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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO 2011 DEC 22 PM 5:00

In the Matter of the Application of )  
Energy Services Providers, Inc. to be ) Case No. 11- 6022 -EL-CRS PUCO  
Certified as a Power Marketer in Ohio )

**MOTION FOR PROTECTIVE ORDER**

Pursuant to O.A.C. § 4901-1-24(D), Energy Services Providers, Inc. ("ESPI"), by counsel, moves for a Protective Order for two years covering Exhibits A-13 (corporate structure), B-4 (environmental disclosure), C-3 (financial statements), C-4 (financial arrangements), C-5 (forecasted financial statements), and C-6/C-7 (credit rating/credit report) to ESPI's Certification Application For Retail Generation Providers and Power Marketers filed contemporaneously herewith. The documents in Exhibits C-3, C-4, C-5 and C-6/C-7 contain competitively sensitive and proprietary business financial information comprising trade secrets that ESPI does not publicly disclose. Exhibit A-13 contains confidential business information about ESPI's ownership and corporate structure that is shielded from disclosure. Exhibit B-4 contains confidential plans and strategies that are also shielded from disclosure.

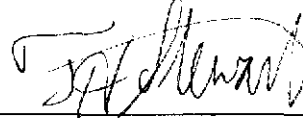
The above documents have been clearly marked as confidential and are filed herewith under seal, separate from the rest of ESPI's Certification Application. The reasons supporting this Motion are set forth in the attached Memorandum in Support.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician Ad Date Processed 12/23/11

Respectfully submitted,

ENERGY SERVICES PROVIDERS, INC.

By: \_\_\_\_\_



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## MEMORANDUM IN SUPPORT

Contemporaneously with this Motion for Protective Order, ESPI is filing its Certification Application For Retail General Providers and Power Marketers. The Application contains all of the required information and materials in accordance with the Commission's Filing Instructions for Retail Generation Providers and Power Marketers. As part of the Application, the Commission requested information regarding ESPI'S corporate structure (Exhibit A-13), environmental disclosures (Exhibit B-4), financial statements (Exhibit C-3), financial arrangements (Exhibit C-4), forecasted financial statements (Exhibit C-5), and credit rating (C-6) and report (C-7). ESPI has submitted the requested information and exhibits under seal because the documents contain competitively sensitive and highly proprietary business and financial information, which require confidential treatment. ESPI's competitors would gain an unfair competitive advantage if the Exhibits were disclosed. ESPI therefore requests that the Commission maintain the confidentiality of these documents and information contained therein by entering a Protective Order.

Exhibit A-13 contains ESPI's corporate structure and ownership. This is information that ESPI does not release to the public and is not available to, but shielded from, the general public including ESPI's competitors. Exhibit B-4 contains environmental disclosure information which includes ESPI's annual projection methodology and proposed approach to compiling environmental disclosure information. This is forward-looking information that ESPI has developed and is not known to the general public. Disclosure of ESPI's methodology, projections, and proposals would give its competitors an unfair advantage. Both Exhibits contain confidential and proprietary information related to ESPI's business model and plans for its electricity marketing efforts. This confidential business information and plans contain strategic

information of potentially great economic value to other providers in the Ohio marketplace who could use this information to disadvantage ESPI in the retail electricity marketplace. Revealing this information would give potential competitors important information about ESPI's current and future business plans as well. Such information could be unfairly leveraged by ESPI's competitors in their planning and marketing to the detriment of ESPI. Exhibits A-13 and B-4 meet the statutory test for protecting business information or plans that are confidential trade secrets and therefore should be protected from disclosure pursuant to Ohio law.

Exhibits C-3, C-4, C-5, and C-6/C-7 contain the financial statements, financial arrangements, forecasted financial statements, and credit information that is proprietary data and maintained in confidence. Public disclosure of this information would jeopardize ESPI's business position in negotiations with other parties and its ability to fairly compete. This information is not generally known by the public and is held in confidence in the normal course of business. The release of this information would provide ESPI's competitors valuable insight into ESPI and its inner workings. Exhibits C-3, C-4 and C-5 contain the kind of proprietary, confidential financial information that the Commission routinely protects via protective orders. Exhibit C-6 (and Exhibit C-7 which incorporates Exhibit C-6) contains credit information about ESPI and includes at the end of the document a statement that it is "[p]rovided under contract for the exclusive use of subscriber ENERGY SERVICES PROVIDERS, INC." which demonstrates that the information is not for use by the general public. ESPI uses its best efforts to keep this and similar trade secrets confidential and shielded from release to others. If not protected, these trade secrets could be used by competitors to determine ESPI's revenue, cash flow, credit agreements, contractual arrangements, and other similar information to obtain an unfair competitive advantage. Disclosure of such information now or in the next 24 months would

unfairly damage ESPI in the marketplace and adversely affect ESPI's ability to compete effectively. The public has no cognizable interest in the disclosure of all or any of the trade secrets or confidential business information.

ESPI is not a publicly traded company and its financial and business records, including the information contained in Exhibits A-13, B-4, C-3, C-4, C-5, and C-6/C-7, are not publicly available nor known to the general public. Rather, ESPI maintains the information in these Exhibits in strict confidence in the usual course of its business. The Exhibits contain competitively sensitive and highly proprietary business and financial information that, if disclosed, would put ESPI at an unfair competitive disadvantage. These Exhibits contain trade secrets of ESPI within the meaning of R.C. § 1333.61(D). The Ohio Supreme Court has held that the "state or federal law" exception to the public records statute, R.C. § 149.43, includes trade secrets. *State ex rel. Besser v. Ohio State University*, 89 Ohio St.3d 396, 399 (2000). Both R.C. § 4905.07 and § 4905.12 specifically incorporate the exceptions found in R.C. § 149.43.<sup>1</sup> Likewise, O.A.C. § 4901-1-24(D) permits the Commission to enter a protective order "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." Thus, disclosure of trade secrets like the information contained in Exhibits A-13, B-4, C-3, C-4, C-5 & C-6 to ESPI's Application is specifically prohibited under state law.

R.C. § 149.43 provides that the term "public records" excludes information which, under state or federal law, may not be released. This "state or federal law" exemption from disclosure covers trade secrets. *State ex rel. Besser v. Ohio State University* (2000), 89 Ohio St.3d 396, 399. OAC Rule 4901-1-24 permits the Commission to protect confidential information in a filing "to

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<sup>1</sup> R.C. § 4905.07 and § 4905.12 provide that records in the possession of the Commission are public records but both begin with the caveat: "Except as provided in section 149.43 of the Revised Code and consistent with the purposes of Title [49] of the Revised Code . . ."

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.”

Consistent with the purposes of Title 49 of Ohio Revised Code, R.C. § 4928.06(F) provides that an electric services company “shall provide the commission with such information, regarding a competitive retail electric service for this it is subject to certification, as the commission considers necessary to carry out this chapter . . . The Commission shall take measures as it deems necessary to **protect the confidentiality of any such information.**” (Emphasis added). The General Assembly clearly recognized the need to protect an applicant’s confidential information. The Ohio Administrative Code expressly provides that a protective order “may provide that . . . (7) A trade secret or other confidential research, development, commercial, or other information not be disclosed . . . .” O.A.C. § 4901-1-24(A). Likewise, in hearings, the commission or an Attorney Examiner may “[p]revent public disclosure of trade secrets, proprietary business information, or confidential research, development or commercial materials or information.” O.A.C. § 4901-1-27(B)(7)e).

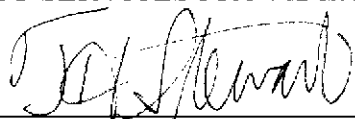
Ordering the information therein be maintained under seal is not inconsistent with Title 49 of the Ohio Revised Code. There is no legitimate purpose or public interest to be served by disclosing the strategic, confidential business and financial information to the general public including ESPI’s competitors or to any person other than the Attorney Examiner or appropriate Commission staff in exercising its review of the application. Finally, there is no reasonable manner to redact the information in Exhibits A-13, B-4, C-3, C-4, C-5, or C-6/C-7 under O.A.C. § 4901-1-24(D) without making the remaining document incomprehensible, so that the Exhibits should be sealed in their entirety by a protective order.

**Conclusion**

For all of the foregoing reasons, ESPI respectfully requests that the Commission enter a Protective Order sealing for two years Exhibits A-13, B-4, C-3, C-4, C-5, and C-6/C-7 to ESPI's Certification Application For Retail Generation Providers and Power Marketers filed contemporaneously herewith.

Respectfully submitted,

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