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FILE

July 2, 2012

Thomas R. Carey
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tom.carey@klgates.com**Via Federal Express**Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street, 13th Floor
Columbus, Ohio 43215**Re: Motion for Protective Order Certification Application For Aggregators / Power Brokers**

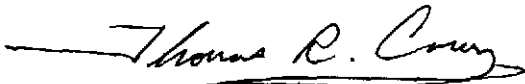
Dear Docketing Division:

About two weeks ago, Jan Murray of our Boston office filed a Motion for me to be admitted *pro hac vice* before the Public Utilities Commission of Ohio ("PUCO"). Thereafter, I spoke with Chuck Stockhausen of your office who said I should go-ahead and file the attached Certification Application for Aggregator/Power Brokers, and related Motion for a Protective Order (with trade secret information under seal). In this regard, enclosed please find the follow:

- Motion for Protective Order;
- Memorandum in support of Motion for a Protective Order;
- One complete copy of my client's Certification Application and three copies of trade secret information exhibits filed under seal; and
- Seven copies of the Certification Application with trade secret exhibits removed.

I would like to combine the material contained herein along with the Motion to be admitted *pro hac vice* for filing with PUCO's Docketing Department. Please feel free to contact me if you have any questions.

Very truly yours,



Thomas R. Carey

TRC/ccw
Enclosures

cc: Jim Titus (w/o enclosures)

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PUCO

**BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Topco Associates LLC. d/b/a)
TopSource LLC for Certification as a)
Aggregator / Power Broker)

12 1971
Case No. ____ - ____ -EL-AGG

**TOPCO ASSOCIATES LLC. D/B/A TOPSOURCE LLC'S
MOTION FOR A PROTECTIVE ORDER**

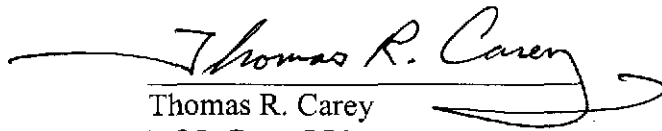
Topco Associates LLC. d/b/a TopSource LLC ("Topco"), and pursuant to O.A.C. 4901-1-24(D), moves the Public Utilities Commission of Ohio (the "Commission") for a protective order keeping confidential certain Topco financial information included with its Certification Application For Aggregators / Power Brokers (the "Application"). Topco seeks confidential treatment of Exhibit C-3 (consolidated financial statements) of the Application. The original Application and three (3) copies thereof (including Exhibit C-3) have been filed concurrently with this motion under seal.

Release of the confidential business information included at Exhibit C-3 of the Application to the public and Topco's current (and future) competitors would cause significant prejudice and competitive harm to Topco. Accordingly, and as set forth in further detail in the attached Memorandum in Support, which is incorporated herein, Topco seeks a protective order from the Commission preventing public disclosure of Exhibit C-3 of the Application.

Respectfully submitted,

TOPCO ASSOCIATES LLC D/B/A
TOPSOURCE LLC

Dated: 7/2/2012

A handwritten signature in black ink, reading "Thomas R. Carey". The signature is fluid and cursive, with a long horizontal line extending to the left and a large loop at the end.

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*Outside Counsel for Topco Associates LLC.
d/b/a TopSource LLC.*

**BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Topco Associates LLC. d/b/a)
TopSource LLC for Certification as a)
Aggregator / Power Broker)

Case No. 12-1971 -EL-AGG

**MEMORANDUM IN SUPPORT OF
TOPCO ASSOCIATES, LLC. D/B/A TOPSOURCE LLC.
MOTION FOR PROTECTIVE ORDER**

NOW COMES Topco Associates LLC d/b/a TopSource LLC ("Topco"), by and through its attorneys and pursuant to Ohio Administrative Code ("O.A.C.") Section 4901-1-24(D), respectfully requests The Public Utilities Commission of Ohio (the "Commission") issue a protective order to protect the confidentiality and prohibit the public disclosure of certain highly-confidential and proprietary trade secret information included at Exhibit C-3 (consolidated financial statements) and Exhibit C-5 (forecasted financial statements) to Topco's "Certification Application for Aggregators / Power Brokers" (the "Application") filed with the Commission and in support thereof states as follows:

1. Upon motion the Commission will protect from public disclosure trade secrets or other confidential research, development, and commercial information pursuant to the issuance of a protective order. *See* O.A.C. § 4910-1-24(A)(7).

2. The term, "trade secret" is defined under Ohio's Uniform Trade Secrets Act as follows:

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 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.

See Section 1333.61(D), Revised Code (*emphasis added*).

3. This definition of “trade secret” under R.C. 1333.61(D) reflects the state’s policy favoring the protection of such information.

4. The Supreme Court of Ohio has adopted a six-factor analysis for determining whether information is a “trade secret” under R.C. 1333.61(D):

(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 (e.g. 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 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.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St. 3rd 513, 325-25 (quoting *Pyromatics, inc. v. Petruziello*, 7 Ohio App.3rd 131, 134-35, 454 N.E.2nd 588 (8th Dist. 1983).

5. The information Topco is requesting be protected against public disclosure clearly falls within the definition of “trade secret” under R.C. 1333.61(D) and passes the Supreme Court of Ohio’s trade secret analysis. This information is not known outside Topco’s business. Topco would not normally publically disclose such information. The Commission’s instructions require Topco to include within its Application “Financial Statements” and “Forecasted Financial Statements.” Topco is providing its consolidated / forecasted financial statements under Exhibits C-3 and C-5 in confidence to the Commission in order to properly complete the Application.

Topco believes that if it omitted the requested consolidated / forecasted financial statements from its Application, its Application would be deemed incomplete and not considered by the Commission.

6. Moreover, the information contained in Exhibits C-3 and C-5 of the Application constitutes sensitive, confidential, and proprietary trade secret information. Topco is not a publically-traded company; hence it is not required to publically disclose the consolidated / forecasted financial statements. Topco is a membership-driven customer aggregator for leveraged sourcing of goods and services. Its methods of operation and related consolidated financial statements are, and always have been, of a very confidential nature. The disclosure of the information in Exhibits C-3 and C-5 would be extremely harmful to the competitive interests of Topco, as competitors could estimate its growth potential and other competitive factors. Said information has not previously been revealed to the public in Ohio or elsewhere, nor is it required by statute to be publically-available. Said information is held in strict confidence by Topco in the normal course of business and any public dissemination thereof would harm Topco and give undue advantage and economic value to Topco's competitors in Ohio and elsewhere.

7. Furthermore, while R.C. § 4905.07 provides that all facts and information in the possession of the Commission shall be public, R.C. § 149.43, on the other hand, specifies that the term "public records" specifically excludes information which, under either state or federal law, may not be released. The Supreme Court of Ohio and O.A.C. § 4901-1-24(D) make in clear that information excluded from disclosure by "state or federal law" includes trade secrets. *See State el rel. Besser v. Ohio State Univ.* (2008). 89 Ohio St. 3rd 396, 399.

8. Indeed, despite its preference open proceedings, the Commission has recognized the statutory obligation to protect trade secrets from public disclosure and has previously protected from disclosure such duly-designated information:

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

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

9. 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. *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.). The Ohio Supreme Court has held that the Commission has both the authority and the 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.

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

10. The Commission has frequently granted protection against public disclosure of the trade secret financial information of potential brokers; recognizing that these prospective

brokers could be significantly harmed if their trade secret financial information were disclosed to the general public.¹

11. The non-disclosure of the confidential and proprietary trade secret information included under Exhibits C-3 and C-5 of the Application will not impair the Commission's review of Topco's Application, as the Commission's staff will have access to said information in reviewing Topco's Application. But for Exhibits C-3 and C-5 of the Application, however, Topco would not be disclosing its consolidated financial statements to the Commission.

12. In short, the consolidated / forecasted financial statements included at Exhibits C-3 and C-5 constitutes trade secrets under Ohio law, and public disclosure of this information would jeopardize Topco's business position and ability to compete.

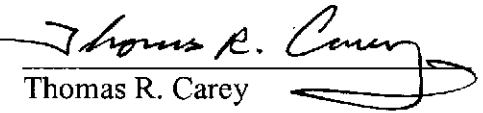
WHEREFORE, for all the foregoing reasons, Topco respectfully requests that the Commission grant Topco's Motion for a Protective Order with respect Exhibit C-3 of the Application (consolidated financial statements) filed with Topco's Application under seal and that said information be afforded confidential treatment by the Commission and protected against public disclosure.

¹ 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).

Respectfully submitted,

TOPCO ASSOCIATES LLC D/B/A
TOPSOURCE LLC

Dated: 7/2/2012

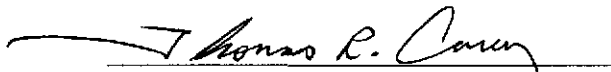
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*Outside Counsel for Topco Associates LLC.
d/b/a TopSource LLC.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing documents was served this 2nd day of July, 2012 by regular mail, postage prepaid, or by electronic mail, upon the persons listed below.


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