

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)

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MOTIONS FOR PROTECTIVE ORDER**OF INDEPENDENT ENERGY CONSULTANTS, INC.**

Independent Energy Consultants, Inc. ("IEC") hereby respectfully moves the Public Utilities Commission of Ohio (the "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 Exhibits C-3 and C-5 of IEC's 2014 Renewal Certification Application to remain a Retail Aggregator and Power Broker. The rationale for granting this Motion is contained in the Memorandum in Support, attached hereto and incorporated herein by reference. Consistent with the requirements of Ohio Administrative Code §4901:1-24(D) of the Commission's rules, IEC has filed unredacted copies of the information which is the subject to this Motion under seal.

Additionally, IEC hereby respectfully moves the Commission to extend the protective order currently in place with respect to Exhibits C-3 and C-5 of IEC's 2012 Renewal Certification Application to remain a Retail Aggregator and Power Broker for at least an additional 24 month period (i.e., until at least May 23, 2016).

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

Dated March 17, 2014

Respectfully submitted

A handwritten signature in black ink, appearing to read 'D. Hrina', is written over a horizontal line.

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MEMORANDUM IN SUPPORT OF MOTIONS FOR PROTECTIVE ORDER

1. Support for Independent Energy Consultants, Inc.'s ("IEC") Motion for Protective Order for Exhibits C-3 and C-5 of IEC's Renewal Certification Application to remain a Retail Aggregator and Power Broker (the "2014 Application").

Along with the filing of its 2014 Application, IEC has also filed a Motion for Protective Order with respect to Exhibits C-3 and C-5 of the 2014 Application. This Memorandum is in support of said Motion.

The 2014 Application contains all of the required information in compliance with the Commission's Certification Application for Retail Aggregators and Power Brokers and Ohio Administrative Code ("OAC") §4901:1-24. The 2014 Application requires the submission of IEC's "Financial Statements" (Exhibit C-3), and "Forecasted Financial Statements" (Exhibit C-5). IEC is a closely held Ohio corporation, and has provided Exhibits C-3 and C-5 under seal because the Exhibits contain IEC's competitively sensitive and highly proprietary financial information. Therefore, IEC respectfully requests that the Commission maintain the commercially sensitive and confidential nature of the information (along with any copies) contained within the portion of the 2014 Application filed under seal. OAC §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 ("ORC") Chapter 4929. ORC § 4929.23 (A) specifically permits the Commission to grant confidentiality where competitive information is at stake. IEC respectfully contends that the commercially sensitive competitive information required by Sections C-3 and C-5 of the 2014 Application constitutes highly confidential and proprietary trade secrets and, as such, Ohio law prohibits release of said 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 Public Utilities Commission of Ohio (the "Commission") has similarly fulfilled its obligations to protect trade secrets in numerous proceedings in the past.² Indeed, the Commission previously issued a Protective Order with respect to the same type of financial information contained in Exhibits C-3 and C-5 of IEC's 2012 Renewal Certification Application to remain a Retail Aggregator and Power Broker (the "2012 Application").³ For the very same reasons the Commission granted a protective order relative to the 2012 Application, IEC is now seeking similar protection with respect to Exhibits C-3 and C-5 of the 2014 Application.

Further, Ohio law and the circumstances of this case require that such protection be granted. More specifically, in *State ex rel. The Plain Dealer v. Ohio Department of Ins.*,⁴ the Ohio Supreme Court set forth six factors to be included in the analysis of what constitutes a trade secret:

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 80 Ohio St.3d 513, 524-525 (1997).

⁴ See Commission Entry, dated June 13, 2012, in Case Nos. 04-592-EL-AGG and 04-593-GA-AGG.

(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.

In the instant case, IEC satisfies each of these considerations. More specifically, IEC has provided the information required in Sections C-3 and C-5 of the 2014 Application under seal, and has treated the information contained in Exhibits C-3 and C-5 as trade secrets. In the normal course of IEC's business, the information contained in Exhibits C-3 and C-5 is deemed confidential, is treated as proprietary and confidential by its employees and is not disclosed to anyone unless required pursuant to law.

Furthermore, IEC 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 IEC seeks to continue to operate, the financial information contained in Exhibits C-3 and C-5 of the 2014 Application is highly proprietary, confidential and commercially sensitive. Therefore, it is imperative that IEC only be required to disclose its financial information and forecasts under seal and that the same be protected by an appropriate protective order, thus preventing IEC's competitors and potential competitors from gaining access to IEC's confidential information and trade secrets. Additionally, maintaining the confidentiality of IEC's financial information and forecasts will in no way prejudice IEC's competitors, because the Commission will have the financial information necessary to make an informed decision. The Commission can thus assure that IEC complies with the Commission's rules and receives no regulatory advantage over its competitors or potential competitors.

In conclusion, IEC's Motion for a Protective Order relative to Exhibits C-3 and C-5 of the 2014 Application is consistent with Ohio law, past Commission precedent and IEC's request for a similar protective order relative to Exhibits C-3 and C-5 of IEC's 2012 Application, which was granted by the Commission.

2. Support for IEC's Motion to Extend the Protective Order Currently in Place Relative to Exhibits C-3 and C-5 of IEC's 2012 Application.

In the Commission's Entry on IEC's 2012 Application, dated June 13, 2012 (the "2012 Entry"), the Commission acknowledged that Exhibits C-3 and C-5 of IEC's 2012 Application constituted trade secret information, and the Commission prohibited the release of said Exhibits until at least May 23, 2014. See 2012 Entry at ¶¶6-7. The Commission also acknowledged that IEC could file a motion to extend said protective order at least 45 days in advance of the May 23, 2014 deadline. See 2012 Entry at ¶18.

IEC has now motioned the Commission more than 45 days in advance of the deadline to extend the protective order granted by the Commission in the 2012 Entry beyond the current deadline of May 23, 2014 and for at least an additional 24 months (i.e., until at least May 23, 2016). IEC's Motion to Extend the Protective Order is consistent with Ohio law and past Commission precedent.

More specifically, the same reasoning used to support IEC's Motion for a Protective Order, which was granted by the Commission, is still applicable today. Namely, IEC continues to maintain the financial information contained in Exhibits C-3 and C-5 of the 2012 Application as confidential business information and trade secrets, as defined by ORC 1333.61(d) and the Ohio Supreme Court's decision in *State ex rel. The Plain Dealer v. Ohio Department of Ins.* discussed *supra*.

Additionally, the Commission has ruled to extend the protective orders of IEC's competitors in the past for the very same financial information (i.e., Exhibits C-3 and C-5). More specifically, and by way of example, *In the Matter of the Application of Palmer Energy Company, Inc. for Certification as both a Competitive Retail Electric Service Provider in Ohio and a Competitive Retail Natural Gas Provider in Ohio* (Case Nos. 10-1081-EL-AGG and 10-1082-GA-AGG), the Commission granted Palmer Energy Company, Inc.'s ("Palmer") Motion to Extend the Protective Order on Exhibits C-3 and C-5 of its application an additional 24 months, even though Palmer did not timely file its Motion.⁵

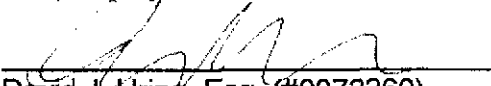
Consequently, IEC's Motion to extend the existing protective order relative to Exhibits C-3 and C-5 of IEC's 2012 Application should be granted.

WHEREFORE, IEC respectfully requests that its Motion for a Protective Order relative to Exhibits C-3 and C-5 of the 2014 Application be granted for the reasons set forth herein.

FURTHER WHEREFORE, IEC respectfully requests that its Motion for an Extension to the Existing Protective Order relative to Exhibits C-3 and C-5 of the 2012 Application be granted for the reasons set forth herein.

Dated March 17, 2014

Respectfully submitted



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⁵ *In the Matter of the Application of Palmer Energy Company, Inc. for Certification as both a Competitive Retail Electric Service Provider in Ohio and a Competitive Retail Natural Gas Provider in Ohio* (Case Nos. 10-1081-EL-AGG and 10-1082-GA-AGG) Entry, at ¶3.