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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

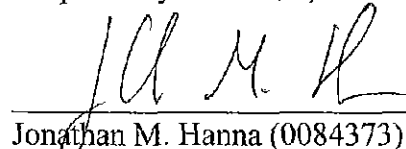
In the matter of the Application of )  
HB Hayes & Associates, LLC d/b/a )  
Alternative Energy Source )  
For Certification as an Electricity Aggregator )

Case No. *09-1058-EL-AGG*

**MOTION FOR PROTECTIVE ORDER**

Pursuant to Ohio Admin. Code §4901-1-24, HB Hayes & Associates, LLC d/b/a Alternative Energy Source ("AES") respectfully requests that the Public Utilities Commission of Ohio ("PUCO" or "Commission") grant his Motion for a Protective Order with regard to Exhibits C-3 and C-5 of his Application for Certification as a Electricity Aggregator, for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,



Jonathan M. Hanna (0084373)  
Attorney for HB Hayes & Associates, LLC d/b/a  
Alternative Energy Source  
Lyden, Liebenthal & Chappell, Ltd.  
5470 Main Street, Suite 300  
Sylvania, OH 43560  
(419) 867-8900  
(419) 867-3647 Facsimile  
jmh@lydenlaw.com

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## MEMORANDUM IN SUPPORT

HB Hayes & Associates, LLC d/b/a Alternative Energy Source ("AES") is filing an Application for Certification as an Electricity Aggregator contemporaneously with this Motion. Attached as exhibits to that Application is certain financial information which contains competitively sensitive and highly proprietary business financial information and marketing plans, all of which comprises trade secrets. Accordingly, this Motion seeks a protective order to protect the confidentiality and prohibit the disclosure of this information. Specifically, AES desires to protect from public disclosure the information contained in the following exhibits:

- (1) Exhibit C-3: Two Year Comparative Financial Statements; and
- (2) Exhibit C-5: Two Year Forecasted Income Statement.

These exhibits have been clearly marked as confidential and are being filed under seal simultaneously with this Motion.

This Motion is made pursuant to Ohio Admin. Code §4901-1-24, which provides as follows:

Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. §4901-1-24(D).

In turn, the term "Trade secret" is defined in R.C. §1333.61(D) as follows:

"Trade secret" means information, including the whole or any portion of phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans,

financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, or not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

AES asserts that its financial information is confidential and is not generally known or available to the general public. Moreover, AES makes concerted efforts to maintain the confidentiality of this information. Public disclosure would jeopardize AES's ability to negotiate and to compete in the market, and would directly threaten AES's financial viability. The information AES seeks to protect—namely, the Two Year Comparative Financial Statements and the Two Year Forecasted Income Statement—falls under the ambit of trade secrets as defined by Ohio law. This information is therefore the proper subject of a protective order.

Furthermore, the nondisclosure of this information is consistent with the purposes of Title 49 of the Ohio Revised Code. Specifically, R.C. §4928.06(F) states that an electric services company “shall provide the commission with such information, regarding a competitive retail electric service for which it is subject to certification, as the commission considers necessary to carry out this chapter....The Commission shall take measures as it considers necessary to protect the confidentiality of any such information.” (Emphasis added). Thus, the General Assembly clearly recognized the importance of balancing the need to provide the Commission with adequate information to review an application for certification with the need to protect the confidential information of market participants.<sup>1</sup> Therefore, because the information AES seeks

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<sup>1</sup> The importance of protecting commercially sensitive information is reflected in the Ohio Administrative Code, as well. For example, Ohio Admin. Code §4901-1-27(E) states that in hearings, the Attorney Examiner will, “[p]rotect public disclosure of trade secrets, proprietary business information, or confidential research, development or commercial materials and information.”

to protect comprises trade secrets, and because nondisclosure of that information comports with the important purpose of protecting such sensitive information, the Commission should grant AES' Motion for Protective Order.

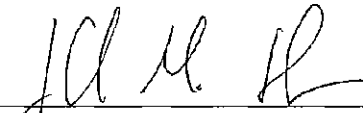
Finally, AES also moves this Court to waive the provisions of Ohio Admin. Code §4901-1-24(F), which states as follows:

Unless otherwise ordered, any order prohibiting public disclosure pursuant to paragraph (D) of this rule shall automatically expire eighteen months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.

The information which is the subject of this Motion will be no less confidential in eighteen months than it is presently. AES's proprietary and confidential information is and will continue to be competitively sensitive information which, if divulged publicly in a competitive market will have an adverse impact on AES's ability to do business. Moreover, the financial statements which AES seeks to protect project out for a two-year period—longer than the initial 18-month duration generally given to protective orders pursuant to Ohio Admin. Code §4901-1-24(F). Thus, it is imperative that the information be protected from disclosure, and that the protective order remain in place beyond the 18-month time frame established in the Ohio Administrative Code.

WHEREFORE, HB Hayes & Associates, LLC d/b/a Alternative Energy Source respectfully requests that the Commission grant his Motion for a Protective Order pursuant to Ohio Admin. Code §4901-1-24, and further that the Commission waive Ohio Admin. Code §4901-1-24(F), for the reasons set forth above.

Respectfully submitted,



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Jonathan M. Hanna (0084373)  
Attorney for HB Hayes & Associates, LLC d/b/a  
Alternative Energy Source  
Lyden, Liebenthal & Chappell, Ltd.  
5470 Main Street, Suite 300  
Sylvania, OH 43560  
(419) 867-8900  
(419) 867-3647 Facsimile  
jmh@lydenlaw.com