

STATE OF OHIO
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF

METROMEDIA ENERGY, INC.

Case No. 02-1926 GA-CRS

FOR CERTIFICATION RENEWAL AS A
COMPETITIVE RETAIL NATURAL GAS
MARKETER, AGGREGATOR AND BROKER

**MOTION SEEKING PROTECTIVE ORDER
DESIGNATING EXHIBITS B-3, C-3, C-4 AND C-5 OF
THE CERTIFICATION RENEWAL APPLICATION OF
METROMEDIA ENERGY, INC. AS CONFIDENTIAL**

Metromedia Energy, Inc. ("MME"), a licensed competitive retail natural gas marketer in the State of Ohio, filed an application on September 21, 2012 for renewal of its certification as a competitive retail natural gas marketer, retail natural gas aggregator and retail natural gas broker for gas customers in Ohio. Pursuant to Rule 4901-1-24 and Rule 4901-1-12 of the Ohio Administrative Code and Section V of the Certification Filing Instruction for Competitive Retail Natural Gas Marketers, MME hereby applies for a protective order designating Exhibits B-3, C-3, C-4 and C-5 of its renewal application as confidential to be retained by the PUC under seal. Redacted copies of Exhibits B-3, C-3, C-4 and C-5 have been previously submitted. Three unredacted copies of these exhibits were previously submitted under seal, with each page marked "Confidential." Submitted herewith is the required memorandum to support the need for the protective

order.

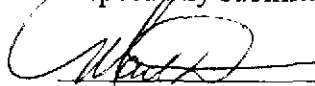
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Respectfully submitted,



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Case No. 02-1926 GACRS

**FOR CERTIFICATION RENEWAL AS A
COMPETITIVE RETAIL NATURAL GAS
MARKETER, AGGREGATOR AND BROKER**

**MEMORANDUM IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER DESIGNATING EXHIBITS B-3,
C-3, C-4 AND C-5 OF THE CERTIFICATION RENEWAL
APPLICATION OF METROMEDIA ENERGY, INC. AS CONFIDENTIAL**

Pursuant to Rule 4901-1-24 of the Ohio Administrative Code, Metromedia Energy, Inc. ("MME") hereby submits this memorandum in support of its motion seeking a protective order designating as confidential Exhibits B-3, C-3, C-4 and C-5 of its renewal application for certification as a competitive retail natural gas marketer, retail natural gas aggregator and retail natural gas broker.

MME is a certified competitive retail natural gas marketer, aggregator, and broker in the State of Ohio since August 28, 2002. On September 21, 2012, MME filed an application to renew its certification.¹ The Company's filing stated it would file this motion to request confidentiality protection for Exhibits B-3, C-3, C-4 and C-5. A copy of the transmittal letter is appended as Attachment A.

Previously filed with this Commission (on or about October 1, 2012) were redacted Exhibits B-3, C-3, C-4 and C-5, as required by Rule 4901-1-24(D) (1). Also

¹ The Renewal Certificate issued September 25, 2012.

submitted under seal were three unredacted copies of these exhibits, with each page marked "confidential," as required by Rule 4901-1-24(D)(2).

The Commission's Certification Filing Instructions for Competitive Retail Natural Gas Marketers 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 (sic) of the Ohio Administrative Code."

Rule 4901-1-24 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."

MME is seeking a proprietary order to protect the confidentiality of Exhibit B-3 attached to its renewal application, which contains customer counts and pro forma volumes in 2011 by state; Exhibit C-3, which contains audited financial statements for

2010; Exhibit C-4: which contains MME's current credit arrangements; and, Exhibit C-5, which contains its projected 2011 Profit and Loss Statement and Balance Sheet.

MME is a privately held corporation, and does not publicly release information as to its customer count, load, gross margins, net profits or credit arrangements. If the highly sensitive information contained in Exhibit B-3, C-3, C-4 and C-5 is disclosed to the public, it would provide a competitive advantage to other marketers. MME's competitors and suppliers would be able to use the Company's financial and customer information for pricing and product strategies. Disclosure would 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 be able to use the financial and customer data as a basis for entry decisions.

As set forth herein, state law prohibits the release of the information that is the subject of this motion. Moreover, the 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 Exhibits B-3, C-3, C-4 and C-5 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 MME seeks to have designated as confidential is not readily ascertainable by other persons and would have substantial economic value if generally known to other gas marketers. Furthermore, when filing this information, MME 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, MME requests that its motion seeking a protective order shielding Exhibits B-3, C-3, C-4 and C-5 of its renewal application from public disclosure be granted in full.

Respectfully submitted,



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Simple Solutions. Powerful Results.

September 20, 2012

ATTACHMENT A

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

Re: Natural Gas Supplier Certification Renewal Application Registration
Case # 02-1926-GA-CRS

Enclosed are Metromedia Energy's certification renewal application and the required 10 copies. Confidential Exhibits B-3, C-3, C-4 and C-5 are being filed separately with a Motion for Protective Order.

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

Sincerely,

Gordon Pozza
Director of Regulatory Affairs
Metromedia Energy, Inc.