

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Optimal Facilities Management )  
Solutions, LLC for Certification )  
Application for Aggregators/Power )  
Brokers )

Case No. 13-1637 -EL-AGG

**MOTION FOR PROTECTIVE ORDER**

Pursuant to the provisions of Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), Optimal Facility Management Solutions, LLC ("OFMS") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a protective order to protect the confidentiality and prohibit disclosure and dissemination of certain documents filed simultaneously with this motion. The documents in Exhibit C-3 Financial Statements ("Exhibit C-3") and Exhibit C-5 Forecasted Financial Statements ("Exhibit C-5") contain competitively sensitive and proprietary business financial information comprised of trade secrets. These documents have been clearly marked as confidential and are hereby filed under seal, separate from the remainder of the materials that comprise OFMS's Certification Application for Aggregators/Power Brokers filed simultaneously with this Motion.

The grounds for the instant Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

  
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**MEMORANDUM IN SUPPORT**

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Contemporaneously with this Motion for Protective Order and Memorandum in Support, Optimal Facility Management Solutions, LLC ("OFMS") files its Certification Application for Aggregators/Power Brokers. As part of the Application materials, the Public Utilities Commission of Ohio ("Commission") requested information regarding OFMS' financial statements (Exhibit C-3) and forecasted financial statements (Exhibit C-5). OFMS has submitted the requested information under seal because the documents contain competitively sensitive and high proprietary business financial information that requires confidential treatment. Consequently, OFMS requests that the Commission maintain the confidential nature of these documents and the information contained therein and to protect the documents from public disclosure.

Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal laws prohibit the release of such information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code ("R.C."). State law recognizes the need to protect information that is confidential in nature, as is the information in Exhibit C-3 and Exhibit C-5. Section 4928.06(F), R.C, specifically permits the Commission to grant confidentiality to competitive information in that it states that "The commission shall take such measures as it considers necessary to protect the confidentiality of such information." Non-disclosure of the information will not impair the purposes of Title 49 as the Commission and its Staff will have access to the information they need to complete the review process.

The documents and information contained in Exhibit C-3 and Exhibit C-5 are comprised of competitively sensitive and high proprietary business financial information falling within the statutory characterization of a trade secret as defined by Section 1333.61(D), R.C.<sup>1</sup>

Clearly, financial statements and forecasted financial statements as set forth in Exhibit C-3 and Exhibit C-5, respectively, contain proprietary data and are confidential. Public disclosure or

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<sup>1</sup>R.C. 1331.61 (D) defines trade secret as: "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 subject of efforts that are reasonable under the circumstances to maintain its secrecy."

dissemination of this information would jeopardize OFMS' business position and ability to compete. OFMS asserts that this information is not generally known by the public and is held in confidence in the ordinary and normal course of business. Therefore, OFMS reasonably requests that the identified financial information contained in Exhibit C-3 and Exhibit C-5 be considered trade secrets, and thus, be treated as confidential by this Commission and its Staff.

WHEREFORE, OFMS respectfully requests that this Motion for Protective Order be granted for the reasons set forth herein.

Respectfully submitted,



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