

ORIGINAL
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS

ORIGINAL
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION

2013 FEB 19 P 1:06

Nordic Energy Services, LLC)
)
Petition for Confidential Treatment)
Of Nordic's Annual Dekatherm Report)
Compliance Filing, pursuant to)
83 Ill. Adm. Code 551.170)

Docket No. 13 - 0140

PETITION 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 "Petitioner"), and pursuant to 83 Ill. Adm. Code 200.430 and 551.60, hereby moves the Illinois Commerce Commission ("Commission") for a protective order to protect portions of Nordic's annual dekatherm compliance filing from disclosure for not less than two years to protect highly confidential and proprietary commercial information included therein. In support of this Petition, Nordic states as follows:

Background

Simultaneously with the filing of this Petition, Petitioner has filed its Annual Compliance Filing, Dekatherm Report, as required pursuant to 83 Ill. Adm. Code 551.170. Certain information included in the Report is, in Petitioner's opinion, highly sensitive confidential, trade secret and proprietary information ("Proprietary Information"). Specifically, the Petitioner 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 Dekatherm Report wherein Petitioner identifies its total annual dekatherms delivered and sold to residential and small commercial customers in all service territories in the preceding calendar year; and
2. information included on the Dekatherm Report wherein Petitioner identifies its total revenue generated from the sale of natural gas delivered and sold to residential and small commercial customers in all service territories in the preceding calendar year.

The aforementioned information is hereinafter referred to as Proprietary Information. Petitioner 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 dekatherm report is privileged and confidential commercial information, the disclosure of which would cause competitive harm to Nordic. Further, because the revenue information could be used to calculate the dekatherms sold and delivered, Nordic maintains that this information is likewise 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 551.60 of Part 551 and Section 7(1)(g) of FOIA.

Nordic's 2012 Annual Dekatherm report (including the disclosure of dekatherms and revenues) contains confidential trade information and market sensitive information regarding Nordic's provision of services to residential and small commercial 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 Proprietary Information 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 AGS. 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 Proprietary Information 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 AGS, 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.

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 Proprietary Information 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 Proprietary Information 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 dekatherm report and corresponding revenue figures 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 dekatherm report and corresponding revenue figures and exempting said report from disclosure for a period of two (2) years.

Respectfully submitted,

NORDIC ENERGY SERVICES, LLC

By: 

One of its Attorneys

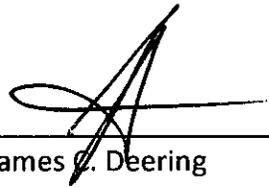
Christopher D. Schuering
Goehl, Schuering, Cassens & Bier
506 Vermont Street
Quincy, IL 62301
Phone: (217) 224-2555
Fax: (217) 224-2569
cds@gscb-law.com
Ill. Bar No.: 6238041

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 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 15th day of February, 2013



Notary Public

My Commission Expires: 10/18/13



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 Annual Compliance Filing of Nordic Energy Services, LLC, and all of the attachments accompanying and referred to within the filing; and that the statements contained in the filing 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 15th day of February, 2013



Notary Public

My Commission Expires: 10/18/13

