

FILE

BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Chicago Power Company.com, LLC)
For a Certification As A Power Broker)

Case No. 12-1935 -EL-AGG

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CHICAGO POWER COMPANY.COM, LLC 'S
AMENDMENT AND
MOTION FOR PROTECTIVE ORDER

I. AMENDMENT

Chicago Power Company.com, LLC ("CPC") hereby amends Exhibit C-5 ("Forecasted Financial Statements") of its Certification Application for Aggregators/Power Brokers (the "Application") previously filed June 25, 2012. Three (3) copies of amended Exhibit C-5 have been filed concurrently with this Amendment and Motion for Protective Order.

II. MOTION FOR PROTECTIVE ORDER

Chicago Power Company.com, LLC ("CPC"), pursuant to O.A.C. 4901-1-24(0), moves for a protective order keeping confidential certain financial information associated with its Application. CPC seeks confidential treatment of both Exhibit C-3 ("Financial Statements") and Exhibit C-5 (Forecasted Financial Statements") (as amended herein) of the Application. Three (3) copies of Exhibit C-3 and amended Exhibit C-5 have been filed concurrently with this motion under seal.

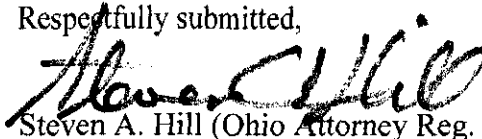
Further, CPC asks that the copies of Exhibits C-3 and C-5 previously filed be removed from the public record as filed, and be substituted by the filings under this Motion.

Release of this confidential business information to the public, including CPC's competitors, would cause significant prejudice and competitive harm to CPC. Thus, as set forth

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in further detail in the attached Memorandum in Support, which is incorporated herein, CPC seeks a protective order preventing public disclosure of Exhibits C-3 and amended C-5.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF
CHICAGO POWER COMPANY.COM, LLC 'S
MOTION FOR PROTECTIVE ORDER**

I. INTRODUCTION

Chicago Power Company.com, LLC ("CPC") requests that Exhibit C-3 ("Financial Statements") and C-5 ("Forecasted Financial Statements") (as amended) of its Certification Application for Aggregators/Power Brokers (the "Application") be designated as confidential pursuant to O.A.C. 4901-1-24(D). The public release of its financial statements would cause harm to CPC and its future operations, and so this information should be kept confidential.

II. LAW & ARGUMENT

The Commission and Ohio law has long protected trade-secret information¹. Pursuant to R.C. § 1333.61(D), a "trade secret" is:

[A]ny 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. [And]

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

¹ O.A.C. § 4901-1-24(A)(7).

Ohio law grants special protections to such trade secrets, including statutory causes of action for an injunction precluding the misappropriation of trade secrets². The Commission has recognized the statutory obligation to protect trade secrets, with due and proper regard for its preference and obligation for open proceedings³.

Ohio law also recognizes that information associated with Ohio's competitive market warrants a different level of protection than the information-sharing associated with regulated public utilities.⁴ The Ohio Supreme Court has held that the Commission has the authority to protect trade secrets and that the trade secret statute creates a duty to protect trade secrets:

[T]he commission has the statutory authority to protect competitive agreements from disclosure, and as we have noted, the commission also has a duty to encourage competitive providers of electric generation. All of the parties agree that as of 2009] the market is weak, and anything could affect the future growth of competitive providers. Exposing a competitor's business strategies and pricing points would likely have a negative impact on that provider's viability.⁵

The Commission frequently grants protection to the trade secret financial information of potential brokers, rightly recognizing that these prospective brokers could be significantly harmed if their trade secret financial information were disclosed to the general public.⁶

² See R.C. § 1333.62.

³ See *In re: General Telephone Co.*, Case No. 81-383"TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets); 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).

⁴ See R.C. § 4928.06(F) ("The commission shall take such measures as it considers necessary to protect the confidentiality of any such information" that the commission is provided with regard to competitive retail electric service.).

⁵ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 370 2009-Ohio-604,,-r 31 (2009) (emphasis added) citing R.C. § 4928.06(F).

⁶ See, e.g., In the Matter of the Application of McEnergy Inc. for Certification as a Competitive Retail Electric Generation Broker, Case No. 12-825-EL-AGG, April 11, 2012 Entry (protecting financial information); 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, June 20, 2011 Entry (same).

CPC is a privately held company which does not disclose its financial statements to the general public. Exhibits C-3 and C-5 contain CPC's confidential and proprietary financial statements which are held in confidence in the normal course of business and which have never appeared in the public record. These documents have actual, substantial independent economic value to market participants and are not ascertainable by proper means by persons who would derive economic value from disclosure. CPC would be harmed if these documents were disclosed to the public.

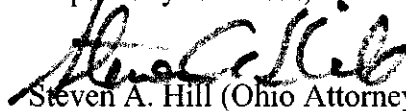
These documents constitute trade secrets under Ohio law,⁷ and public disclosure of this information would jeopardize CPC's business position and ability to compete. By way of examples, by reviewing this information potential competitors could reasonably estimate CPC's potential growth, market share, and margins. In addition, public disclosure of this financial information is not likely to assist the Commission in carrying out its duties, since the Commission and its Staff will already have access to this information.

⁷ The factors to be considered in recognizing a trade secret include: (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 State ex rei. Perrea v. Cincinnati Pub. Sch.*, 123 Ohio St 3d 410, 414, 2009-Ohio-4762 (2009); *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga App. 1983) *citing Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980).

III. CONCLUSION

The Commission has frequently granted protection to the trade secret financial information of other market participants. CPC requests that the Commission continue this policy and maintain Exhibits C-3 and amended C-5 of the Application under seal.

Respectfully submitted,



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