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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Renewal Application of) Case No. 11-3277-GA-AGG
Consumer Energy Solutions, Inc.)
For Certification as a Competitive Retail)
Natural Gas Broker)

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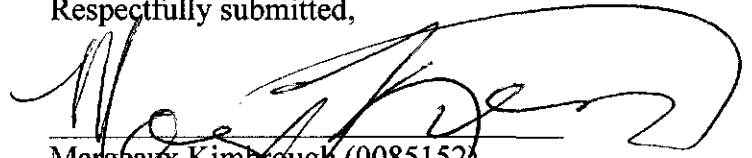
MOTION FOR PROTECTIVE ORDER

Applicant Consumer Energy Solutions, Inc. (hereinafter, "CES" 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 Renewal Application for Certification as a Competitive Retail Natural Gas Broker/Aggregator. These Exhibits seek information and records which CES 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 CES's competitive position as an energy provider. CES filed its Application in this proceeding on the date of filing of this Motion.

CES 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 more fully explained in the attached Memorandum in Support.

CES 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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MEMORANDUM IN SUPPORT

CES is incorporated under the laws of the State of Florida 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 CRNGS operation, along with a list of assumptions, and the name, address, e-mail address, and telephone number of the preparer.”

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

CES 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. CES 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 Natural Gas Service arena, this information is a legitimate trade secret, access to which could negatively affect CES'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 CES's ability to compete effectively is preserved, Ohio consumers will be better served. Fair competition is the philosophical basis for the CRNGS statute and implementing regulations.

Applicant notes that similar motions for protective order with respect to financial statements and forecasted financials are being granted routinely by recent Attorney Examiner Entries based on their determination that such information constitutes a trade secret, meeting the six factor test adopted by the Ohio Supreme Court in the *Plain Dealer* decision quoted above.¹ Applicant submits that the basis for the Attorney Examiner to grant the Motion with respect to Applicant's pending Application is equally compelling here as it was in that proceeding.

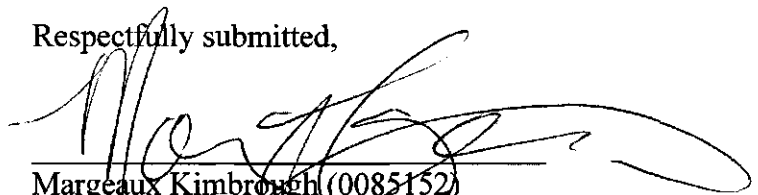
For all of the foregoing reasons, Consumer Energy Solutions, Inc. respectfully requests that a Protective Order be issued which permits it to file its responses to the Commission's

¹ For Example, see Entry by Attorney Examiner K. Sheets on January 4, 2013, *In the Matter of the Application of Diversegy, LLC for Certification as a Competitive Retail Natural Gas Broker/Aggregator*, Case No. 12-2880-GA-AGG, Finding No. 6.

Renewal Application for Certification as a Competitive Retail Natural Gas Broker/Aggregator, 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. Consumer Energy Solutions, Inc. 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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