

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Direct	)	
Energy Business Marketing, LLC for	)	Case No. 13-1278-EL-CRS
Certification as a Competitive Retail Electric	)	
Service Provider.	)	

**MOTION FOR PROTECTIVE ORDER**

In accordance with the provisions of Ohio Admin. Code 4901-1-24(D), Direct Energy Business Marketing, LLC (DEBM) respectfully moves the Public Utilities Commission of Ohio (Commission) to issue a protective order to protect the confidentiality of and prohibit the disclosure of certain documents filed simultaneously with this motion in the above-captioned docket. The documents in Exhibits C-4, “Financial Arrangements” and C-10, “Corporate Structure” contain competitively sensitive and highly proprietary business structure information comprising trade secrets, which require confidential treatment. The documents have been clearly marked as confidential and are hereby filed under seal, separate from the remainder of the materials that comprise DEBM’s Renewal Certification Application filed simultaneously with this Motion.

The grounds for the instant Motion are set forth in the attached Memorandum in Support. Consistent with the requirements of the above-cited rule, unredacted copies of the exhibits have been submitted under seal.

Respectfully submitted,

/s/ Rebekah J. Glover

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## **MEMORANDUM IN SUPPORT**

Contemporaneously with this Motion for Protective Order and Memorandum in Support, DEBM filed its Renewal Certification Application for Competitive Retail Electric Service (CRES). The Application contains all of the required information and materials in accordance with the Commission's Renewal Certification Filing Instructions for Competitive Retail Electric Service and Ohio Admin. Code 4901-1-24. As part of the Application materials, the Commission requested information regarding DEBM's Financial Arrangements (Exhibit C-4) and Corporate Structure (Exhibit C-10).

DEBM has submitted the requested information under seal because the documents contain competitively sensitive and proprietary business structure information, which requires confidential treatment. Consequently, DEBM requests that the Commission maintain the confidential nature of the document and the information contained therein, and protect the document from public disclosure.

Ohio Admin. Code 4901-1-24(D) 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 law 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. State law recognizes the need to protect information that is confidential in nature, as is the information contained in Exhibits C-4 and C-10. R.C. 4928.06(F) specifically permits the Commission to grant confidentiality to competitive information.<sup>1</sup> R.C. § 4901.12 and 4905.07

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<sup>1</sup> R.C. § 4928.06(F) provides: "An electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code shall provide the commission with such information, regarding a competitive retail electric service for which it is subject to certification, as the commission considers necessary to carry out this chapter. An electric utility shall provide the commission with such information as the commission considers necessary to carry out divisions (B) to (E) of this section. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information . . ."

facilitate the protection of trade secrets in the Commission's possession.<sup>2</sup> R.C. §§ 4901.12 and 4905.07 reference R.C. §149.43, and therefore incorporate the provision that accepts from the public record information and records of which the release is prohibited by law.<sup>3</sup> State law prohibits the release of information meeting the definition of a trade secret. Additionally, non-disclosure of the information will not impair the purposes of Title 49 as the Commission and its Staff will have full access to the requested information in order to complete their review process.

Exhibits C-4 and C-10 contain competitively sensitive and highly proprietary business structure information falling within the statutory characterization of a trade secret as defined by R.C. § 1333.61(D). The definition of trade secret therein is as follows:

"Trade secret" means 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 the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. § 1333.61(D) (emphasis added).

After applying these factors to the information sought to be protected, it is clear that financial arrangements and corporate structure charts contain proprietary data and other

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<sup>2</sup> R.C. § 4901.12 provides: "Except as otherwise provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records."

R.C. § 4905.07 provides: "Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature of nature in its possession shall be open to inspection by interested parties or their attorneys."

<sup>3</sup> R.C. § 149.43(A)(1)(v) provides in part: "'Public record' does not mean records the release of which is prohibited by state or federal law."

information and are confidential as trade secrets. Public disclosure of this information would jeopardize DEBM's business position in negotiations with other parties and its ability to compete. This information has independent economic value to DEBM from not being known by its competitors.

DEBM asserts that this information is not generally known by the public and is held in confidence in the normal course of business. DEBM expends substantial resources and effort to obtain and develop the information in these exhibits, and it would take DEBM's competitors substantial amounts of time and expense for others to acquire and duplicate the information.

Therefore, DEBM reasonably requests that the financial arrangements and business structure information contained in Exhibits C-4 and C-10 in this certificate renewal Application be deemed to contain trade secrets, and thus, be treated as confidential by this Commission and its Staff.

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

Dated: May 9, 2019

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 Direct Energy Business Marketing, LLC