

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Renewal Application of)
On-Demand Energy, Inc., for Certification as) Case No. 09-402-EL-AGG
an Electric Aggregator/Power Broker in)
Ohio.)

MOTION FOR PROTECTIVE ORDER AND
MEMORANDUM IN SUPPORT

Now comes On-Demand Energy, Inc. ("the Company"), by and through counsel, seeking re-certification as a governmental aggregator and power broker in the State of Ohio, and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, moves for a Protective Order seeking to protect Exhibits C-3, C-5, and C-7 confidential for an additional 18 months. Each of these documents were filed under seal, and made a part of the Company's original application for certification, dated May 9, 2011. At that time, the Ohio Public Utilities Commissioner determined that those exhibits were confidential and should not be a part of the public record. For the reasons stated in the Memorandum in Support and attached affidavit, the Company respectfully requests that the Public Utilities Commission of Ohio ("Commission") grant this instant motion for Protective Order concerning these new Exhibits C-3, C-5, and C-7 (a copy of which are attached and filed under seal), along with this renewal certification application. Consistent with the requirements of the above-cited Rule, three unredacted copies of the new exhibits are submitted under seal.

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Respectfully submitted,



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MEMORANDUM IN SUPPORT

On-Demand Energy, Inc. respectfully requests that the Commission designate as confidential and protect from public disclosure new exhibits C-3, C-5, and C-7 to its Application for Certification as a governmental aggregator and power broker in the State of Ohio. Further, the Company requests that the Commission maintain as confidential previously filed exhibits C-3, C-5, and C-7, which were filed with the Company's original application dated, May 9, 2011, for an additional twenty-four (24) months. If released to the public, the information contained in new exhibits C-3, C-5, and C-7, and previously filed exhibits C-3, C-5, and C-7 covering the same information, would harm the Company, as it would provide its competitors with confidential, proprietary information which is not generally known or available to the public.

Rule 4901-1-24(D) of the Ohio Administrative Code permits an attorney examiner to issue an order to protect the confidentiality of information contained in a document filed at the Commission, "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 non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

Section 1333.61(D) of the Ohio Revised Code defines a trade secret as information that “(1) 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; and, (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Further, Section 149.43 of the Ohio Revised Code states that the term “public records” excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has opined that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399. Moreover, in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25, the Supreme Court of Ohio adopted the following six factor test to determine whether information constitutes a “trade secret” under the Section 1333.61 of the Ohio Revised Code:

- (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.

Applying these factors to the information contained in new exhibits C-3, C-5, and C-7 and previously filed exhibits C-3, C-5, and C-7 that the Company seeks to protect, the Commission should grant the Company’s motion in its entirety. Exhibit C-3 is four pages of financial information, including Financial Balance sheets and Profit and Loss Statements. Exhibit C-5 if Forecasted Financial Statements, including income, total costs of goods sold, gross

profits, and expenses. Exhibit C-6 is a 3-page Credit Report that lists the current cash balances and recent activity of payment trends. None of the information contained in these exhibits is readily available outside of the Company. The only individuals at the company who have access to this information are Company President John Zbihley and Director of Accounting Denise Ebeburn. This information is password protected on the company's computers and any hard copies are locked in a filing cabinet where only Mr. Zbihley and Ms. Ebeburn possess a key. This information would reveal the structure of the company which would provide competitors insight into On-Demand's business approach. The Company has invested considerable resources in the business model which could be reversed engineered through studying our financial information. Further, this information would reveal the "savings effected" and would give competitors an unfair advantage. The Company spent a certain amount of time and money in developing this information, and the only way a competitor would acquire or duplicate this information would be if they obtained said information inappropriately. Further, public disclosure of this information will not assist the Commission in carrying out its duties under the pertinent rules and regulations.

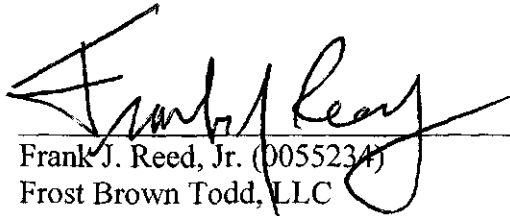
Both new and previously filed exhibit C-3 contain certain confidential financial statements of the Company. Financial information of the nature contained in these exhibits is not disclosed, as such disclosure would give competitors an advantage that would damage the Company's ability to compete in a number of important markets. Further, confidential treatment of this information is not inconsistent with the purposes of Title 49 of the Revised Code.

In light of the nature of the exhibits for which the Company seeks confidential treatment, and the competitive advantage that disclosure of the information contained in the exhibits may afford to the Company's competitors, the Commission should grant On-Demand Energy, Inc.'s motion for a protective order over new exhibits C-3, C-5, and C-7 as well as for previously filed

exhibits C-3, C-5, and C-7 attached to the original application for certification as an electric aggregator/power broker in Ohio.

WHEREFORE, for the above-stated reasons, On-Demand Energy, Inc. respectfully requests that the Commission grant its motion for a protective order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank J. Reed, Jr.", is written over a horizontal line.

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