

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In re: The Matter of the Application of
Energy Solutions and Services, LLC for
Certification as an Aggregator/Power Broker

Certification Case No. 13-0409-EL-AGG

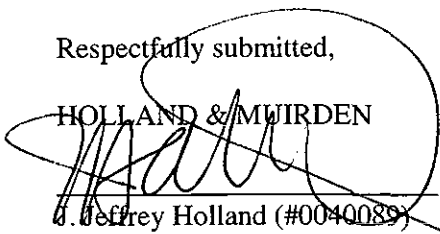
ENERGY SOLUTIONS AND SERVICES, LLC'S
MOTION FOR PROTECTIVE ORDER

Now comes Energy Solutions and Services, LLC (the "Applicant"), by counsel, and hereby moves for a protective order pursuant to Ohio Administrative Code Rule 4901-1-24(D) to protect the confidentiality of Exhibits No. B-2, C-1, C-3, C-5, and C-7, all of which are included with the Applicant's application for renewal of Aggregator/Power Broker certification in Ohio. Each of these exhibits contains commercially sensitive and proprietary information that constitutes a trade secret. Applicant therefore seeks a protective order preventing public disclosure of these exhibits and requests that the Commission maintain the exhibits under seal. Support for this motion is contained in the attached Memorandum.

Respectfully submitted,

HOLLAND & MWIRDEN

Date: February 1st, 2019


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MEMORANDUM IN SUPPORT OF PROTECTIVE ORDER

I. INTRODUCTION

Energy Solutions and Services, LLC (the "Applicant") is filing herewith a public application for renewal of certification as a certified Aggregator/Power Broker in Ohio. As part of its application, the Applicant filed with the Commission, under seal, Exhibit Nos. B-2, C-1, C-3, C-5, and C-7 (the "Proprietary and Confidential Exhibits"). The Applicant respectfully requests a protective order and that the Commission continue to maintain the Proprietary and Confidential Exhibits under seal to protect their confidential content.

II. ARGUMENT

The Commission and Ohio law have long protected trade-secret information. Pursuant to Ohio Revised Code § 1333.61(D), a "trade secret" is:

[A]ny 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.
[And]

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Ohio law grants special protections to such trade secrets, including statutory causes of action for an injunction precluding the misappropriation of trade secrets. Ohio Revised Code § 1333.62. The Commission has recognized the statutory obligation to protect trade secrets, even in the context of its preference for open proceedings, and has previously upheld trade secret protections in numerous actions before it. See *In re: General Telephone Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets); See, e.g., *Elyria Tel. Co.*, Case No. 89-965-TP-AEC

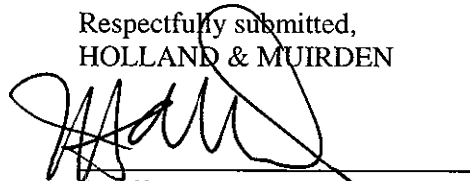
(Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

The Proprietary and Confidential Exhibits include nonpublic and proprietary information about the Applicant's experience and plans (Exhibit No. B-2), annual reports and financial statements, both current and as projected in the future (Exhibit Nos. C-1, C-3 and C-5), and its credit report, which is protected by law (Exhibit No. C-7). The Commission should protect the Proprietary and Confidential Exhibits because each contains competitively sensitive and proprietary business and/or financial information. In that regard, the Proprietary and Confidential Exhibits have independent economic value, actual or potential, from not being generally known to or discoverable by the Applicant's competitors who would obtain economic value from their disclosure or use. Further, disclosure of this sensitive structural and financial information would provide the Applicant's competitors with unfair advantage and valuable insight into the Applicant's business activities. For these reasons, Applicant treats this information as proprietary and confidential in the ordinary course of its business. Accordingly, the value of the Applicant's Proprietary and Confidential Exhibits can only be protected if they are guarded from public disclosure and maintained under seal.

III. CONCLUSION

For the foregoing reasons, the Applicant requests that the Proprietary and Confidential Exhibits be placed under a protective order to prevent them from being disclosed publicly and that the Commission maintain them under seal.

Respectfully submitted,
HOLLAND & MUIRDEN



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