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12-1925-GA-AGG

BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
American Utility Management, Inc.)
For a Certification As A Competitive)
Retail Natural Gas Broker)

Case No. ____-____-GA-AGG

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AMERICAN UTILITY MANAGEMENT INC.'S
MOTION FOR PROTECTIVE ORDER

American Utility Management Inc. ("AUM"), pursuant to O.A.C. 4901-1-24(D), moves for a protective order keeping confidential certain financial information associated with its Certification Application for Competitive Retail Natural Gas Brokers/Aggregators (the "Application"). AUM seeks confidential treatment of Exhibit C-3 (financial statements) of the Application. Three (3) copies of Exhibit C-3 have been filed concurrently with this motion under seal.

Release of this confidential business information to the public, including AUM's competitors, would cause significant prejudice and competitive harm to AUM. Thus, as forth in further detail in the attached Memorandum in Support, which is incorporated herein, AUM seeks a protective order preventing public disclosure of Exhibit C-3.

Respectfully submitted,

/s/ N. Trevor Alexander

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In the Matter of the Application of)	
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**MEMORANDUM IN SUPPORT OF
AMERICAN UTILITY MANAGEMENT INC.'S
MOTION FOR PROTECTIVE ORDER**

I. Introduction

American Utility Management Inc. ("AUM") requests that Exhibit C-3 (financial statements) of its Certification Application for Competitive Retail Natural Gas Brokers/Aggregators (the "Application") be designated as confidential pursuant to O.A.C. 4901-1-24(D). The public release of its financial statements would cause harm to AUM and its future operations, and so this information should be kept confidential.

II. LAW & ARGUMENT

The Commission and Ohio law has long protected trade-secret information.¹ Pursuant to R.C. § 1333.61(D), a "trade secret" is:

[A]ny 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. [And]

¹ O.A.C. § 4901-1-24(A)(7).

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Ohio law grants special protections to such trade secrets, including statutory causes of action for an injunction precluding the misappropriation of trade secrets.² The Commission has recognized the statutory obligation to protect trade secrets, even in the context of its preference for open proceedings and has previously carried out its obligations in this regard in numerous proceedings.³

Ohio law also reflects a recognition that information associated with Ohio's competitive market warrants a different level of protection than the information-sharing associated with regulated public utilities.⁴ Indeed, the Ohio Supreme Court has held that, not only does the Commission have the authority to protect trade secrets, the trade secret statute creates a duty to protect them:

[T]he commission has the statutory authority to protect competitive agreements from disclosure, and as we have noted, the commission also has a duty to encourage competitive providers of electric generation. All of the parties agree that [as of 2009] the market is weak, and anything could affect the future growth of competitive providers. Exposing a competitor's business strategies and pricing points would likely have a negative impact on that provider's viability.⁵

² See R.C. § 1333.62.

³ See *In re: General Telephone Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets); See, e.g., *Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

⁴ See R.C. § 4928.06(F) ("The commission shall take such measures as it considers necessary to protect the confidentiality of any such information" that the commission is provided with regard to competitive retail electric service.).

⁵ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 370 2009-Ohio-604, ¶ 31 (2009) (emphasis added) citing R.C. § 4928.06(F).

The Commission has frequently granted protection to the trade secret financial information of potential brokers, rightly recognizing that these prospective brokers could be significantly harmed if their trade secret financial information were disclosed to the general public.⁶

AUM is a privately held company which does not disclose its financial statements to the general public. Exhibit C-3 contains AUM's confidential and proprietary financial statements which are held in confidence in the normal course of business and which have never appeared in the public record. These documents have actual, substantial independent economic value to market participants and are not ascertainable by proper means by persons who would derive economic value from disclosure. AUM would be harmed if these documents were disclosed to the public.

These documents constitute trade secrets under Ohio law,⁷ and public disclosure of this information would jeopardize AUM's business position and ability to compete. By way of examples, by reviewing this information potential competitors could reasonably estimate AUM's potential growth, market share, and margins. In addition, public disclosure of this financial

⁶ See, e.g., *In the Matter of the Application of McEnergy Inc. for Certification as a Competitive Retail Electric Generation Broker*, Case No. 12-825-EL-AGG, April 11, 2012 Entry (protecting financial information); *In the Matter of the Application of T.E.S. Energy Services, L.P. for Certification as a Competitive Retail Electric Service Broker Aggregator*, Case No. 11-2541-EL-AGG, June 20, 2011 Entry (same).

⁷ The factors to be considered in recognizing a trade secret include: (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. See *State ex rel. Perrea v. Cincinnati Pub. Sch.*, 123 Ohio St.3d 410, 414, 2009-Ohio-4762 (2009); *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga App. 1983) citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980).

information is not likely to assist the Commission in carrying out its duties, since the Commission and its Staff will already have access to this information.

III. CONCLUSION

The Commission has frequently granted protection to the trade secret financial information of other market participants. AUM requests that the Commission continue this policy and maintain Exhibit C-3 of the Application under seal.

Respectfully submitted,

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