

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of DNE)	
Sales, LLC for Certification as a Competitive)	
Retail Electric Power Broker)	Case No. 17-1093-EL-AGG
)	
)	

MOTION FOR PROTECTIVE ORDER

In accordance with Ohio Adm. Code 4901-1-24(D), DNE Sales, LLC (DNE), hereby respectfully moves for a protective order keeping confidential the information contained in Exhibits C-3 and C-5 to DNE's Application for Certification as a Competitive Retail Electric Power Broker. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of Ohio Adm. Code 4901-1-24(D), unredacted copies of the confidential information which is the subject of this motion have been filed under seal.

Respectfully submitted,

/s/ Rebekah J. Glover

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ATTORNEYS FOR DNE SALES, LLC

MEMORANDUM IN SUPPORT

DNE Sales, LLC (DNE) respectfully requests that the Commission issue a protective order granting confidential treatment of Exhibits C-3 and C-5 to the accompanying Application of DNE for Certification as a Competitive Retail Electric Power Broker, along with any and all copies, including electronic copies. These Exhibits contain sensitive and confidential information regarding DNE's current and forecasted financial information, respectively.

Ohio law defines a "trade secret":

[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 law further prohibits the release of information meeting the definition of a trade secret. R.C. §§ 1333.61(D) and 1333.62. Moreover, the General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission's possession; "public records" do not include records the release of which is prohibited by state or federal law. R.C. § 149.43(A)(1).

Ohio Adm. Code 4901-1-24(D) provides that the Commission and designated staff may issue an order that is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division:

to the extent that state or federal law prohibits the release of the information, including where the information is deemed by the

commission, the legal director, the deputy legal director, or an attorney examiner 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.

As set forth herein, state law prohibits the release of the information that is the subject of this motion as a protected “trade secret.” Moreover, the non-disclosure of the information will not impair the purposes of R.C. Title 49.

The Ohio Supreme Court has instructed that the following factors set forth in the Uniform Trade Secrets Act are relevant to determining whether information constitutes trade secrets under Ohio law:

(1)The extent to which the information is known outside the business; (2) the extent to which it is known 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 (1997).

Exhibits C-3 and C-5 to the Application contain highly confidential trade secret information. DNE is a privately held corporation and does not enclose the information contained in the Exhibits to anyone outside of the company other than its attorneys and accountants. Within the company, DNE employees take care to protect the information. DNE has also taken appropriate precautions to guard the secrecy of the information in the ordinary course of business. Finally, release of the information DNE seeks to protect is likely to result in a competitive disadvantage for DNE, as it contains the details of DNE’s current and projected finances.

For the foregoing reasons, DNE requests that the Commission grant DNE's Motion for a Protective Order to protect the confidentiality of information contained in Exhibits C-3 and C-5.

Dated: April 18, 2017

Respectfully submitted,

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Summary: Motion for Protective Order and Memorandum in Support electronically filed by Ms. Rebekah J. Glover on behalf of DNE Sales, LLC