

ILLINOIS COMMERCE COMMISSION 27 P 12:41

Nordic Energy Services, LLC)	CHIEF CLERK'S OFFICE
)	Docket No. 14 - 0251
Petition for Confidential Treatment of)	
Nordic Energy Services, LLC's)	
2013 Annual Net Metering Report)	

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, hereby moves the Illinois Commerce Commission ("Commission") for a protective order to protect portions of Nordic's annual net metering report 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, Petitioner has filed its Annual Net Metering Report, as required pursuant to 83 Ill. Admin. Code Section 465.40 and Section 16-107.5(k) of the Illinois Public Utilities Act. 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 Net Metering Report wherein Petitioner identifies its total peak demand supplied in the preceding calendar year (hereinafter “total peak demand”).

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 total peak demand 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 7(1)(g) of FOIA.

Nordic’s 2013 annual net metering 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 total peak demand 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 total peak demand 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 total peak demand and market share data to a competitor's detriment is not fair. For example, Nordic's competitors could use the total peak demand figures to develop misleading comparative advertising, highlighting the competitor's market share while diminishing Nordic's. Further, proprietary total peak demand, 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 total peak demand 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 total peak demand was not treated as proprietary is twofold. First, the data 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 total peak demand is confidential and proprietary information. Disclosure of Nordic’s total peak demand 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 total peak demand 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 total peak demand and exempting said information from disclosure for a period of two (2) years.

Respectfully submitted,
NORDIC ENERGY SERVICES, LLC

By: 
One of its Attorneys

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VERIFICATION

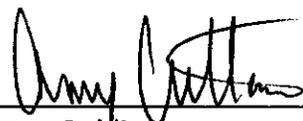
STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

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 to Protect Confidential and Proprietary Information 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 25th day of March, 2014


Notary Public

My Commission Expires: June 13, 2017

