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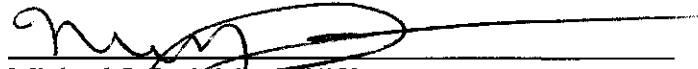
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the Application of)	
HB Hayes & Associates, LLC d/b/a)	Case No.
Alternative Energy Source)	
For Certification as an Electricity Aggregator)	

MOTION FOR PROTECTIVE ORDER

Pursuant to Ohio Admin. Code §4901-1-24, HB Hayes & Associates, LLC d/b/a Alternative Energy Source ("AES") respectfully requests that the Public Utilities Commission of Ohio ("Commission") grant its Motion for a Protective Order with regard to Exhibits C-3 and C-5 of its Application for Certification as an Electricity Aggregator submitted simultaneously with this Motion, for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

AES is filing an Application for Certification as an Electricity Aggregator contemporaneously with this Motion. Attached as exhibits to that Application is certain financial information which contains competitively sensitive and highly proprietary business financial information, all of which comprises trade secrets. Accordingly, this Motion seeks a protective order to protect the confidentiality and prohibit the disclosure of this information. Specifically, AES desires to protect from public disclosure the information contained in the following exhibits: Exhibit C-3: Balance Sheet, Comparative Income Statement and Personal Financial Statement (together, the "Financial Statements") and Exhibit C-5: Balance Sheet and Forecasted Income Statement (together, the "Forecasted Financial Statements"). These exhibits have been clearly marked as confidential and are being filed under seal simultaneously with this Motion.

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.

Ohio Admin. Code §4901-1-24(D). 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, 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.

R.C. §1333.61(D).

AES asserts that the Financial Statements and Forecasted Financial Statements are confidential and are not generally known or available to the general public. Moreover, AES makes concerted efforts to maintain the confidentiality of this information. Public disclosure would jeopardize AES's ability to negotiate and to compete in the market, and would directly threaten AES's financial viability. In short, the financial information AES seeks to protect contained in Exhibits C-3 and C-5 qualify as trade secrets under applicable law and regulations, and is therefore the proper subject of a protective order. See R.C. §1333.61(D); *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 524-525, 687 N.E.2d 661 (1997). The Commission has previously granted AES such protection for the same type of information in Case No. 09-1058-EL-AGG.

Furthermore, the nondisclosure of this information 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.¹ Therefore, because the information AES seeks to protect comprises trade secrets, and because nondisclosure of that information comports with the important purpose of protecting such sensitive information, the Commission should grant AES's Motion for Protective Order.

AES also moves the Commission to waive the provisions of Ohio Admin. Code §4901-1-24(F) to afford confidential treatment to the Financial Statements and Forecasted Financial Statements pursuant to the Protective Order for a period of twenty-four (24) months, which states as follows:

Unless otherwise ordered, any order prohibiting public disclosure pursuant to paragraph (D) of this rule shall automatically expire eighteen months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond eighteen months 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.

Ohio Admin. Code §4901-1-24(F). The information which is the subject of this Motion will be no less confidential in eighteen (18) months than it is presently. AES's proprietary and confidential information is and will continue to be competitively sensitive information which, if divulged publicly in a competitive market will have an adverse impact on AES's ability to do business. Thus, it is imperative that the financial information in Exhibits C-3 and C-5 be protected from disclosure, and that the Protective Order remains in place beyond the 18-month

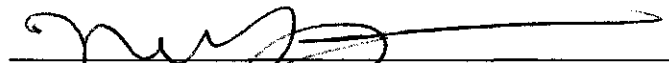
¹ The importance of protecting commercially sensitive information is reflected in the Ohio Administrative Code, as well. For example, Ohio Admin. Code §4901-1-27(B)(7)(e) states that in hearings, "the presiding hearing officer may, without limitation: Take such actions as are necessary to: [p]revent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information."

time frame established in the Ohio Administrative Code. Again, the Commission has previously found AES entitled to such protection for the same type of information in Case No. 09-1058-EL-AGG.

Finally, the Financial Statements in Exhibit C-3 and Forecasted Financial Statements in Exhibit C-5 are permeated with trade secret information, and thus cannot be reasonably redacted to remove the confidential information. A protective order for the whole of the Financial Statements in Exhibit C-3 and Forecasted Financial Statements in Exhibit C-5 is the appropriate means to protect AES's trade secrets.

WHEREFORE, HB Hayes & Associates, LLC d/b/a Alternative Energy Source respectfully requests that the Commission grant its Motion for a Protective Order pursuant to Ohio Admin. Code §4901-1-24, and further that the Commission waive Ohio Admin. Code §4901-1-24(F) and afford confidential treatment to the financial information contained in Exhibits C-3 and C-5 pursuant to the Protective Order for a period of twenty-four (24) months, for the reasons set forth above, for the reasons set forth above.

Respectfully submitted,



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