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BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of the Application of ) Case No. 14-1942-EL-AGG  
 Vanguard Energy Services, L.L.C. )  
 for Renewal Certification As a )  
 Competitive Retail Electric Service )  
 Provider )

MOTION FOR PROTECTIVE ORDER

Applicant, Vanguard Energy Services, L.L.C., an Oklahoma limited liability company, (hereinafter, "Vanguard" or "Applicant") by and through counsel, hereby moves pursuant to Ohio Administrative Code 4901-1-24(D), for the entry of a protective order designating as confidential Exhibits C-2, C-3, and C-5 (collectively, the "Confidential Exhibits") to the Commission's Renewal Certification Application for a Competitive Retail Electric Provider on the same date as the filing of this Motion (the "Application").

The Confidential Exhibits seek financial information and records which Vanguard considers confidential and proprietary trade secrets, and which are maintained as confidential by the company. Public disclosure of this information could be harmful to Vanguard's competitive position as an energy provider.

Vanguard requests that its responses to any subsequent requests for additional information or clarification which Commission Staff might make with regard to these same requests also be permitted to be filed under seal, pursuant to the same Protective Order requested herein.

Vanguard further requests that the Protective Order be effective for a period of six (6) years from the effective date of the certificate issued to it in this proceeding. In compliance with Ohio Administrative Code 4901-1-24(D)(2), two (2) unredacted copies of the confidential information in response to the Confidential Exhibits are being submitted under seal with this Motion. The grounds supporting this Motion are fully explained in the attached Memorandum in Support.

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Respectfully submitted,

*/s Emily O. Vaisa*

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## MEMORANDUM IN SUPPORT

In the Application, Exhibit C-2 requests “copies of the applicant’s two most recent years of audited financial statements, including a balance sheet, income statement, and cash flow statement.” Exhibit C-3 requests “two years of forecasted income statements based solely on the applicant’s anticipated business activities in the state of Ohio.” Exhibit C-5 requests “a copy of the applicant’s credit report from Experian, Equifax, TransUnion, Dun and Bradstreet or a similar credit reporting organization.” The information on Exhibits C-2, C-3, and C-5 is clearly competitively sensitive trade secret information. Public disclosure of said information would impair Vanguard’s ability to respond to competitive opportunities in the marketplace and provide its competitors with an unfair advantage. Vanguard requests that the information designated as confidential (Exhibits C-2, C-3, and C-5) to its Application be protected from public disclosure.

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 has 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 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 facilitates the protection of trade secrets in Ohio Administrative Code 4901-1-24(D) which provides:

Upon motion of any party or person with regard to the filing of a document with the commission’s docketing division relative to a case before the commission...the attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by ... the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not consistent with the purposes of Title 49 of the Revised Code.

The Ohio Uniform Trade Secrets Act (Ohio Revised Code Section 1333.61(D)) defines a “Trade Secret” as:

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.

In State ex rel. Plain Dealer v. Ohio Dep't of Ins., 80 Ohio St. 3d 513, 687 N.E. 2d 661 (1998) (citations omitted), the Ohio Supreme Court has adopted a six-factor test to analyze whether information is a trade secret under Rev. Code § 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, 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 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.

Applying these six factors to the financial information contained in Exhibits C-2, C-3, and C-5, they are clearly trade secrets and a protective order should be granted.

Vanguard shall provide the information requested in Exhibits C-2, C-3, and C-5 to the Commission, but requests that it be subject to Protective Order due to the confidential, proprietary nature of this information and because its public disclosure might be injurious to the Company's competitive position. Vanguard is a privately held company engaged solely in brokering relating to energy management for its customers and does not make public disclosure of the requested information. As such, and given the intense competition in the Competitive Retail Electric Service area, this information is a legitimate trade secret, access to which could negatively affect Vanguard's competitive position.

This request for a protective order is reasonable, necessary and will not prejudice any other party or individual. In fact, to the extent Vanguard's ability to compete effectively is preserved, Ohio consumers will be better served. Fair competition is the philosophical basis for the CRES statute and implementing regulations. The Commission would have full access to the information in order to fulfill its statutory obligations and the nondisclosure of said information will not frustrate the purposes of Title 49 of the Revised Code.

WHEREFORE, for all of the above reasons, Vanguard respectfully requests that a protective order be issued which permits it to file its responses to Exhibits C-2, C-3, and C-5 under seal and requires those with access to those responses to treat them in a confidential manner for a period of six (6) years from the effective date of the certificate issued in this proceeding. Vanguard further requests that should Commission Staff seek any additional information or clarification with respect to Exhibits C-2, C-3, and C-5, those also be permitted to be filed under seal and subject to the same Protective Order.

Respectfully submitted,

/s Emily O. Vaisa  
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