

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of Major	)	
Energy Services, LLC for Certification as	)	Case No. 15-1405-GA-CRS
a Competitive Retail Natural Gas	)	
Supplier in Ohio.	)	

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**RESTATED MOTION FOR PROTECTIVE ORDER**

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Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code (“OAC”), Major Energy Services, LLC (“Major Energy”) files this restated motion for a protective order to keep confidential the proprietary information contained in Table 1 to its October 19, 2021 Notice of Customer Transfer following the agreement to assign natural gas customer contracts from Starion Energy PA, Inc. to Major Energy.

The reasons underlying this restated motion are detailed in the attached Memorandum in Support. Consistent with the requirements of OAC Rule 4901-1-24(D), the confidential information was submitted under seal on October 19, 2021.

Respectfully submitted,

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

Major Energy Services, LLC (“Major Energy”) filed a notice in this proceeding on October 19, 2021, regarding its recent agreement with Starion Energy PA, Inc. (“Starion”) pursuant to which certain Ohio customers served by Starion would be assigned to Major Energy. Major Energy requested that the confidential information in *Table 1: Assignment Table by Utility Territory* as set forth in the notice be protected from public disclosure. This customer information is considered confidential and proprietary, and is not available to the public at this granular level. Such information, if released to the public, would harm Major Energy by providing its competitors with proprietary information in what is designed by statute to now be a competitive service. It would disclose market strategy and market share.

State statutes and regulations recognize the need to protect information that is confidential in nature. OAC Rule 4901-1-24(D) provides in particular that the Public Utilities Commission of Ohio (“Commission”) or certain designated employees may issue an order that is necessary to 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. These requirements of the rule have been met. State law recognizes the need to protect trade secrets such as the information in Table 1 of the October 19, 2021 notice filing. Also, the non-disclosure of the information will not impair the purposes of Title 49 because 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 trade secret information in Table 1 of the October 19, 2021 filing.

While the Commission has often expressed its preference for open proceedings, the Commission has 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* OAC Rules 4901-1-24(A)(7) and (D).

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.

Section 1333.61(D), Revised Code (emphasis added).

*In State ex rel The Plain Dealer the Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court 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)).

The notice information contains competitively sensitive and highly proprietary business information falling within the statutory definition of trade secret. Release of this information to the public would harm Major Energy by providing its competitors with proprietary information in relation to Major Energy's Ohio competitive activities, including in all the territories in which it operates by giving competitors insight into its acquisitions and market strategy activities, which would hinder the ability to compete. Further, the efforts to protect the confidential information are reasonable under the circumstances. Such sensitive information has been guarded. 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 rules.

The Commission has retained similar information under seal previously. *See In the Matter of the Application of Stream Ohio Gas & Electric, LLC d/b/a Stream Energy for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 07-1283-GA-CRS, Entry at ¶9 (May 2, 2014) (granted protective order for corporate structure information in a renewal application because it would give competitors advance notice of where a supplier may market services). 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 through the Uniform Trade Secrets Act to all businesses, including public utilities and the new entrants providing power. 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); and *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

WHEREFORE, for the above reasons, Major Energy requests that the Commission grant this restated motion for a protective order and maintain under seal the information in Table 1, which was submitted under seal on October 19, 2021, in this proceeding.

Respectfully submitted,

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