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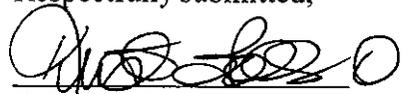
BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of the Application of)
Energy Professionals, LLC for Renewal) Case No. 11-5444-GA-AGG
Of Its Certification as a Natural Gas)
Broker/Aggregator)

REQUEST FOR CONFIDENTIALITY
[REVISED MARCH 9TH, 2018]

Now comes Energy Professionals, LLC ("Energy Professionals"), seeking renewal of its certification to provide Natural Gas Broker/Aggregator services; and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C.") moves the Public Utilities Commission of Ohio for a protective order to keep financial exhibits C-3, C-5 and C-7 to its renewal application for certification confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) unredacted copies of the exhibits are submitted under seal.

Respectfully submitted,

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2 **MEMORANDUM IN SUPPORT OF REQUEST**
3 **FOR CONFIDENTIALITY**

4 Energy Professionals requests that the information designated as confidential Exhibits
5 C-3(Financial Statements), C-5 (Forecasted Financial Statements) & C-7 (Credit
6 Report) of its Renewal Certification Application for Competitive Retail Natural Gas
7 Brokers/Aggregators be protected from public disclosure. The information for which
8 protection is sought covers financial forecasts, statements, and internal information. Such
9 information if released to the public would harm Energy Professionals by providing its
10 competitors proprietary information in what is designed by statute to now be a competitive
11 service.
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14 Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or
15 certain designated employees may issue an order which is necessary to protect the
16 confidentiality of information contained in documents filed with the Commission's
17 Docketing Division, to the extent that state or federal law prohibits the release of the
18 information and where non-disclosure of the information is not inconsistent with the purposes
19 of Title 49 of the Revised Code. State law recognizes the need to protect certain types of
20 information which are the subject of this motion. The non-disclosure of the information
21 will not impair the purposes of Title 49. The Commission and its staff have full access to the
22 information in order to fulfill its statutory obligations. No purpose of Title 49 would be
23 served by the public disclosure of the information.
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26 The need to protect the designated information from public disclosure is clear, and
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1 there is compelling legal authority supporting the requested confidentiality. While the
2 Commission has often expressed its preference for open proceedings, the Commission also
3 long ago recognized its statutory obligations with regard to trade secrets:

4 The Commission is of the opinion that the "public records" statute
5 must also be read in pari materia with Section 1333.31, Revised Code
6 ("trade secrets" statute). The latter statute must be interpreted as
7 evincing the recognition, on the part of the General Assembly, of the
value of trade secret information.

8 In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982.)

9 Likewise, the Commission has facilitated the protection of trade secrets in its rules
10 (O.A.C. § 4901-1-24(A)(7)).

12 The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

13 "Trade secret" means information, including the whole or any
14 portion or phase of any scientific or technical information,
15 design, process, procedure, formula, pattern, compilation,
16 program, device, method, technique, or improvement, or any
17 business information or plans, financial information or listing of
names, addresses, or telephone numbers, that satisfies both of the
following:

18 (1) It derives independent economic value, actual or
19 potential, from not being generally known to, and not being
20 readily ascertainable by proper means by, other persons who
can obtain economic value from its disclosure or use.

21 (2) It is the subject of efforts that are reasonable under
22 the circumstances to maintain its secrecy.

23 R.C. § 1333.61(D). This definition clearly reflects the state policy favoring the
24 protection of trade secrets such as the information which is the subject of this motion.

26 Courts of other jurisdictions have held that not only does a public utilities
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1 commission have the authority to protect the trade secrets of the companies' subject to its
2 jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v.
3 Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do
4 otherwise would be to negate the protections the Ohio General Assembly has granted to
5 all businesses, including public utilities, and now the new entrants who will be
6 providing power through the Uniform Trade Secrets Act. This Commission has
7 previously carried out its obligations in this regard in numerous proceedings. See, Elyria
8 Tel. Co., Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); Ohio Bell Tel.
9 Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio,
10 Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

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12 In Pyromatics. Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County
13 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854,
14 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

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16 (1) The extent to which the information is known outside the
17 business, (2) the extent to which it is known to those inside the
18 business, i.e. by the employees, (3) the precautions taken by the
19 holder of the trade secret to guard the secrecy of the information,
20 (4) the savings effected and the value to the holder in having the
21 information as against competitors, (5) the amount of effort or
22 money expended in obtaining and developing the information, and
23 (6) the amount of time and expense it would take for others to
24 acquire and duplicate the information.

25 Applying these factors to the financial exhibits Energy Professionals seeks to keep
26 confidential, it is clear that a request for confidentiality should be granted. Similar motions
27 were granted in November, 2015 by the PUCO for Energy Professionals' Natural Gas
28 Broker/Aggregator certificate renewal.

1 Exhibits C-3, C-5 & C-7 contain confidential financial information. Such
2 sensitive financial information is generally not disclosed. Its disclosure could give
3 competitors an advantage that would hinder Energy Professionals ability to compete. On the
4 other hand, public disclosure of this financial information is not likely to assist the
5 Commission in carrying out its duties under CRES rules.
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7 WHEREFORE, for the above reasons Energy Professionals requests the Commission
8 to grant its motion for a protective order and to maintain exhibits C-3, C-5 & C-7 of its Renewal
9 Certification Application for Competitive Retail Natural Gas Brokers/Aggregators under seal.
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11 Respectfully submitted,

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1 **LIST OF EXHIBITS**

2 **FOR WHICH CONFIDENTIALITY IS SOUGHT**

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<u>EXHIBIT</u>	<u>REASONS JUSTIFYING CONFIDENTIALITY</u>
4 C-3 (Balance Sheets)	5 This exhibit contains financial information. 6 Disclosure would give an unfair advantage to 7 competitors and would hinder Energy Professionals' 8 ability to compete.
9 C-5 (Financial Forecasts)	10 This exhibit contains financial information. 11 Disclosure would give an unfair advantage to 12 competitors and would hinder Energy Professionals' 13 ability to compete.
14 C-7 (Credit Rating)	15 This exhibit contains financial information. 16 Disclosure would give an unfair advantage to 17 competitors and would hinder Energy Professionals' 18 ability to compete.

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