

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Cleveland Thermal Steam Distribution,)
LLC for Approval of a Standard)
Steam Supply and Distribution)
Agreement with 800 Superior LLC.)

Case No. 21-0356-HT-AEC

**MOTION OF CLEVELAND THERMAL STEAM
DISTRIBUTION, LLC FOR PROTECTIVE ORDER AND
MEMORANDUM IN SUPPORT**

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April 9, 2021

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Distribution, LLC**

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**MOTION OF CLEVELAND THERMAL STEAM
DISTRIBUTION, LLC FOR PROTECTIVE ORDER**

Pursuant to Ohio Adm.Code 4901-1-24, Cleveland Thermal Steam Distribution, LLC (“Cleveland Thermal”) respectfully moves the Public Utilities Commission of Ohio (“Commission” or “PUCO”) to issue a Protective Order to protect the confidentiality and prohibit disclosure of the confidential information contained in the Standard Steam Supply and Distribution Agreement between Cleveland Thermal and 800 Superior LLC (“800 Superior”). The confidential information is not subject to disclosure and includes competitively sensitive and highly proprietary business information comprising trade secrets. Cleveland Thermal requests confidential treatment of the pricing, usage, and term provisions of the contract. The grounds for this Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Matthew R. Pritchard

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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

On April 9, 2021, pursuant to R.C. 4905.31, Cleveland Thermal filed with the Commission the Standard Steam Supply and Distribution Agreement between Cleveland Thermal and 800 Superior. Cleveland Thermal maintains that the pricing, usage, and term provisions of the contract constitute confidential information not subject to disclosure and includes competitively sensitive and highly proprietary business information comprising trade secrets.

For the reasons stated below, Cleveland Thermal respectfully requests that the Commission grant protective treatment of the pricing, usage, and term provisions of Cleveland Thermal's Standard Steam Supply and Distribution Agreement with 800 Superior LLC filed under seal.

II. ARGUMENT

The pricing, usage, and term provisions in the contract between Cleveland Thermal and 800 Superior contain competitively sensitive and highly proprietary business information that constitutes trade secrets under Ohio law and the Commission's rules.

State law recognizes the need to protect information that is confidential in nature. Accordingly, the Ohio General Assembly granted the Commission statutory authority to exempt certain documents from disclosure.¹ Pursuant to this statutory grant of authority, the Commission promulgated Ohio Adm.Code 4901-1-24. The rule 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 if non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.² A trade secret is defined by R.C. 1333.61(D), 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).

The confidential information is competitively sensitive and highly proprietary business and financial information that falls within the statutory characterization of a trade

¹ See R.C. 4901.12 and 4905.07.

² R.C. 149.43(A)(1)(v); *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St.3d 513, 530 (1997).

secret.³ The information for which protective treatment is sought includes information regarding the initial and renewal term of the contract and the monthly consumption rate charge per Mlbs of steam and related annual escalation language. The confidential information is the subject of significant company efforts to maintain its secrecy and has not been disclosed to third parties or otherwise appeared in the public domain.

Public disclosure of the term and pricing information would jeopardize Cleveland Thermal's business position and its ability to compete. The actual pricing information and contract terms that Cleveland Thermal seeks to protect derive independent economic value from not being generally known and not being readily ascertainable through proper means by Cleveland Thermal's competitors. To this end, Cleveland Thermal is not similarly situated to other electric and gas utilities in the state of Ohio, on which the Commission routinely rules on motions for protective orders. Unlike other monopoly utilities in the state of Ohio, Cleveland Thermal must compete with non-utility companies offering to provide heat through means other than utility service. While gas and electric distribution utilities have little to no competition, Cleveland Thermal faces competition on a regular basis.

It is this competition that prompted the underlying contract in this proceeding. If Cleveland Thermal's competitors knew the confidential term and pricing information contained in the Standard Steam Supply and Distribution Agreement between Cleveland Thermal and 800 Superior, Cleveland Thermal's non-utility competitors could exploit the terms to put Cleveland Thermal at a competitive disadvantage. Cleveland Thermal's non-utility competitors are not required to publish any of their price or term conditions that they

³ R.C. 1333.61(D).

may be offering for heating needs of Cleveland Thermal's customers. Granting this motion will promote Cleveland Thermal's ability to compete on a more level playing field with non-utility competitors and help the Company retain its customers base and avoid rate increases for remaining customers.

Further, these type of provisions are routinely accorded protected status by the Commission in cases seeking approval of reasonable arrangements.

The non-disclosure of the contract pricing, usage, and term information will not impair the purposes of Title 49 as the Commission and its Staff will have full access to the confidential information in order to complete its review process. Further, Cleveland Thermal has filed both public and redacted versions of the documents. Because Cleveland Thermal's information which has been redacted from the contract constitutes a trade secret, it should be accorded protected status.

III. CONCLUSION

Cleveland Thermal respectfully requests that this Motion for Protective Order be granted for the reasons set forth herein.

Respectfully submitted,

/s/ Matthew R. Pritchard

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**Counsel for Cleveland Thermal Steam
Distribution, LLC**

CERTIFICATE OF SERVICE

In accordance with Ohio Adm.Code 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion of Cleveland Thermal Steam Distribution, LLC for Protective Order and Memorandum in Support* was sent by, or on behalf of, the undersigned counsel for Cleveland Thermal to the following parties of record on April 9, 2021, *via* electronic transmission.

/s/ Matthew R. Pritchard _____
Matthew R. Pritchard

This foregoing document was electronically filed with the Public Utilities

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Case No(s). 21-0356-HT-AEC

Summary: Motion for Protective Order electronically filed by Mr. Matthew R. Pritchard on behalf of Cleveland Thermal