

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
MidAmerican Energy Services, LLC for a)	Case No. 15-1299-EL-CRS
Certificate to Provide Competitive Retail)	
Electric Service in Ohio.)	

MOTION FOR A PROTECTIVE ORDER

Pursuant to Ohio Administrative Code Rules 4901:1-24(B) and 4901-1-24(D), MidAmerican Energy Services, LLC moves for a protective order to keep a portion of Exhibit C-6 to its renewal application filed on July 12, 2019, confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above-cited rule, two (2) unredacted copies of the exhibit are submitted under seal.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT
OF
MOTION FOR PROTECTIVE ORDER**

MidAmerican Energy Services, LLC (“MES”) requests that a portion of its Exhibit C-6, containing its officer statement, to its July 12, 2019 renewal application be protected from public disclosure. The officer statement contains highly sensitive and not publicly disclosed information about MES and its parent. Release of this information to the public would harm MES and its parent by providing its competitors with proprietary information in relation to what is designated by Ohio statute as a competitive service not only in relation to MES’ Ohio competitive energy services, but the other territories in which it operates by giving competitors insight into its financial and corporate relationships, including the amount of support.

Ohio Administrative Code (“O.A.C.”) Rule 4901:1-24(B) allows a competitive retail electric service applicant to request a protective order regarding information in its certificate renewal application.

O.A.C. Rule 4901-1-24(D) provides that the Public Utilities Commission of Ohio (“Commission”) or certain designated employees may 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 and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code (“R.C.”). State law recognizes the need to protect certain types of information, including that which is the subject of this motion. The non-disclosure of the officer statement information in Exhibit C-6 to MES’ July 12, 2019 renewal application will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill their statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to 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. *See*, O.A.C. Rule 4901-1-24(A)(7).

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“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. Section 1333.61(D) (emphasis added). This definition clearly reflects the state policy favoring the protection of trade secrets such as the exhibit that is the subject of this motion.

In *State ex rel. The Plain Dealer the Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, the Supreme Court of Ohio adopted a six-factor test to analyze whether information is a trade secret under the statute:

(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, 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.

Id. at 524-525 (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

After applying these factors to the information sought to be protected, it is clear that a protective order should be granted. The officer statement in Exhibit C-6 describes in detail the business and financial support of the applicant. While this may not appear to contain confidential information, this information should be protected from public disclosure. The information details actions taken in support of MES. Such sensitive information is generally not disclosed. Its disclosure could give competitors an undue advantage by gaining insight into the business and financial plans and strategy of the parent of MES, , including the amount of support provided to MES, which would hinder MES' ability to compete in Ohio and in other states. In addition, public disclosure of this confidential information is not likely to assist the Commission or its staff in carrying out the duties under the competitive retail electric service rules. Moreover, the Commission has retained this information under seal when filed previously. MES requested confidential treatment of the officer statement portion of Exhibit C-6 included in its renewal application filed in 2017 in this proceeding and although that motion remains pending, the

Commission has not ruled against MES. *See* MES' Motion for Protective Order filed June 19, 2017.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. *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).

WHEREFORE, for the above reasons, MES requests that the Commission grant its motion for a protective order and to maintain under seal the officer statement portion of Exhibit C-6 to its July 12, 2019 application to renew its electric certificate.

Respectfully submitted,

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/12/2019 9:25:01 AM

in

Case No(s). 15-1299-EL-CRS

Summary: Motion Motion for a Protective Order electronically filed by Mrs. Gretchen L. Petrucci on behalf of MidAmerican Energy Services, LLC