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ORIGINAL

13-0413-EL-AGG⁴

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
The Energy Link, LLC, for Certification as) Case No. _____
Aggregation/Power Broker for Electric)
Service in Ohio.)

THE ENERGY LINK, LLC'S MOTION FOR PORTECTIVE ORDER

The Energy Link, LLC ("Energy Link"), by and through its attorneys, and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, moves for a protective order to keep confidential the confidential and/or proprietary information in Exhibit C3 to Energy Link's Certification Application for Aggregation/Power Brokers for the State of Ohio. Pursuant to Rule 2901-1-24(D), The Energy Link submits herewith three unredacted copies of Exhibit C3 that have been marked as "Confidential" and are to be filed under seal. A memorandum in support of this Motion is filed herewith.

This 25th day of January, 2013

Respectfully submitted,

THOMPSON, DUNLAP & HEYDINGER, LTD.

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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, forecasted financial statements, and financial arrangements contained within Exhibits C3 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 Energy Link's competitors with valuable insight into its business activities. This information is treated as proprietary and confidential in the ordinary course of business of Energy Link. 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 Exhibits C3 to the Application constitutes trade secrets.

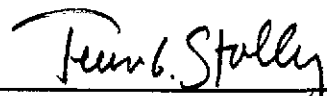
III. Conclusion

Because Exhibits C3 meet the requirements of Rule 4901-1-21(D) and contain "trade secrets" as defined under Ohio law, Energy Link requests that Exhibits C3 now filed under seal be treated as confidential by the Commission.

This 25th day of January, 2013

Respectfully submitted,

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