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October 19, 2012

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VIA UPS

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

Re: In the Matter of the Application of Discount Power, Inc. for Certification as a
Competitive Retail Electric Service Provider in Ohio; Case No. 12-2153-EL-CRS
(Discount Power)

Dear Sir/Madam:

Enclosed please find Discount Power's Motion for Protective Order and Memorandum in Support. As noted in the enclosed Motion, Exhibit C5 to the Application contains sensitive and confidential information and Discount Power requests that the three enclosed copies of Exhibit C5 to the Application be filed under seal and kept confidential.

Please let me know if you have any questions or need additional information.

Sincerely,


Gretchen L. Lange

Enclosures

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Discount)
Power, Inc., for Certification as a)
Competitive Retail Electric Service Provider) Case No. 12-2153-EL-CRS
In Ohio.)

**DISCOUNT POWER, INC.’S MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

I. Introduction

In support of Discount Power’s Certification Application for Retail Generation Providers and Power Marketers for the State of Ohio (hereinafter, “Application”), Discount Power submitted various exhibits, including Exhibit C5: Discount Power Inc.’s Forecasted Financial Statements 2013-2014. Discount Power now submits, under seal, an updated Exhibit C5, which contains competitively sensitive and highly proprietary business information that is not generally known or available to the public. Discount Power requests that the Commission enter an order protecting the updated Exhibit C5 from public disclosure.

II. Argument

Exhibit C5 to the Application should be kept confidential because the information contained within Exhibit C5 satisfies the requirements of Rule 4901-1-24(D) and constitutes trade secrets under Ohio law.

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. Rule 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.

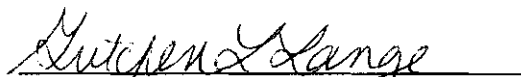
State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-525 (Ohio 1997).

The financial statements contained within Exhibit C5 to the Application are competitively sensitive and highly proprietary business and financial information, which derive independent economic value, actual or potential, from not being generally known to its competitors, and from not being reasonably ascertainable by its competitors, who could obtain economic value from its disclosure or use. Disclosure of this sensitive financial information would provide Discount Power's competitors with valuable insight into Discount Power's business activities. This information is treated as proprietary and confidential in the ordinary course of business of Discount Power. Accordingly, after applying the *Plain Dealer* analysis and the definition of "trade secrets" contained in Section 1333.61(D), it is clear that the information contained within Exhibit C5 to the Application constitutes trade secrets.

III. Conclusion

Because Exhibit C5 meets the requirements of Rule 4901-1-21(D) and contains "trade secrets" as defined under Ohio law, Discount Power requests that the new Exhibit C5 now filed under seal be treated as confidential by the Commission.

Respectfully submitted,



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