide a competitive advantage to other power brokers and marketers. MMP’s competitors would be able to use the Company’s proprietary financial information as a resource to establish and adjust its sales and marketing strategies. Disclosure would thus adversely affect the Company’s finances and therefore its ability to compete effectively. Moreover, potential competitors, i.e., those

outside of PUCO jurisdiction and not subject to public disclosure requirements, would also be able to use the Company's financial data to its advantage.

As set forth herein, state law prohibits the release of the information that is the subject of this motion. Moreover, non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in Exhibit C-3 in order to fulfill their statutory obligations. No purpose of Title 49 would be served by the public disclosure of this 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 preference 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 1333.31, 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).

Similarly, the Commission's rules protect trade secrets. Rule 4901-1-24 (A)(7).

The Ohio statutes provide a definition of "trade secret" which is derived from the Uniform Trade Secrets Act:

"Trade secret" means information, 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). This definition clearly reflects the state policy favoring the protection of trade secrets such as the information that is the subject of this motion. See, Spring Industries, Inc. v. J.E. Nicolozakes, et al., 2000 LEXIS 5522; 58 U.S.P.Q. 2d (BNA) 1794 (Ct. App. Oh. 2000).

As shown above, the information that MMP seeks to have designated as confidential is not readily ascertainable by other persons and would have substantial economic value if generally known to its competitors. Furthermore, when filing this information, MMP requested that it be designated as confidential and not made available to the general public, and the relevant pages have been stamped “confidential”.

Courts of other jurisdictions have held that, not only does a public utilities commission have the authority to protect the trade secrets of a public utility, but the trade secret statute creates a duty to protect them. See, New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y.2d 213 (1982). If the Commission were to do otherwise, it would negate protections the Ohio General Assembly has granted to all businesses through adoption of the Uniform Trade Secrets Act.

In the past, this Commission has granted both protective orders and extensions of protective orders. MCI /Ameritech Ohio Arbitration, Case No. 01-1319-TP-ARB; TCG/Ameritech Ohio Arbitration, Case No. 96-694-TR-ARB, Entry, July 29, 1998; MCI/Ameritech Ohio Arbitration, Case No. 96-888-TP-ARB, Entry, July 29, 1998; AT&T/Ameritech Ohio Arbitration Case No. 96-752-TP-ARB, Entry, September 23, 1998; In the Matter of the Commission's Investigation Into Continuation of the Ohio Telecommunications Relay Service, Case No. 96-1139-TP-COI, Entry, January 3, 1999; Ameritech Advanced Data Services/Ohio Dominican College Case No. 97-13 91 -CT-ZAC, Entry, April 19, 1999; Ameritech Advanced Data Services/SUN Television and Appliances Case No. 97-1494-CT- ZAC, Entry, May 19, 1999.

For all of the foregoing reasons, MMP requests that its motion seeking a protective order shielding Exhibit C-3 of its application from public disclosure be granted in full.

Respectfully submitted,

Scott Spiewak

By: _____

Scott Spiewak



Vice President and Counsel
Metromedia Energy, Inc.
405 Highview Road
Englewood, NJ 07631
Phone: (201) 871-0427
Fax: (253) 663-7224
sspiewak@mmenergy.com



November 23, 2011

ATTACHMENT A

Public Utilities Commission of Ohio
Docketing Division
13th Floor
180 East Broad Street
Columbus, OH 43215-3793

Re: Metromedia Power, Inc.
Renewal Application for CRES Recertification as a Power Broker/Aggregator

Enclosed herein is Metromedia Power's renewal application and the required ten copies. A Motion for Protective Order is being filed separately for Confidential Exhibit C-3.

If there are any questions or additional information is needed, please contact me at 732-318-3658 or by e-mail at gpozza@mmenergy.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gordon Pozza", is written over the printed name.

Gordon Pozza
Director of Regulatory Affairs
Metromedia Power, Inc.