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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Pinnacle Energy Services, LLC for ) Case No. 12-2725 -EL-AGG  
Certification as a Competitive )  
Retail Electric Service )  
Aggregator/Power Broker )

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MOTION FOR PROTECTIVE ORDER

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Applicant Pinnacle Energy Services, LLC (hereinafter, "Pinnacle" or "Applicant") by and through counsel, hereby moves pursuant to Ohio Administrative Code 4901-1-24(D), for the entry of a Protective Order designating as confidential its responses to Exhibits C-3 and C-5 in the Commission's Application for Certification as a Competitive Retail Electric Service Aggregator/Power Broker. These Exhibits seek information and records which Pinnacle considers confidential and proprietary trade secrets, and which are maintained as confidential by the company. Public disclosure of this information could be potentially harmful to Pinnacle's competitive position as an energy provider. Pinnacle filed its Application in this proceeding on the date of filing of this Motion.

Pinnacle further asks that its responses to any subsequent requests for additional information or clarification which Staff might make with regard to these same requests also be permitted to be filed under seal, pursuant to the same Protective Order requested herein. The grounds supporting this Motion are fully explained in the attached Memorandum in Support.

Pinnacle requests that the Protective Order be effective for a period of twenty-four (24) months from the effective date of the certificate issued to it in this proceeding.

Respectfully submitted,



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Pinnacle Energy Services, LLC*

## **MEMORANDUM IN SUPPORT**

Pinnacle is a limited liability company organized under the laws of the State of Maryland and is registered with the Ohio Secretary of State to do business in Ohio.

In the Application, Exhibit C-3 requests “copies of the applicant’s two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement)”; Exhibit C-5 requests “two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant’s CRES operation, along with a list of assumptions, and the name, address, e-mail address, and telephone number of the preparer.”

Pinnacle requests that the information designated as confidential (Exhibits C-3 and C-5) to its Application for Certification as a Competitive Retail Electric Service Aggregator/Power Broker be protected from public disclosure. If said information is released to the public, Pinnacle would suffer substantial harm as its competitors would have access to Pinnacle’s proprietary information.

Ohio Admin. Code 4901-1-24(D) provides:

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 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 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.

The need to protect the types of information that are the subject of this Motion is recognized under Ohio law. The Commission would have full access to the information in order to fulfill its statutory obligations and the nondisclosure of said information will not frustrate the purposes of Title 49 of the Revised Code.

Ohio Law defines a “Trade Secret” as:

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.

Rev. Code §1333.61(D). The Commission facilitates the protection of such trade secrets in its Rules in the Administrative Code as well. *See* Ohio Admin. Code 4901-1-24(A)(7).

The Ohio Supreme Court has adopted a six factor test to analyze whether information is a trade secret under Rev. Code § 1331:

(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.

*State ex rel. Plain Dealer v. Ohio Dep't of Ins.*, 80 Ohio St. 3d 513, 687 N.E. 2d 661 (1998) (citations omitted).

Pinnacle gladly provides the information requested in Exhibits C-3 and C-5 to the Commission, but asks that it be subject to Protective Order due to the confidential, proprietary nature of this information and because its public disclosure might be injurious to the Company's competitive position. Pinnacle is a company engaged solely in brokering relating to energy management for its customers and does not make public disclosure of the requested information through SEC filings or otherwise. As such, and given the intense competition in the Competitive

Retail Electric Service arena, this information is a legitimate trade secret, access to which could negatively affect Pinnacle's competitive position.

This request for a Protective Order is reasonable, necessary and will not prejudice any other party or individual. In fact, to the extent Pinnacle's ability to compete effectively is preserved, Ohio consumers will be better served. Fair competition is the philosophical basis for the CRES statute and implementing regulations.

Applicant notes that a similar Motion for Protective Order, filed by Commercial and Industrial Energy Solutions, LLC with respect to its approved Application for Certification as a Competitive Retail Electric Aggregator/Power Broker with respect to Exhibits C-3, C-4, and C-5, was granted by Entry dated October 1, 2012, *In the Matter of the Application of Commercial and Industrial Energy Solutions, LLC for Certification as an Aggregator/Power Broker*, Case No. 12-2386-EL-AGG. Pinnacle submits that the basis for the Attorney Examiner to grant the Motion with respect to Pinnacle's pending Application is equally compelling here as it was in that proceeding.

For all of the foregoing reasons, Pinnacle Energy Services, LLC, respectfully requests that a Protective Order be issued which permits it to file its responses to the Commission's Application for Certification as a Competitive Retail Electric Service Aggregator/Power Broker, Exhibits C-3 and C-5, under seal and requires those with access to those responses to treat them in a confidential manner for a period of twenty-four (24) months from the effective date of the certificate issued in this proceeding. Pinnacle Energy Services, LLC, further requests that should Staff seek any additional information or clarification with respect to Exhibits C-3 and C-5, those also be permitted to be filed under seal and subject to the same Protective Order.

In compliance with Ohio Administrative Code 4901-01-24(D)(2), three (3) unredacted copies of the confidential information in response to Exhibits C-3 and C-5 are being submitted under seal with this Motion.

Respectfully submitted,



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