

**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 Distribution)
Agreement with TLS Corp.)

Case No. 22-0096-HT-AEC

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

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February 4, 2022

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

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Cleveland Thermal Steam)
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MEMORANDUM IN SUPPORT**

Pursuant to Ohio Adm.Code 4901-1-24, Cleveland Thermal Steam Distribution, LLC (“Cleveland Thermal” or “Company”) respectfully moves the Public Utilities Commission of Ohio (“Commission”) 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 (“Agreement”) with TLS Corp. (“TLS”). 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 estimated usage, pricing, information related to the Company’s contribution toward building upgrades, and term provisions in the Agreement. 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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**Counsel for Cleveland Thermal Steam
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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

On February 4, 2022, pursuant to R.C. 4905.31, Cleveland Thermal filed with the Commission the Agreement between Cleveland Thermal and TLS. Cleveland Thermal maintains that the estimated usage, pricing, information related to the Company's contribution toward building upgrades, and term provisions in the Agreement constitutes 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 estimated usage, pricing, information related to the Company's contribution toward building upgrades, and term provisions in Cleveland Thermal's Agreement with TLS which has been filed under seal.

II. ARGUMENT

The estimated usage, pricing, information related to the Company's contribution toward building upgrades, and term provisions in the Agreement between Cleveland Thermal and TLS contains 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 in the Agreement is competitively sensitive and highly proprietary business and financial information that falls within the statutory

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).

characterization of a trade secret.³ The information for which protective treatment is sought includes information regarding the estimated usage by TLS, the initial and renewal term of each contract, the monthly contract capacity, and related annual escalation language. Additionally, as permitted by the standard Steam Supply and Distribution Agreement, the Agreement here contains provisions related to the Company's contribution toward building upgrades. The building upgrade provisions include term and pricing information and as such are confidential and proprietary. The confidential information is the subject of reasonable 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 estimated usage, term, and pricing information would jeopardize Cleveland Thermal's business position and its ability to compete. The actual 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 cooling 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 contracts in this proceeding. If Cleveland Thermal's competitors knew the confidential information contained in the

³ R.C. 1333.61(D).

Agreement between Cleveland Thermal and TLS, 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 usage, price, or term conditions that they may be offering for cooling 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 types of provisions are routinely accorded protected status by the Commission in cases seeking approval of reasonable arrangements.

The non-disclosure of the estimated usage, pricing, information related to the Company's contribution toward building upgrades, and term provisions in the Agreement 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 Agreement. Because Cleveland Thermal's information which has been redacted from the Agreement 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

Matthew R. Pritchard (Reg. No. 0088070)

(Counsel of Record)

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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 for Protective Order* was sent by, or on behalf of, the undersigned counsel for Cleveland Thermal to the following parties of record this 4th day of February 2022, *via* electronic transmission.

/s/ Matthew R. Pritchard

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**Counsel for the Staff of the Public
Utilities Commission of Ohio**

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