

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

CleanChoice Energy, Inc.	) ) )	D.P.U. 19-07
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**MOTION OF CLEANCHOICE ENERGY, INC.  
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

CleanChoice Energy, Inc. (the “Company”) hereby requests that the Department of Public Utilities (the “Department”) grant protection from public disclosure of certain confidential, sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D and 220 CMR § 1.04(5)(e). Specifically, the Company requests that the Department protect from public disclosure certain confidential information being provided in a table and the accompanying explanations in response to the Department’s request by Memorandum on August 15, 2019 that competitive suppliers, including the Company, submit a table to the Department with information on automatic renewals and contract pricing (the “Report”). The information, if disclosed, could become known to the Company’s competitors, which would likely cause harm to the Company by disclosing confidential enrollment statistics and internal business practices. Such disclosure would allow competitors to ascertain the Company’s position in the market, customer base, and enrollment strategies, particularly when combined with public marketing information, and unfairly utilize the results, thereby harming the Company and the competitive market. As discussed below, the Report contains confidential, competitively sensitive and/or other proprietary information as categorized in G.L. c. 25, § 5D that, if publicly released, would harm the competitive business position of the Company. The Company has filed a redacted copy of the Report in the above-referenced proceeding and submitted an un-redacted copy of the same in a separate filing marked “Confidential” to the Hearing Officer.

## **I. LEGAL STANDARD**

The Department is authorized to protect from public disclosure “trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings.” G.L. c. 25, § 5D. The Department has developed a three-part standard for assessing requests for protective treatment submitted pursuant to G.L. c. 25, § 5D.

First, the information for which protection from disclosure is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information.” Second, the party seeking protection from disclosure must overcome the statutory presumption that the public is benefited by disclosure of that information by “proving” the need for non-disclosure. Lastly, the Department will protect only so much of the information as is necessary to meet the established need. See, e.g., Western Massachusetts Electric Company, D.T.E. 99-56 (1999); Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U. 95-59-B/95-80/95-112/96-13, September 2, 1997 Procedural Order. Appropriate considerations with respect to the public interest issue include an assessment of the interests at stake, the likely harm that would result from public disclosure of information, and the public policy implications of such disclosure. See, e.g., Berkshire Gas Company, D.P.U. 93-187/188/189/190 (1994); D.P.U. 92-259 (1993), Essex County Gas Company, D.P.U. 96-105 (1996).

## **II. BASIS FOR CONFIDENTIALITY**

The Company is seeking protective treatment for information in the Report, which includes confidential enrollment statistics, which are the results of proprietary business and marketing strategies. The information included in the Report is competitively sensitive, proprietary and not available to the Company’s competitors via the public domain.

The Department has previously granted protection for confidential business strategies. Bay

State Gas Company, D.P.U. 97-24, at 2-3 (approving protective treatment for information related to the company's business strategies and ongoing negotiations). The Report is competitively sensitive because disclosure of the number of customers enrolled and the results of marketing communications would directly harm the Company's business interests and the competitive market. Disclosure for public review would allow the Company's competitors to gain access to information about the Company's market position as well as results of the Company's public marketing campaigns, and then make decisions for their own business based on the Company's strategies and their success. The competitive supply market necessarily relies on fair competition in the market to provide value to customers and suppliers. Disclosing the Company's unique position and strategies could weaken competition in the market and harm the Company.

Accordingly, the Department should offer protection for the Report against public disclosure and afford confidential treatment for a period of three (3) years from the date of the decision on this motion, subject to later protection upon a showing that continued confidential treatment continues to be warranted and appropriate.

### **III. CONCLUSION**

For the above reasons, the confidential and competitively sensitive information contained in the Report should be protected from public disclosure for the period requested in this motion. To the Company's knowledge, information and belief, the information in the Report is not otherwise available on the public record.

**WHEREFORE**, the Company respectfully requests that the Department grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

**CLEANCHOICE ENERGY, INC.**

By its attorneys,

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Dated: September 13, 2019

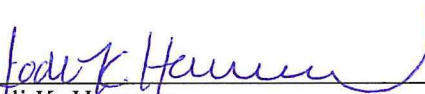
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1) (Department's Rules of Practice and Procedure).

Dated at Boston, Massachusetts this 13<sup>th</sup> day of September, 2019.

  
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