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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Peoples Energy Services Corporation for) Case No. 05-1134-EL-CRS
Certification as A Competitive Retail)
Electric Service Provider)

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MOTION FOR PROTECTIVE ORDER

Now comes Peoples Energy Services Corporation ("Peoples"), an independent power marketer, seeking certification as a competitive retail electric service (CRES) provider; and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), moves for a protective order to keep Exhibits C-3 (Financial Statements), C-4 (Financial Arrangements), and C-5 (Financial Forecasts) to its application for certification confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) unredacted copies of Exhibits C-3, C-4, and C-5 are presented under seal.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

Peoples requests that Exhibits C-3, C-4, and C-5 of its Application for Certification as a CRES provider be protected from public disclosure. The information for which protection is sought covers financial statements, financial arrangements with its parent, and financial forecasts. Such information, if released to the public, would harm Peoples by providing its competitors proprietary information in what is designed by statute to now be a competitive service.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information. This Commission is specifically authorized to protect the confidential nature of competitive information under Section 4928.06(F), Revised Code. The financial information contained in Exhibits C-3, C-4, and C-5 are trade secrets and, as such, the release of that information is prohibited by law.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read *in pari materia* 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.) Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"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.

R.C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion.

The information contained in the subject Exhibits to the Application covers the financial statements, financial arrangements, and financial forecasts (including assumptions) for Peoples. If this information is disclosed to the public, Peoples' competitors would unjustly

benefit from access to proprietary information not generally known or readily ascertainable to others regarding competitive services. Peoples takes reasonable and prudent steps to protect the information contained in the relevant exhibits and their improvident disclosures would undermine such efforts and cause harm to Peoples. Clearly, the financial information which is the subject of the motion for protective order meets the definition set forth above, and, therefore, is the type of valuable property that the legislature sought to protect when it adopted the Uniform Trade Secrets Act.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); Ohio Bell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

- (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

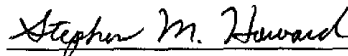
money expended in obtaining and developing the information, and
(6) the amount of time and expense it would take for others to
acquire and duplicate the information.

Applying these factors to the exhibits Peoples seeks to keep confidential, it is clear that a
protective order should be granted.

The financial statements, financial arrangements, and financial forecasts requested
in Exhibits C-3, C-4, and C-5 are highly sensitive and proprietary, and are not generally
disclosed. The public disclosure of this information would adversely affect Peoples' ability to
compete in the competitive retail electric service market.

WHEREFORE, for the above reasons, Peoples requests the Commission to grant
its motion to protect Exhibits C-3, C-4, and C-5 of its Application for Certification as a
Competitive Retail Electric Service (CRES) provider and Power Marketer under seal.

Respectfully submitted,



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LIST OF EXHIBITS FOR WHICH
CONFIDENTIAL TREATMENT IS SOUGHT

<u>Exhibit No. and Description</u>	<u>Reason</u>
C-3 (Financial Statements)	All three exhibits (C-3, C-4, and C-5) contain financial information which would provide an unfair and undue advantage to competitors and would hinder Peoples' ability to compete in the competitive retail electric market.
C-4 (Financial Arrangements)	
C-5 (Financial Forecasts)	