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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of
Patriot Energy Group, Inc. for Certification
as a Competitive Retail Electric Service
Broker/Aggregator.

Case No. 09-741-EL-AGG

***PATRIOT ENERGY GROUPS'
MOTION FOR PROTECTIVE ORDER***

Patriot Energy Group, Inc. ("Patriot"), by its attorneys and pursuant to Section 4901-124(D), Ohio Administrative Code, moves the Public Utilities Commission of Ohio for a protective order to prohibit the disclosure and protect the confidentiality of designated exhibits to Patriot's application to renew its certificate as a competitive retail electric service broker/aggregator. The designated exhibits consist of financial statements (Exhibit C-3) and forecasted financial statements (Exhibit C-5), which were filed contemporaneously with this motion under seal with Patriot's renewal application. The reasons supporting this motion are detailed in the attached Memorandum in Support.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF
PATRIOT ENERGY GROUP'S MOTION FOR PROTECTIVE ORDER**

Patriot Energy Group, Inc. ("Patriot") is not a publicly traded company and its financial information is not publicly available. Therefore, Patriot requests that the financial information contained in Exhibit C-3: Financial Statements ("Exhibit C-3") and Exhibit C-5: Forecasted Financial Statements ("Exhibit C-5") to the application for certificate renewal filed contemporaneously with this motion be protected from public disclosure.

The information for which protection is sought describes Patriot's financial information, results of operation, and projected financial information. Such information clearly is competitively sensitive trade secret information. Public disclosure would impair Patriot's ability to respond to competitive opportunities in the marketplace and would provide competitors with an unfair competitive advantage. The Public Utilities Commission of Ohio ("Commission") has afforded such information protection as confidential trade secret information in the certification proceedings of other competitive retail electric service brokers/aggregators. See, e.g., *In the Matter of the Application of T.E.S. Energy Services, L.P., for Certification as a Competitive Retail Electric Service Broker/Aggregator*, Case No. 11-2541-EL-AGG (Entry, June 20, 2011).

Rule 4901-1-24(D), Ohio Administrative Code, provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law, and

specifically Section 4929.23(A), Ohio Revised Code, permits the Commission to protect the confidentiality of competitive information submitted as a part of the certification process for competitive retail electric service providers. Moreover, Sections 4901.12 and 4905.07, Ohio Revised Code, facilitate the protection of trade secrets in the Commission's possession. These statutes incorporate by reference the provisions of Section 149.43, Ohio Revised Code, which excepts from the public record information and records for which disclosure is prohibited by law. State law prohibits the release of information meeting the definition of a trade secret. Sections 1333.61(D) and 1333.62, Ohio Revised Code. Sections 4901.12 and 4905.07, Ohio Revised Code, also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 and non-disclosure of the information will not impair the purposes of Title 49, because the Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

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 documents and information contained in Exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret as defined by Section 1333.61(D), Ohio 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 information which is the subject of this motion.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect trade secret information submitted to it, the trade secret statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N. Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including competitive retail electric service providers, through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. *See, e.g., 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).

In *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing 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.

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

Patriot considers and treats the documents and information contained in Exhibits C-3 and C5 as trade secret. In the ordinary course of business, the information is deemed confidential, is treated as proprietary and confidential by Patriot employees and is not disclosed to anyone unless required pursuant to a legal proceeding.

Considering the competitive environment in which Patriot operates, the financial information requested in Exhibits C-3 and C-5 of the application is highly proprietary, confidential and commercially sensitive. Therefore, it is imperative that Patriot be required to provide such information only under seal, thus precluding potential competitors from gaining access to this commercially sensitive information. Additionally, non-disclosure of the information will not impair the purposes of Title 49, because the Commission and its Staff have full access to the information in order to fulfill its statutory obligations. The Commission can thus ensure that Patriot (1) complies with Commission's rules and (2) will receive no regulatory advantage over its potential competitors.

For the foregoing reasons, Patriot requests that the designated information be protected from public disclosure.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dane Stinson", written over a horizontal line.

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