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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO.

In the Matter of the Application of)
Epiq Energy, LLC for Certification) Case No.13-1380-EL-AGG
As a Competitive Retail Electric)
Aggregator/Power Broker)

MOTION FOR PROTECTIVE ORDER

Applicant Epiq Energy, LLC (hereinafter, “Epiq” 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. Epiq filed its Application for Certification on the same date as the filing of this Motion.

Exhibits C-3 and C-5 seek information and records which Epiq 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 Epiq's competitive position as an energy broker.

Epiq 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.

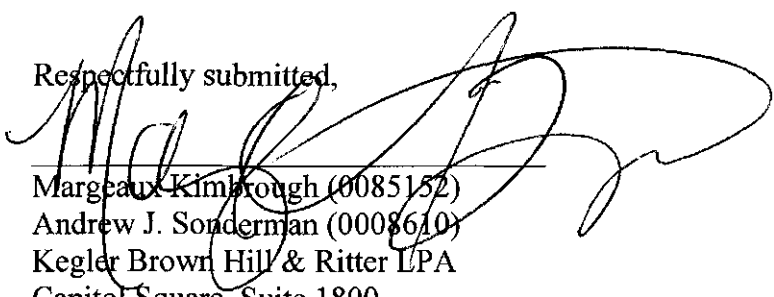
Epiq requests that the Protective Order be effective for a period of twenty-four (24) months from the effective date of the certificate issued to it in this proceeding.

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Respectfully submitted,



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MEMORANDUM IN SUPPORT

Epiq is a Delaware limited liability company 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.”

Epiq 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, Epiq would suffer substantial harm as its competitors would have access to Epiq’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).

Epiq 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. Epiq 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 Epiq'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 Epiq'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 similar motions for protective order with respect to Exhibits C-3 and C-5 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 Epiq submits that the basis for the Attorney Examiner to grant the Motion with respect to Epiq's pending Application is equally compelling here as it was in that proceeding.

For all of the foregoing reasons, Epiq Energy, LLC respectfully requests that a Protective Order be issued which permits it to file its responses to the Commission's Application for

¹ For example, see Entry by Attorney Examiner K. Sheets on November 15, 2012, *In the Matter of the Application of Nordic Energy Services, LLC for Certification as a Competitive Retail Electric Supplier*, Case No. 12-2701-EL-CRS, Finding No. 6.

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. Epiq Energy, 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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