

2011 MAR -1 A 10:41 ILLINOIS COMMERCE COMMISSION

~~CHIEF CLERK'S OFFICE~~
Nordic Energy Services, LLC)
)
Motion for Confidential Treatment)
Of Nordic's Annual Kilowatt-Hour Report)
Compliance Filing, pursuant to)
83 Ill. Adm. Code 451.770)

Docket No. 11 - 0196

MOTION FOR PROTECTIVE ORDER TO PROTECT CONFIDENTIAL AND PROPRIETARY INFORMATION OF NORDIC ENERGY SERVICES, LLC

Now comes the law firm of Goehl, Schuering, Cassens & Bier, in the person of Christopher D. Schuering, on behalf of Nordic Energy Services, LLC ("Nordic Energy" or "Movant"), and pursuant to 83 Ill. Adm. Code 200.430 and 451.60, hereby moves the Illinois Commerce Commission ("Commission") for a protective order to protect portions of Nordic's annual kilowatt-hour compliance filing from disclosure for not less than two years to protect highly confidential and proprietary commercial information included therein. In support of this motion, Nordic states as follows:

Background

Simultaneously with the filing of this Motion, Movant has filed its Annual Compliance Filing, Kilowatt-Hour Report, as required pursuant to 83 Ill. Adm. Code 451.770. Certain information included in the Report is, in Movant's opinion, highly sensitive confidential, trade secret and proprietary information ("Proprietary Information"). Specifically, the Movant seeks protection of the following information, which has been removed from the public version of the report and noted with a "Redaction" stamp:

1. information included on the Kilowatt-hour Report wherein Movant identifies its total annual kWh delivered and sold to retail customers in the ComEd service territory in the preceding calendar year.

Movant maintains that this information is highly confidential and proprietary, the disclosure of which to competitors or potential competitors would be detrimental to Nordic.

Argument

Nordic maintains that the kWh report is privileged and confidential commercial information, the disclosure of which would cause competitive harm to Nordic. These are the thresholds that must be met pursuant to Section 451.60 of Part 451 and Section 7(1)(g) of FOIA.

Nordic's 2010 Annual kWh report contains confidential trade information and market sensitive information regarding Nordic's provision of services to retail customers in Illinois. Nordic considers this information to be highly proprietary and confidential information, the disclosure of which to competitors, or potential competitors, would be detrimental to Nordic.

First and foremost, the annual kWh report can be used by Nordic's competitors, or others, to determine Nordic's market share. This information is not publicly available, and it is not information Nordic would willingly share with its competitors. In short, market share information is highly sensitive. Courts have agreed, recognizing that market share information is entitled to protection from public disclosure. In The Stanley Works v Newell Co., 1992 WL 229652, at 6 (N.D.Ill. 1992), the federal district court, in

ruling on a discovery dispute, denied a motion to compel the production of market share information.

Disclosure of Nordic's market share will cause Nordic competitive harm. Nordic's competitors can use that information to attempt to drive Nordic out of business. Accordingly, Nordic seeks the requested protection.

Nordic sells to customers in competition with many other ARES. Unlike a public utility, it does not have a defined service territory in which it enjoys "first in the field" protection from competitors. Disclosure of commercial information like Nordic's annual kWh report is harmful to a company like Nordic because it gives Nordic's competitors insight into information about Nordic's relative position in the marketplace. It lets those competitors know where Nordic is focusing its efforts.

Once Nordic's competitors become aware of Nordic's market share, those competitors would be able to adjust their marketing strategies to respond to competition from Nordic. Competition is good; unfair competition is not good. Utilizing confidential sales volumes and market share data to a competitor's detriment is not fair. For example, Nordic's competitors could use the annual sales data to develop misleading comparative advertising, highlighting the competitor's market share while diminishing Nordic's. Further, proprietary sales data and market share information could be utilized to price Nordic out of the market in a specific area in order for the competitor to gain market share. In the end, any such unfair competition will result in fewer ARES, which means less competition. When there is less competition, the few remaining competitors have a greater ability to raise prices. Nordic is of the opinion that disclosure of its annual

kWh report will not only be detrimental to Nordic and its competitive well-being, but ultimately to customers as well when a lack of competition results in price increases.

Finally, Nordic contends that proprietary treatment for two years is appropriate. Two years is the “default” period for proprietary status under 83 Ill. Admin. Code Part 200.430(b). Therefore Nordic requests proprietary treatment for two years.

In summary, the harm that would result if Nordic’s annual kWh report was not treated as proprietary is twofold. First, the report could be used by Nordic’s competitors to determine Nordic’s market share. This market share information, in turn, could be unfairly and improperly used by the competitors against Nordic in several ways, including via misleading advertising or predatory pricing targeted and intended to diminish Nordic’s market share or drive them out of the market completely. This will cause the second harmful result: decreased competition and increased prices. The report contains confidential and proprietary information. Disclosure of Nordic’s annual kWh report would cause competitive harm to Nordic and will also harm the marketplace. As such, Nordic respectfully requests that the Commission enter an Order granting proprietary status to Nordic’s annual kWh report for a period of two years.

WHEREFORE, Nordic Energy Services, LLC respectfully requests that the Commission, for the reasons outlined herein, enter a finding granting proprietary and confidential treatment of Nordic’s kWh report and exempting said report from disclosure for a period of two (2) years.

Respectfully submitted,
NORDIC ENERGY SERVICES, LLC

By: Chris Schuer
One of its Attorneys

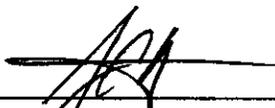
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VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF COOK)

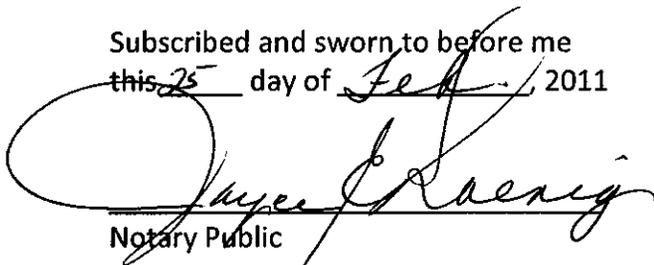
SS:

James C. Deering, being first duly sworn, deposes and says that he is the Managing Member of Nordic Energy Services, LLC; that he has read the foregoing Petition for Confidential Treatment of Nordic Energy Services, LLC, and all of the attachments accompanying and referred to within the petition; and that the statements contained in the petition and the attachments are true, correct, and complete to the best of his knowledge, information and belief.



James C. Deering
Managing Member
Nordic Energy Services, LLC

Subscribed and sworn to before me
this 25 day of Feb, 2011



Notary Public

My Commission Expires: 12-04-2014

