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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Independent) Case No. 04-592-EL-AGG
Energy Consultants, Inc. for Renewal Certification)
as a Retail Aggregator and Power Broker)

MOTION FOR PROTECTIVE ORDER
OF INDEPENDENT ENERGY CONSULTANTS, INC.

Independent Energy Consultants, Inc., hereby respectfully moves the Public Utilities Commission of Ohio ("Commission") for a protective order to shield proprietary information from the public record and keep confidential the commercially sensitive and financial data designated confidential and/or proprietary information in Sections C-3 and C-5 of Independent Energy Consultants' application for authority to continue to operate as a Retail Aggregator and Power Broker. The rationale for granting this motion is contained in the memorandum attached hereto and incorporated herein. Consistent with the requirements of Section 4901:1-24(D) of the Commission's rules, Independent Energy Consultants, Inc. has filed under seal unredacted copies of the information which are subject to this motion.

The grounds for the instant Motion are set forth in the attached Memorandum in Support.

Respectfully submitted



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MEMORANDUM IN SUPPORT

Along with this Motion for Protective Order and Memorandum in Support, Independent Energy Consultants, Inc. has filed its Renewal Certification Application to remain a Retail Aggregator and Power Broker. The application contains all of the required information in compliance with the Commission's Certification Application for Retail Aggregators and Power Brokers and Rule 4901:1-24, Ohio Administrative Code ("O.A.C.").

The application requires the submission of Independent Energy Consultants' "Financial Statements" ("Exhibit C-3"), and "Forecasted Financial Statements" ("Exhibit C-5"). Independent Energy Consultants Inc., a privately held S Corporation registered in the State of Ohio, has provided the information under seal because the documents contain competitively sensitive and highly proprietary financial information. Therefore, Independent Energy Consultants, Inc. requests that the Commission maintain the commercially sensitive and confidential nature of the information (along with any copies) contained within the portion of the application filed under seal. OAC Rule 4901:1-24(D) provides that the Commission may issue an order to protect the confidentiality of information contained in documents filed with the Commissions Docketing Division to the extent that

state or federal law prohibits the release of information and where non-disclosure of the information is not inconsistent with the purposes of Ohio Revised Code ("R.C.") Chapter 4929. Revised Code § 4929.23 (A) specifically permits the Commission to grant confidentiality where competitive information is at stake. Independent Energy Consultants, Inc. contends that the commercially sensitive competitive information required by Sections C-3 and C-5 of the application constitutes highly confidential and proprietary trade secrets and, as such, Ohio law prohibits release of the information.

Other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of a public utility, the trade statute creates a duty to protect them.¹ The Ohio Commission has similarly fulfilled its obligations to protect trade secrets in numerous proceedings.² For the Commission to do otherwise here would contradict the Ohio legislature's protections of all businesses, including public utilities.

In Pyromatics, Inc. v. Peruzziello,³ the Court of Appeals set forth six factors to be included in the analysis of what constitutes a trade secret:

- (1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

¹ See e.g., *New York Tel. Co. v. Pub. Serv. Comm.* N.Y. 2d 213 (1982)

² See, e.g., *Elyria Telephone Co.*, Case No. 89-965-TP-AEC (Finding and Order, Sept. 21, 1989); *Ohio Bell Telephone Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, Aug. 17, 1990).

³ 7 Ohio App. 3d 131, 134-35 (Cuyahoga County 1983).

Independent Energy Consultants, Inc. satisfies all of these considerations. Independent Energy Consultants, Inc has provided under seal the information required in Sections C-3 and C-5 of the application and has treated the information as a trade secret. In Independent Energy Consultant's normal course of business, the information is deemed confidential, is treated as proprietary and confidential by its employees and is not disclosed to anyone unless required pursuant to law.

Independent Energy Consultants, Inc. is seeking authority to continue to operate as a Retail Aggregator and Power Broker in the State of Ohio. Given the competitive environment in which it seeks to operate the financial information requested in Sections C-3 and C-5 of the application is highly proprietary, confidential and commercially sensitive. Therefore, it is imperative that Independent Energy Consultants, Inc. be required to disclose its financial forecasts only under seal, thus preventing potential competitors from gaining access to this sensitive information. Additionally, maintaining the confidentiality of Independent Energy Consultants, Inc. financial forecasts will in no way prejudice Independent Energy Consultants' competitors, because the Commission will have the financial information necessary to make an informed decision. The Commission can thus assure that Independent Energy Consultants, Inc. complies with the Commissions rules and receives no regulatory advantage over its potential competitors.

Additionally, Independent Energy Consultants, Inc. hereby requests a waiver from Rule 4901-1-24(F), O.A.C., which causes any order prohibiting public disclosure of certain documents to automatically expire eighteen (18) months after the date the order was issued.

Given the sensitive nature of the requested documents, Independent Energy Consultants, Inc. believes that a waiver of this rule is appropriate. The information is proprietary now and will continue to be sensitive in eighteen months. Independent Energy Consultants, Inc. also respectfully requests that the Commission grant a waiver from Rule 4901-1-24(F), O.A.C., to prevent the information that has been filed under seal from being removed from protective status and placed into the public record of the proceeding.

WHEREFORE, Independent Energy Consultants, Inc. respectfully requests that this Motion for Protective Order be granted for the reasons set forth herein.

Respectfully submitted



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