

TERM Power & Gas, LLC)
d/b/a TERM Energy d/b/a ENCOA)
)
Petition for Relief to Protect Petitioner's 2014)
Dekatherm Report from Disclosure for Not)
Less than Two Years to Protect Highly)
Confidential and Proprietary Information)

Docket No. 15- 0126

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**PETITION FOR RELIEF TO PROTECT CONFIDENTIAL
AND PROPRIETARY INFORMATION OF ILLINOIS COMMERCE COMMISSION
TERM POWER & GAS, LLC D/B/A TERM ENERGY D/B/A ENCOA**
CHIEF CLERK'S OFFICE

Pursuant to 83 Ill. Adm. Code 200.430 and 551.60, TERM Power & Gas, LLC d/b/a TERM Energy d/b/a ENCOA ("ENCOA") hereby petitions the Illinois Commerce Commission ("Commission") for relief to protect ENCOA's 2014 Dekatherm Report ("2014 Report") from disclosure for not less than two years to protect highly confidential and proprietary information included therein. In support of this Petition, ENCOA states as follows:

1. ENCOA is certified by the Commission as an alternative gas supplier ("AGS") in the State of Illinois. The Commission granted ENCOA a certificate of service authority as an AGS on July 31, 2012 in Docket No. 12-0401.
2. ENCOA is required, pursuant to 83 Ill. Adm. Code 551.170, to submit to the Commission each year a report stating the total annual dekatherms delivered and sold to residential and small commercial customers within each utility service territory in the preceding calendar year and the total revenues associated with the sale of natural gas to residential and small commercial customers within each utility service territory in the preceding calendar year.
3. Pursuant to 83 Ill. Adm. Code 551.170, on February 13, 2015, ENCOA submitted via overnight delivery its 2014 Report to the Chief Clerk of the Commission, with copies also provided to the Energy Division -- AGS and the Financial Analysis Division. The 2014 Report contains information that ENCOA designates as confidential and proprietary pursuant to 83 Ill.

Adm. Code 551.60. Pursuant to 83 Ill. Adm. Code 200.430(d), this confidential and proprietary information (“Confidential Information”) is redacted from the public version of ENCOA’s 2014 Report. Pursuant to 83 Ill. Adm. Code 551.60, on February 13, 2015, ENCOA also submitted to the Chief Clerk of the Commission, under seal and marked “Confidential & Proprietary,” an unredacted version of the 2014 Report.

4. The Confidential Information is highly sensitive material that should be protected from public disclosure for not less than two (2) years. Specifically, the information contains trade information and commercial and market sensitive information regarding ENCOA’s provision of service in Illinois. This information is privileged or confidential and is exempt from public disclosure under Section 4-404 of the Public Utilities Act (“PUA”), 220 ILCS 5/4-404, and Section 7(g) of the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/7.

5. Section 4-404 of PUA provides that the “Commission *shall* provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity[.]” (Emphasis added.) An AGS that believes any of the information to be submitted to the Commission by the AGS is privileged or confidential is instructed by the Commission’s rules to “request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of [the information].” 83 Ill. Adm. Code 551.60.

6. Similarly, Section 7(g) of the Illinois FOIA exempts from public disclosure “trade secrets and commercial or financial information . . . where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm” 5 ILCS 140/7(1)(g). The Confidential Information falls within this exemption and should be afforded confidential treatment pursuant to both PUA and

the Illinois FOIA. More particularly, the Confidential Information includes market-sensitive material which is company specific, and information of a highly commercially sensitive nature involving company business operations or financial information. The specific information for which ENCOA seeks confidential and proprietary treatment is the total dekatherm sales in the service areas for which ENCOA provides service. Such information could be used by ENCOA's competitors to determine ENCOA's market share. The Commission has consistently held that market share data is confidential. *See, e.g., Champion Energy LLC's Petition for Relief to Protect Petitioner's 2013 Dekatherm Report From Disclosure for Not Less Than Two Years to Protect Highly Confidential and Proprietary Information*, Docket No. 14-0197, Order (Apr. 16, 2014); *XOOM Energy Illinois, LLC Application for Confidential Treatment of Dekatherm Report*, Docket No. 13-0344, Order (Jul. 10, 2013); *Petition for Relief to Protect Nicor Advanced Energy LLC Dekatherm Report for 2012 for not less than two years in order to protect highly Confidential and Proprietary information*, Docket No. 13-0165, Order (Jun. 18, 2013); *Petition for Confidential Treatment of Nordic's Annual Dekatherm Report Compliance Filing, pursuant to 83 Ill. Adm. Code 551.170*, Docket No. 13-0140, Order (Mar. 20, 2013); *Direct Energy Services, LLC's Petition for Emergency Relief to Protect Portions of Direct's Report of Continued Compliance as an Alternative Gas Supplier*, Docket No. 12-0202 (Apr. 4, 2012); *Petition for Relief to Protect Portions of TEGE LLC's Report of Continued Compliance as an Alternative Gas Supplier from Disclosure for Not Less Than Two Years in Order to Protect Highly Confidential and Proprietary Information*, Docket No. 12-0074 (Feb. 23, 2012) *See also Sharkey v. Food & Drug Administration*, 2007 U.S. App. LEXIS 23597 (11th Cir. 2007). The Confidential Information is not widely available or known outside of ENCOA and would be of considerable value to competitors or potential competitors of ENCOA to the serious detriment of ENCOA.

7. The natural gas service industry is highly competitive, and it is imperative that public disclosure of the Confidential Information is avoided for a period of at least two years. The Commission has previously afforded proprietary and confidential treatment to the type of information for which ENCOA seeks protection. *See, e.g., Champion Energy LLC's Petition for Relief to Protect Petitioner's 2013 Dekatherm Report From Disclosure for Not Less Than Two Years to Protect Highly Confidential and Proprietary Information*, Docket No. 14-0197, Order (Apr. 16, 2014); *XOOM Energy Illinois, LLC Application for Confidential Treatment of Dekatherm Report*, Docket No. 13-0344, Order (Jul. 10, 2013); *Petition for Relief to Protect Nicor Advanced Energy LLC Dekatherm Report for 2012 for not less than two years in order to protect highly Confidential and Proprietary information*, Docket No. 13-0165, Order (Jun. 18, 2013); *Petition for Confidential Treatment of Nordic's Annual Dekatherm Report Compliance Filing, pursuant to 83 Ill. Adm. Code 551.170*, Docket No. 13-0140, Order (Mar. 20, 2013).

8. Accordingly, ENCOA seeks an order from this Commission, without hearing, protecting from disclosure, for a period of not less than two years from the date of the order, the Confidential Information submitted in compliance with 83 Ill. Adm. Code 551.

9. ENCOA agrees to accept service by electronic means as provided for in 83 Ill. Adm. Code 200.1050.

WHEREFORE, PREMISES CONSIDERED, TERM Power & Gas, LLC d/b/a TERM Energy d/b/a ENCOA respectfully requests that the Commission enter an order, without hearing, protecting from disclosure the Confidential Information submitted to the Commission for a period of not less than two years.

Respectfully submitted,



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*Attorney for TERM Power & Gas, LLC
d/b/a TERM Energy d/b/a ENCOA*

Dated: February 20, 2015

VERIFICATION

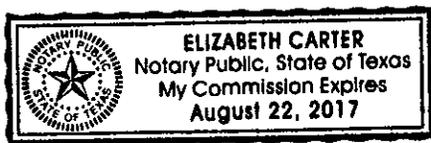
STATE OF TEXAS)
)
COUNTY OF HARRIS)

I, Michael Matlock, being first duly sworn upon my oath, depose and state that I am Director of Compliance for Twin Eagle Resource Management, the parent company of TERM Power & Gas, LLC d/b/a TERM Energy d/b/a ENCOA; that I have reviewed the confidential and proprietary information described in the foregoing Petition; that I have read the above and foregoing Petition for Relief; and that said contents are true, correct and complete to the best of my knowledge, information and belief.



Michael Matlock

Subscribed and sworn to before me this 20 day of February 2015.





Notary Public