

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

BEFORE THE
ILLINOIS COMMERCE COMMISSION

ORIGINAL

ILLINOIS COMMERCE
COMMISSION

In the Matter of Application of XOOM Energy Illinois, LLC)
For Confidential Treatment of 2015 Dekatherm Annual Report)

16-0141

2016 MAR -7 A 11: 30
CHIEF CLERK'S OFFICE

**MOTION FOR PROTECTIVE ORDER TO PROTECT
CONFIDENTIAL PROPRIETARY INFORMATION**

I. INTRODUCTION

XOOM Energy Illinois, LLC ("XOOM Energy Illinois") is certified by the Illinois Commerce Commission (the "Commission") as an Alternative Gas Supplier ("AGS"). The Commission issued XOOM Energy Illinois a certificate of authority to provide service as an AGS in the State of Illinois on December 13, 2011 in ICC Docket No. 11-0724. In this motion for protective order, XOOM Energy Illinois respectfully requests the Commission to grant exemption from public disclosure pursuant to Sections 200.290, 200.430, 451.60 and 551.60 of Title 83 of the Illinois Administrative Code (the "Code") and Section 7 (g) of the Illinois Freedom of Information Act (5 ILCS 140/7(g)), the confidential and proprietary information included in its 2015 Dekatherm Report (the "Dekatherm Report") prepared in accordance with Part 551.170 of the Code.

This protective order is requested to be in place for a period of two (2) years to protect the confidential and proprietary financial and operational information of XOOM Energy Illinois, a privately held company incorporated in the State of Illinois. Pursuant to Sections 451.60 and 200.430 of Part 451 and Section 7(1)(g) of the Freedom of Information Act ("FOIA"), 5 ILCS 140/1 et seq. XOOM Energy Illinois respectfully submits this motion for protective order in its assertion of a confidentiality claim.

II. LEGAL STANDARD

The Illinois Commerce Commission may exempt confidential information from public disclosure through an appropriate representative to issue an order protecting certain proprietary information. 83 Ill. Admin. Code 451.60 states in part that:

If an applicant or ARES...or AGS...believes any of the information to be disclosed by an applicant for ARES...or AGS...is privileged or confidential, the applicant or ARES...or AGS... should request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of any data, information or studies pursuant to 83 Ill. Admin. Code 200.430.”

Title 83 of the Illinois Administrative Code section 200.430 states in part that:

A document submitted and marked as proprietary shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document and a ruling on that motion by the Commission or the Hearing Examiner. (emphasis added)

Section 7(1)(g) of the FOIA exempts the following from public disclosure:

Trade secrets and commercial or financial information obtained from a person or business 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 to the person or business, and only insofar as the claim applies to the records.

XOOM Energy Illinois believes in good faith that its 2015 Dekatherm Report constitutes “confidential information” as defined under Title 83 of the Code Rule 451.60.

Furthermore, 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(g). The financial and trade information contained in the Dekatherm Report falls within this exemption as this information is not released to the public in any other forum or to any other agency without an accompanying request for confidential treatment.

III. THE MATERIALS ARE PROPRIETARY AND CONFIDENTIAL AND WARRANT PROTECTION FROM DISCLOSURE

By submitting its Dekatherm Report, XOOM Energy Illinois is demonstrating continuing compliance with the reporting requirements of 83. Ill. Admin. Code Section 551.70. XOOM Energy Illinois considers this information to be highly confidential and proprietary information, the disclosure of which to competitors would be detrimental to XOOM Energy Illinois. It is well known that the retail gas service industry is highly competitive, and it is imperative that public disclosure of confidential information contained in the Dekatherm Report be avoided for a period of at least five (5) years because of the competitive harm which disclosure of such information likely would cause XOOM Energy Illinois.

Specifically, XOOM Energy Illinois's Dekatherm Report demonstrates the actual amount of XOOM's natural gas volumes and associated revenue in Illinois, the disclosure of which to competitors, or even potential competitors, would be damaging to XOOM Energy Illinois's business and competitive interests. The information contained in the Dekatherm Report would provide competitors market sensitive information and direct insight to XOOM Energy Illinois's market share and operations, including how active or in-active XOOM Energy Illinois is in Illinois.

Additionally, the information contained in the Dekatherm Report could allow a competitor to access the effectiveness of a sales or marketing campaign over the past year by watching for changes in XOOM's numbers. It is important to note that no industry discloses the effectiveness of sales campaigns. This information at issue could allow a competitor to review enrollment levels from prior to current years and assess the effectiveness of XOOM's products and marketing efforts which is highly sensitive information.

Lastly, the information contained in XOOM's Dekatherm Report could weaken XOOM Energy Illinois's bargaining position in the wholesale market since it would allow a counterparty to know the amount of natural gas XOOM Energy Illinois would need to serve its customers, allowing counterparties to see the approximate need and respond accordingly while negotiating.

The Commission has the authority under Section 200.430 to enter an order protecting the confidentiality of any data or information submitted in a proceeding. 83 Ill. Adm in. Code 200.430. The commission regularly uses the discretionary language of Section 200.430 to protect confidential business information. XOOM Energy Illinois respectfully requests that the Commission exercise its discretion and provide protection and confidential treatment of XOOM Energy Illinois's Dekatherm Report submitted in support of this motion.

IV. CONCLUSION

For the reasons set forth above, XOOM Energy Illinois requests that the Commission protect from public disclosure the Dekatherm Report for a period of not less than two (2) years from the date of this order.

Respectfully Submitted,



Stephanie Kueffner
Associate Counsel
XOOM Energy, LLC, Single-Member Manager of XOOM
Energy Illinois, LLC
11208 Statesville Road, Suite 200
Huntersville, North Carolina 28077
Telephone: (704) 274-1450
Facsimile: (877) 396-6041

Counsel for XOOM Energy Illinois, LLC

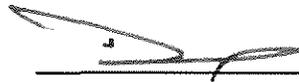
STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AFFIDAVIT OF XOOM ENERGY ILLINOIS, LLC

The undersigned, under oath, deposes and states as follows:

1. My name is David Vail. I am the Chief Financial Officer of XOOM Energy, LLC, a single-member manager of XOOM Energy Illinois, LLC ("AGS") and I submit that in accordance with the AGS' Operating Agreement, the officers of the member-manager XOOM Energy, LLC are authorized to enter into agreements and transact on behalf of AGS and, as such, I am authorized to execute this Affidavit.
2. I have read AGS' Motion For Protective Order to Protect Confidential Proprietary Information (the "Protective Order") in connection with AGS' 2015 Annual Dekatherm Report (the "Dekatherm Report") prepared pursuant to Section 451.770 of Title 83 of the Illinois Administrative Code.
3. I have personal knowledge of the facts discussed in the above-mentioned Protective Order and kWh Report and, to the best of my knowledge, information and belief, those facts are true and correct and, if sworn as a witness, I could testify concerning them.



Signature

David Vail

Typed or Printed Name

Chief Financial Officer

Title of Signatory

SWORN TO AND SUBSCRIBED before me

This 4th day of March, 2016

Tamara A. Walker Tamara A. Walker

Notary Public In and For the State of North Carolina

My commission expires: May 20, 2017

