

ORIGINAL

ILLINOIS COMMERCE COMMISSION

OFFICIAL FILE
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
ILLINOIS COMMERCE COMMISSION

2012 APR 30 P 1:52

Nordic Energy Services, LLC)
)
Petition for Confidential Treatment of)
Nordic Energy Services, LLC's)
2012 ARES Part 451 Compliance Report)

CHIEF CLERK'S OFFICE
Docket No. 12- 0313

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

Pursuant to 83 Ill. Adm. Code 200.430 and 451.60, Nordic Energy Services, LLC ("Nordic Energy" or "Movant"), hereby moves the Illinois Commerce Commission ("Commission") for a protective order to protect portions of Nordic's 2012 ARES Part 451 Compliance Report filed in this docket from disclosure for not less than two years to protect highly confidential and proprietary financial and commercial information included therein. In support of this petition, Nordic states as follows:

Background

Simultaneously with the filing of this Petition, Movant has filed its 2012 ARES Annual Compliance Report. 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 in section 451.740(c) wherein Movant identifies its good faith estimate of its expected peak hourly demand over the next twelve months and its peak hourly demand scheduled during the previous calendar year; and

2. the resulting bond amount and calculation included in section 451.740(c) and Attachment A; and
3. information included in section 451.740(d) wherein Movant identifies its good faith estimate of the total amount it expects to be obligated to pay to the utility under single billing tariffs; and
4. the resulting bond amount and calculation included in section 451.740(d) and Attachment B.

Movant maintains that if the bond amount was disclosed, an individual could reverse the calculation in order to determine the aforementioned figures which Movant claims as Proprietary Information, and therefore Movant seeks protection for the bond amounts as well.

Argument

The Rules of Practice recognize the potential need for protection of confidential information. The Rules, at 83 Ill. Admin Code 200.430, state: “At any time during the pendency of a proceeding, the Commission or the Hearing Examiner may, on the motion of any person, enter an order to protect the confidential, proprietary or trade secret nature of any data, information or studies.”

Further, section 7(g) of the Illinois Freedom of Information Act exempts from public disclosure “trade secrets and commercial or financial information ... where the trade secrets or information are proprietary, privileged or confidential.” (5 ILCS 140/7(g).) The Proprietary Information falls within this exemption.

Nordic maintains that it is appropriate to protect from disclosure the Proprietary Information. First, the Proprietary Information can be utilized to determine market share and the success of a product, based upon the number of customers buying the product. Nordic does not disclose this information to any person or entity in the public domain. Nordic contends that Proprietary Information is commercially and financially sensitive, confidential and proprietary.

Nordic's Proprietary Information is privileged and confidential commercial information, the disclosure of which to competitors or potential competitors would cause competitive harm to Nordic. The Proprietary Information contain financial data that is on its face confidential, and also could be used to derive confidential trade information and market sensitive information regarding Nordic's provision of services to customers in Illinois.

The electric service industry is highly competitive. The Proprietary Information can be used by Nordic's competitors, or others, to determine Nordic's market share, sales success, product-line success, and business structure. This information is not publicly available, and it is not information Nordic would willingly share with its competitors. 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 Proprietary Information 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.

Disclosure of commercial information like Nordic's market share data 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.

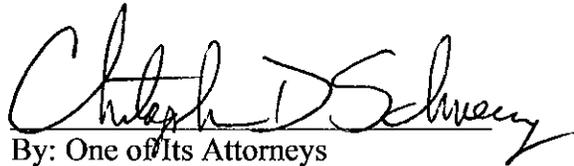
Once Nordic's competitors become aware of Nordic's market share, sales success, product-line success, and business structure, those competitors would be able to adjust their marketing strategies to respond to competition from Nordic. Competition is good; unfair competition is not good. Utilizing confidential financial data, sales volumes and market share data to a competitor's detriment is not fair. For example, Nordic's competitors could use the Proprietary Information to develop misleading comparative advertising, highlighting the competitor's market share or sales volumes while diminishing Nordic's. Further, proprietary financial data, 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 providers, 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 Proprietary Information 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.

[signature page follows]

WHEREFORE, Nordic Energy Services, LLC, respectfully requests that the Commission enter an Order, without hearing, protecting from disclosure for a period of not less than two (2) years, the above-referenced Proprietary Information that was submitted pursuant to Part 451 to the Chief Clerk of the Commission, as part of Nordic's Part 451 ARES Annual Compliance Report.

Respectfully submitted,

Nordic Energy Services, LLC


By: One of Its Attorneys

Christopher D. Schuering
Goehl, Schuering, Cassens & Bier
506 Vermont Street
Quincy, IL 62301
Phone: (217) 224-2555
Fax: (217) 224-2569
Email: cds@gsclawnet.com
Ill. Bar No.: 6238041

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

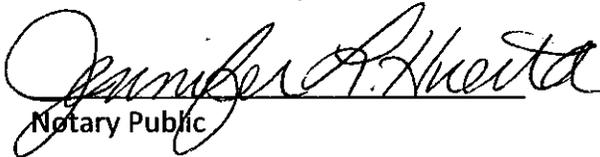
ss:

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 Protective Order of Nordic Energy Services, LLC; 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 26th day of April, 2012



Notary Public

My Commission Expires: 10/18/13

