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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Industrial Energy Users-Ohio for)
Certification as an Aggregator.)

Case No. 00-1711-EL-AGG

**MOTION OF INDUSTRIAL ENERGY USERS-OHIO FOR
PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT**

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September 23, 2014

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MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24, Ohio Administrative Code ("O.A.C."), the Industrial Energy Users-Ohio ("IEU-Ohio") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a Protective Order to protect the confidentiality and prohibit the disclosure of the confidential information contained in Amended Exhibit C-5 of IEU-Ohio's Renewal Application for Aggregator and Power Broker Services ("Renewal Application") filed on September 23, 2014 in Case No. 00-1711-EL-AGG. The confidential information is not subject to disclosure and includes competitively sensitive and highly proprietary business information comprising trade secrets. The grounds for this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

IEU-Ohio's Motion requests that confidential information regarding pricing and cost recovery contained in Amended Exhibit C-5 filed on September 23, 2014 in this docket be exempted from public disclosure as confidential, proprietary and competitively sensitive ("Confidential Information"). Amended Exhibit C-5 provides IEU-Ohio's Confidential Information regarding financial statements that, if readily available and in the public record, would be available to competitors and impair competition. Accordingly, IEU-Ohio requests a *Protective Order* to preserve the confidentiality of this Confidential Information.

II. ARGUMENT

Amended Exhibit C-5 contains competitively sensitive and highly proprietary business process information that constitutes trade secrets under Ohio law and the Commission's rules. State law recognizes the need to protect information that is confidential in nature. Accordingly, the General Assembly granted the Commission statutory authority to exempt certain documents from disclosure.¹ Pursuant to this

¹ See Sections 4901.12 and 4905.07, Revised Code.

statutory grant of authority, the Commission promulgated Rule 4901-1-24, O.A.C. Rule 4901-1-24(D), O.A.C., provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal law prohibit the release of such information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.² A trade secret is defined by Section 1333.61(D), Revised Code, as follows:

"Trade secret" means 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.

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

The IEU-Ohio-related information contained within Amended Exhibit C-5 is competitively sensitive and highly proprietary business and financial process information falling within the statutory characterization of a trade secret.³ Public disclosure of this

² Section 149.43(A)(1)(v), Revised Code; *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St.3d 513, 530 (1997).

³ Section 1333.61(D), Revised Code.

information would jeopardize IEU-Ohio's business position and its ability to compete. The information that IEU-Ohio seeks to protect derives independent economic value from not being generally known and not being readily ascertainable by proper means by IEU-Ohio's competitors. Further, the efforts to protect the confidential information are reasonable under the circumstances. Finally, the Commission has afforded protected status to similar information of other competitive retail electric service ("CRES") providers' certificate applications.⁴

The non-disclosure of the information will not impair the purposes of Title 49 of the Revised Code, as the Commission and its Staff will have full access to the Confidential Information in order to complete its review process. Because IEU-Ohio's information constitutes a trade secret, it should be accorded protected status.

III. CONCLUSION

IEU-Ohio respectfully requests that this Motion for Protective Order be granted for the reasons set forth herein.

Respectfully submitted,



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⁴ *In the Matter of the Application of Viridian Energy PA, LLC for Certification as a Competitive Retail Electric Marketer*, Case Nos. 13-1836-EL-CRS, *et al.*, Entry at 2-3 (Oct. 15, 2013); *In the Matter of the Application of Frontier Utilities Northeast, LLC for Certification as a Competitive Retail Electric Power Marketer*, Case Nos. 14-412-EL-CRS, *et al.*, Entry at 2-3 (July 3, 2014).

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