

FILE

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 Aggregator/Power Broker

Case No. 09-1058-EL-AGG

MOTION FOR PROTECTIVE ORDER

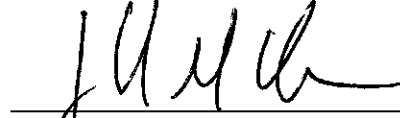
Pursuant to Ohio Admin. Code §4901-1-24, HB Hayes & Associates, LLC d/b/a Alternative Energy Source ("Alternative Energy") respectfully requests that the Public Utilities Commission of Ohio (the "Commission") enter an Order protecting from disclosure the financial information submitted as Exhibit C-3 to its Renewal Application for Aggregators/Power Brokers, submitted simultaneously with this Motion. Furthermore, because the Commission never issued a decision on Alternative Energy's Motion for Protective Order submitted with Alternative Energy's original application for certification in 2009, Alternative Energy requests that the Protective Order be retroactively applied to protect from disclosure the financial documents submitted as Exhibit C-3 to the original application for certification.

The grounds for this Motion are set forth more fully in the following Memorandum in Support.

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Respectfully submitted,



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### **MEMORANDUM IN SUPPORT**

On December 16, 2009, HB Hayes & Associates, LLC d/b/a Alternative Energy Source ("Alternative Energy") was issued Ohio Competitive Retail Electric Service Provider Certificate Number 09-180-E(1) for certification to provide aggregation and power broker services, effective from December 4, 2009 through December 4, 2011. A copy of the Certificate is attached as **Exhibit 1**. In connection with its application, Alternative Energy submitted a Motion for Protective Order with respect to certain financial statements submitted as Exhibit C-3 to its certification application. However, the Commission never issued a ruling on the Motion for Protective Order.

Because Alternative Energy's certification is set to expire on December 4, 2011, Alternative Energy is now filing a Renewal Application for Aggregators/Power Brokers, including financial statements for the previous two years of Alternative Energy's operations as Exhibit C-3 to the renewal application. Alternative Energy asserts that the financial documents attached as Exhibit C-3 to the renewal application, as well as the documentation

submitted as Exhibit C-3 to the original application (together, the “Financial Statements”), qualify as trade secret information and should be protected from disclosure through the public record.

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)

A party wishing to extend a protective order...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. §4901-1-24(F).

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 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, 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.

Alternative Energy asserts that the Financial Statements are competitively sensitive and highly proprietary business information, and that this information is not generally known or available to the general public. Alternative Energy makes concerted efforts to ensure that the information contained in the Financial Statements is known only to its principal officers, and is not disclosed to the public. Such disclosure would jeopardize Alternative Energy's ability to negotiate and to compete in the market, and would directly threaten Alternative Energy's financial viability. In short, the Financial Statements qualify as trade secrets under applicable law and regulations, and are therefore the proper subject of a protective order. See R.C. §1333.61(D); see also, *State ex rel The Plain Dealer v. Ohio Dept of Ins.*, (1997) 80 Ohio St.3d 513,524-525.

Furthermore, the nondisclosure of the Financial Statements 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 Alternative Energy seeks to protect comprises trade

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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."

secrets, and because nondisclosure of that information comports with the important purpose of protecting such sensitive information, the Commission should grant this Motion.

Finally, the Financial Statements are permeated with trade secret information, and thus cannot be reasonably redacted to remove the confidential information. Again, a protective order for the whole of the Financial Statements is the appropriate means to protect Alternative Energy's trade secrets.

WHEREFORE, for the reasons set forth above, Alternative Energy respectfully requests that the Commission grant this Motion for Protective Order, pursuant to Ohio Admin. Code §4901-1-24. Specifically, Alternative Energy requests that the Commission enter a Protective Order, for a period of no less than twenty-four (24) months, to: (1) protect from disclosure the financial documents submitted as Exhibit C-3 to the original application for certification submitted in 2009; and (2) to protect from disclosure the financial documents submitted as Exhibit C-3 to the renewal application for certification submitted simultaneously with this Motion.

Respectfully submitted,



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