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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Affiliated Power Purchasers)
International, LLC for Renewal of its)
Certification as a Competitive Retail)
Electric Service Broker/Aggregator in the)
State of Ohio.)

Case No. 01-134-EL-AGG

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**MOTION TO EXTEND THE EFFECTIVE DATE OF AFFILIATED POWER
PURCHASERS INTERNATIONAL, LLC'S CURRENT OHIO COMPETITIVE RETAIL
ELECTRIC SERVICE PROVIDER CERTIFICATE, MOTION FOR PROTECTIVE
ORDER AND MEMORANDA IN SUPPORT OF
AFFILIATED POWER PURCHASERS INTERNATIONAL, LLC**

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**ATTORNEYS FOR AFFILIATED POWER
PURCHASERS INTERNATIONAL, LLC**

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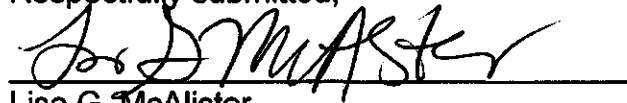
**MOTION TO EXTEND THE EFFECTIVE DATE OF AFFILIATED POWER
PURCHASERS INTERNATIONAL, LLC'S CURRENT OHIO COMPETITIVE RETAIL
ELECTRIC SERVICE PROVIDER CERTIFICATE**

Affiliated Power Purchasers International, LLC ("APPI") respectfully requests that the Public Utilities Commission of Ohio ("Commission") extend the expiration date of APPI's Certificate No. 01-062(E), which authorizes APPI to provide competitive retail electric services in the State of Ohio. APPI's current certificate expired on May 31, 2011. APPI filed a renewal certificate application on May 23, 2011. Additionally, on the same day, APPI filed a Motion for Extension of the 30-day review process of its renewal application. However, the initial motion was not signed by an attorney licensed to practice in Ohio.

In compliance with Rule 4901:1-24-09(A), Ohio Administrative Code ("OAC"), and in order to allow for the 30-day review process of its renewal application without allowing APPI's certification to expire, APPI respectfully requests that the Commission extend the expiration date until June 30, 2011.

WHEREFORE, APPI respectfully requests that the Commission grant its motion to extend the expiration date of Certificate No. 01-062(E) from May 31 to June 30, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa G. McAlister", is written over a horizontal line.

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MEMORANDUM IN SUPPORT

APPI has been an Ohio certified competitive retail electric service provider since 2001. APPI was issued Certificate No. 01-062(E) to provide competitive retail electric services for the two year period commencing May 31, 2009. Unfortunately, due to an administrative error, APPI failed to file its renewal application until May 23, 2011, which is outside of the time frame set forth by Rule 4901:1-24-09, OAC.

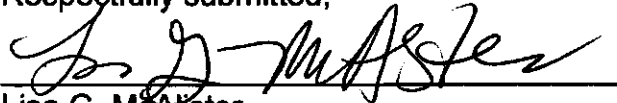
The Commission has plenary authority to extend the expiration date of APPI's certification for good cause shown. APPI's tardiness in filing its renewal application was solely due to an inadvertent administrative error. APPI takes its responsibilities, including timely filing applications for renewal on a timely basis, seriously. APPI apologizes for its administrative error and pledges that all filings going forward will be timely and properly made in compliance with the governing rules.

Additionally, concurrently with this Motion, APPI is filing a revised and complete renewal application. Now that the Commission has received a final copy of APPI's renewal application, the Commission can see that there have been no material changes in APPI's business practices as defined in the Commission's rules. Nonetheless, APPI

recognizes that the Commission Staff needs adequate time to review APPI's renewal application.

For the reasons stated herein, APPI respectfully requests an extension of the expiration date of its certification.

Respectfully submitted,

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MOTION FOR PROTECTIVE ORDER

On May 23, 2011, Affiliated Power Purchasers International, LLC ("APPI") filed its renewal application for certification as a competitive retail electric service ("CRES") power broker and aggregator. APPI's May 23, 2011, filing did not contain all of the information required for Exhibit C. Accordingly, attached hereto is a complete, revised certification renewal application. While APPI previously included its financial statements in Exhibit C-3, which are now in the public domain, APPI's forecasted financial statements in Exhibit C-5 are included for the first time in the attached certification renewal application.

Accordingly, pursuant to Rule 4901-1-24(D), Ohio Administrative Code ("OAC"), APPI hereby moves the Commission for a protective order to shield proprietary information from the public record and keep confidential the forecasted financial data contained in Exhibit C-5 (forecasted financial statements) to APPI's certification renewal application

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

Consistent with the requirements of Rule 4901-1-24(D), OAC, APPI has filed under seal three (3) unredacted copies of the confidential exhibits that are the subject of this motion.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Rule 4901-1-24(D), OAC, provides that the Commission or certain designated Commission employees may issue an 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 . . . 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." Moreover, Section 4928.06(F), Revised Code, specifically permits the Commission to grant confidentiality to competitive information. APPI asserts that the information being submitted in Exhibit C-5 constitutes confidential and proprietary business information, as well as a trade secret; and as such, state law prohibits the release of the information.

Sections 4901.12 and 4905.07, Revised Code, were amended in 1996 to facilitate the protection of trade secrets in Commission proceedings. By referencing Section 149.43, Revised Code, (Ohio's Public Records Law), the Commission-specific statutes incorporate the definition of "public records," as well as an exception to that definition that includes "[r]ecords the release of which is prohibited by state or federal law." Section 149.43(A)(1), Revised Code. In turn, state law prohibits the release of

information meeting the definition of a trade secret. See Sections 1333.61(D) and 1333.62, Revised Code. For this reason, records containing trade secrets are prohibited from public disclosure.

The definition of "trade secret" is set forth in Section 1333.61(D), Revised Code:

"Trade secret" means information, including the whole or any portion or 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, and 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.

This definition clearly reflects the state policy favoring the protection of trade secrets such as the financial information which is the subject of this motion. As the Ohio Supreme Court recently explained:

by adopting the Uniform Trade Secrets Act, with the express purpose to make uniform the law with respect to their subject among states, the General Assembly has determined that public policy in Ohio, as in the majority of other jurisdictions, favors the protection of trade secrets, whether memorized or reduced to some tangible form.

Al Minor & Associates, Inc. v. Martin, (2008) 117 Ohio St.3d 58.

Courts of other jurisdictions not only have held that a state public utilities commission has the authority to protect trade secrets, but that trade secret statutes create a duty to protect them. See *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982).

Furthermore, this Commission itself has recognized the need to protect trade secrets from public disclosure as consistent with its other statutory obligations:

The Commission is of the opinion that the "public records" statute must also be read *in pari materia* with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982). The Commission has previously carried out its obligation to protect the trade secret status of information from utilities and other regulated entities in numerous proceedings. See, e.g., *Cleveland Electric Illuminating Co.*, Case No. 07-171-EL-BTX (Entry dated August 14, 2008); *Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. 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, August 17, 1990).

Perhaps most importantly, the Commission regularly grants motions for protective orders to protect the confidential trade secret status of exhibits to CRES broker/aggregator applications - see e.g. *Palmer Energy Corporation*, Case No. 10-1081-EL-AGG (Entry October 21, 2010) and *RD Energy, Inc.*, Case No. 10-72-EL-AGG (Entry March 26, 2010). See also, *Buckeye Energy Brokers, Inc.*, Case No. 02-1676-GA-AGG (Entry July 15, 2003, explaining that "income statement and balance sheet information can be considered a trade secret and afforded confidential treatment"). For the Commission to do otherwise would be to negate the protections the General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act.

Expounding upon the "trade secret" definition above, the Ohio Supreme Court has delineated factors to be considered in analyzing a trade secret claim:

(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.

State ex. rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St.3d 513, 524-525.

The Commission applies these factors in the context of CRES broker/aggregator applications to conclude that certain financial exhibits constitute trade secrets. Here, APPI requests that the information designated as confidential (Exhibit C-5) in its certification renewal application be protected from public disclosure. APPI redacted the confidential information from Exhibit C-5 to the certification application. In addition, the information for which APPI seeks protection is entirely private and has never appeared in the public record.

APPI is not a public company. APPI asserts that the confidential information contained in Exhibit C-5 is not generally known by the public, is held in confidence in the normal course of business and that any public dissemination of such information or any portion thereof would harm APPI and give undue advantage to APPI's aggregator/power broker competitors in Ohio. Additionally, the nondisclosure of the information will not impair the purpose of Title 49, as the Commission and its staff will have access to the requested information.

For the reasons stated herein, the information in Exhibit C-5 to the certification application falls directly within the definition of a "trade secret," and should be protected from public disclosure.

Accordingly, APPI respectfully requests that the Commission grant this renewed Motion for Protective Order and protect the designated information in the exhibits to its certification application from public disclosure.

Respectfully submitted,

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