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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Renewal Application of) Case No. 12-2317-GA-AGG
EnerNOC, Inc. for Certification as a)
Competitive Retail Natural Gas Service)
Aggregator/Broker.

MOTION FOR PROTECTIVE ORDER

EnerNOC, Inc. ("EnerNOC") submits the following request for a protective order pursuant to Rule 4901-1-24, Ohio Administrative Code (O.A.C.) to keep one financial document (one (1) page) of its Renewal Application for Certification as a Competitive Retail Natural Gas Service Aggregator/ Broker ("Application") confidential. This document should not be part of the public record in this case. The support for this motion is set forth in the attached memorandum in support. In accordance with Rule 4901-1-24, O.A.C., two unredacted copies of the exhibit for which EnerNOC seeks protection are submitted under seal.

WHEREFORE, EnerNOC respectfully requests that its Motion for Protective Order seeking confidential treatment of Exhibit C-5 of its Application be granted.

Respectfully submitted,



Michael Storch
EnerNOC, Inc.
One Marina Park Drive, Suite 400
Boston, MA 02210

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MEMORANDUM IN SUPPORT

EnerNOC respectfully requests that the Public Utilities Commission of Ohio (“Commission”) designate as confidential and protect from public disclosure the attached Exhibit C-5 to its Renewal Application. The information in this document is sensitive, proprietary information that is not known to the public and would provide EnerNOC’s competitor’s with a competitive advantage over EnerNOC.

Ohio Administrative Code Rule 4901-1-24(D) allows an attorney examiner to issue an order to protect the confidentiality of information contained in a document filed at the Commission “to the extent that state or federal law prohibits release of the information, including where the information is deemed to constitute a trade secret under Ohio law, and where non-disclosure of the information is not consistent with the purposes of Title 49 of the Revised Code.”

Revised Code Section 1333.61(D) defines a trade secret as information which:

(1) 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 [; and] (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Further, Revised Code Section 149.43 states that the term “public records” excludes information which, under state or federal law, may not be released.

The Supreme Court of Ohio has stated that this “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St. 3d 396, 399. Moreover, in *State ex. Rel. The Plain Dealer v. Ohio Dept. of Insurance*, the Supreme Court of Ohio adopted the following six factor test to determine whether information constitutes a “trade secret” under Revised Code Section 1333.61:

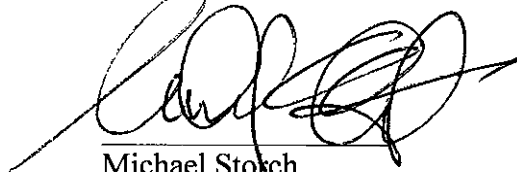
- (1) The extent to which the information is known outside the business;
- (2) The extent to which it is known to those inside the business;
- (3) The precautions taken by the holder of the trade secret to guard the secrecy of the information;
- (4) The Savings effected and the value to the holder in having the information as against competitors;
- (5) The amount of effort or money expended in obtaining and developing the information;
- (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. (1997), 80 Ohio St.3d 513, 524-25.

Reviewing the document submitted by EnerNOC under the six-factor test stated above, EnerNOC requests that the Commission grant the Motion for Protective Order. Exhibit C-5 addresses confidential information relating to EnerNOC’s forecasted revenues and expenses. This information is neither widely known inside nor known outside the business. Further, information of the nature contained in this exhibit is not disclosed, as such disclosure would give competitors an advantage that could damage EnerNOC’s ability to compete in Ohio. Further, confidential treatment of the information contained in Exhibit C-5 is consistent with the purposed of Revised Code Title 49.

For these reasons, EnerNOC respectfully requests the Commission to grant its Motion for Protective Order covering Exhibit C-5 of its Renewal Application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael Storch', written over a horizontal line.

Michael Storch
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Boston, MA 02210