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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

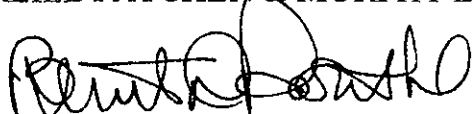
In the matter of the MSI Utilities, Inc.'s )  
Renewal Application for Competitive Retail )  
Natural Gas Brokers/Aggregators ) Case No. 12-2667-GA-CRS  
)

MOTION FOR PROTECTIVE ORDER

Pursuant to Section 4901-1-24(D) Ohio Admin. Code, MSI Utilities, Inc. ("MSI") respectfully requests that the Public Utilities Commission of Ohio ("PUCO" or "Commission") grant its Motion for a Protective Order with regard to trade secrets, confidential and proprietary financial information contained in Exhibits C-3 and C-5 to its Renewal Application for Competitive Retail Natural Gas Brokers/Aggregators, that the unredacted version of said Application be withheld from the PUCO website and all other public records, and the redacted version attached to this Motion be the only version included on the PUCO website and in the public records, for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

MSI seeks a protective order to protect the confidentiality of and to prohibit the disclosure of certain documents which contain competitively sensitive and highly proprietary business financial information and marketing plans which comprise trade secrets and which are submitted to the Commission in Exhibits C-3 and C-5 to the attached Renewal Application for Competitive Retail Natural Gas Brokers/Aggregators. The appropriately-designated documents have been clearly marked as confidential and are being filed contemporaneously with this Motion under seal. Specifically, MSI requests that the Commission's protective order extend to Exhibits C-3 ("Financial Statements,") and C-5 ("Forecasted Financial Statements").

Rule 4901-1-24(D) Ohio Admin. Code authorizes the Commission to issue an order protecting the confidentiality of information where it constitutes a trade secret and where disclosure is not inconsistent with Title 49 of the Ohio Revised Code. As discussed above, Title 49 already addresses the concern of protecting proprietary information. Moreover, both Section 4901-12 and 4905-07 Ohio Rev. Code allow exceptions to the rule that all proceedings of the Public Utilities Commission of Ohio are public. Those exceptions are outlined in Sec. 149.43 which excludes the release of records which are prohibited by state law. Under Sec. 149.43 Ohio Rev. Code, trade secrets are not subject to the public disclosure by government agencies, nor are they considered public records. Sec. 4901-1-27(e) Ohio Admin. Code states that in hearings, the Attorney Examiner will, "[p]rotect public disclosure of trade secrets, proprietary business information, or confidential research, development or commercial materials and information."

The information MSI seeks to protect falls under the ambit of trade secrets; proprietary business information; and, confidential research, development and commercial materials and information.

Trade Secret is defined in Sec. 1333.61(D) Ohio Code as follows [emphasis added]:

“Trade secret” means information, including the whole or any portion of 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, or 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.

The Commission long ago recognized its statutory obligation to protect 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).

Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. §4901-1-24(A)(7)).

The information sought to be redacted consists exclusively of financial information, including financial statements and Dun & Bradstreet reports which

contain financial information. MSI asserts that its financial information is confidential and is not generally known or available to the general public. Public disclosure of this information would jeopardize MSI's ability to negotiate and to compete in the market. Moreover, its financial arrangements with lending institutions fall within the same category.

MSI also requests a waiver of Rule 4901-1-24(F) Ohio Admin. Code which mandates rescission of the protective order after eighteen months. MSI asserts that the information it deems to be confidential today will not be any less so in eighteen months. It is and will be competitively sensitive information, which, if unleashed in a competitive market will have an adverse impact on MSI's ability to engage in business. Thus, it is imperative that the information remains confidential.

WHEREFORE, MSI respectfully requests that the Commission grant its Motion for a Protective Order pursuant to Sec. 4901-1-24(D) Ohio Admin. Code and its Motion for a waiver of Rule 4901-1-24(F) for the reasons set forth above.

Respectfully submitted,

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