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EDF Industrial Power Services (IL), LLC)
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Petition for Relief to Protect a Portion of)
Petitioner's 2011 Kilowatt-Hour Report)
From Disclosure For Not Less Than Two)
Years To Protect Highly Confidential and)
Proprietary Information)
)

Docket No. 12-0161

**PETITION FOR RELIEF TO PROTECT CONFIDENTIAL AND PROPRIETARY
INFORMATION OF EDF INDUSTRIAL POWER SERVICES (IL), LLC
AND MOTION TO APPEAR PRO HAC VICE**

Pursuant to Ill. Admin. Code tit. 83, §§ 200.430, 451.60 (2011), EDF Industrial Power Services (IL), LLC ("Petitioner" or "EIPS") hereby petitions the Illinois Commerce Commission ("ICC" or "Commission") for relief to protect Petitioner's 2011 Kilowatt-Hour Report ("2011 KWh Report") and Petitioner's 2011 Call Center Report ("2011 Call Center Report") from disclosure for not less than two years to protect highly confidential and proprietary information included therein, and moves for entry of appearance, *pro hac vice*, of Mosby G. Perrow, as counsel in the above-captioned matter pursuant to Ill. Admin. Code tit. 83, §§ 200.90, 200.25 (2011), and Illinois Supreme Court Rule 707, Ill. Comp. Stat. S. Ct. Rule 707. In support of this Petition, EIPS states as follows:

(1) EIPS is certified by the Commission as an alternative retail electric supplier ("ARES") in the State of Illinois. The Commission granted EIPS a certificate of service authority as an ARES on December 2, 2009, in Docket No. 09-0467.

(2) Petitioner is required, pursuant to Ill. Admin. Code tit. 83, § 451.770 (2011), to submit to the Commission each year a report for the preceding calendar year stating the total annual kilowatt-hours delivered and sold by Petitioner to retail customers within each utility service territory.

(3) On February 29, 2012, Petitioner submitted its 2011 KWh Report to the Chief Clerk of the Commission via overnight delivery with copies for the Energy Division and the Financial Analysis Division. Attachment A to Petitioner's 2011 KWh Report contains confidential and proprietary information and was designated as such when submitted to the Commission. The proprietary information was submitted to the Commission under seal, marked "CONFIDENTIAL & PROPRIETARY." A public, redacted version of the 2011 KWh Report was provided to the Commission concurrently.

(4) Also on February 29, 2012, Petitioner submitted its 2011 Call Center Report to the Chief Clerk of the Commission via overnight delivery with copies for the Manager of the ICC's Consumer Services Division. Attachment A to Petitioner's 2011 Call Center Report contains confidential and proprietary information and was designated as such when submitted to the Commission. The proprietary information was submitted to the Commission under seal, marked "CONFIDENTIAL & PROPRIETARY." A public, redacted version of the 2011 Call Center Report was provided to the Commission concurrently.

(5) The specific information for which EIPS seeks proprietary treatment is the total kilowatt-hour sales in the service areas for which EIPS is eligible to provide service, the nature and number of customers for whom it currently provides service, and the strategic market and type of customers that EIPS seeks to serve in the future. This proprietary information is highly sensitive material that EIPS has designated as proprietary and confidential, and it should be protected from public disclosure for not less than two (2) years pursuant to Section 4-404 of the Public Utilities Act ("PUA"), 220 Ill. Comp. Stat. 5/4-404, and Section 7(g) of the Illinois Freedom of Information Act ("FOIA"), 5 Ill. Comp. Stat. 140/7.

(6) Section 4-404 of PUA provides that the "Commission *shall* provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity ..." (emphasis added). An ARES who believes that any of the information to be submitted to the Commission by the ARES is privileged or confidential, is instructed by the Commission's rules to "request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of [the information]." Ill. Admin. Code tit. 83, § 451.60 (2010). Similarly, Section 7(g) of the FOIA exempts from public disclosure "trade secrets and commercial or financial information ... where the trade secrets or information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm." 5 Ill. Comp. Stat. 140/7(1)(g).

(7) The proprietary information falls within the FOIA 7(g) exemption and should be afforded confidential treatment pursuant to both PUA and the Illinois FOIA. More particularly, the proprietary information includes market-sensitive material that is company specific, and information of highly commercially sensitive nature involving company business operations or financial information. The specific information for which EIPS seeks proprietary treatment is (1) the total kilowatt-hour sales in the service areas for which EIPS is eligible to provide service and (2) information regarding EIPS' business model and strategies related to the identity and number of customers and customer service. EIPS' competitors can directly use such information to determine EIPS' market share in Illinois' competitive retail electricity industry and to determine EIPS' proprietary business model and strategies.

(8) The information contained in the 2011 KWh Report and Call Center Report is highly confidential and proprietary and should be afforded protection from public disclosure for two years. The Illinois retail electric service industry is highly competitive. The Office of Retail Market Development's 2011 Annual Report indicates that there are 54 ARES certified to serve

Illinois customers.¹ This is in addition to public utilities that may serve customers competitively outside of their service territory(ies) without certification. As one of the 54 certificated ARES, EIPS faces significant competition for its position in the market. The release of the highly confidential and proprietary information contained in the 2011 KWh Report and Call Center Report would likely result in substantial competitive harm to EIPS by providing an unfair competitive advantage to EIPS' competitors. Disclosure of such commercial and strategic information would be harmful to EIPS because it would give EIPS' competitors insight into information about EIPS' relative position in the marketplace.

(9) The Commission has consistently held that market share data and information available in Call Center Reports is confidential, and the Commission previously has afforded proprietary and confidential treatment to the type of information for which EIPS seeks protection. *See, e.g., Champion Energy*, Docket No. 09-0192 (Aug. 19, 2009); *Constellation NewEnergy, Inc.*, Docket No. 09-0126 (Aug. 19, 2009); *Constellation NewEnergy, Inc.*, Docket No. 09-0126, Order on Rehearing (Aug. 19, 2009); *Champion Energy, LLC*, Docket No. 08-0159, Order (Mar. 26, 2008); *Constellation NewEnergy, Inc.*, Docket No. 08-0163, Order (Mar. 26, 2008); *Reliant Energy Solutions East, L.L.C.*, Docket No. 08-0235, Order (April 23, 2008).

(10) Accordingly, EIPS seeks an Order from this Commission, without hearing, protecting from disclosure, for a period of not less than two years from the date of the Order, the proprietary information designated in Petitioner's 2011 KWh Report and 2011 Call Center Report.

(11) EIPS agrees to accept service by electronic means as provided for in 83 Ill. Adm. Code 200.1050.

(12) Furthermore, pursuant to Ill. Adm. Code tit. 83, §§ 200.90(a), 200.25 (2011), and Illinois Supreme Court Rule 707, the undersigned out-of-state attorney, Mosby G. Perrow, moves to enter an appearance *pro hac vice* to appear on behalf of EIPS in this proceeding.

(13) Mr. Perrow is an attorney in the firm Jones Day. He is admitted to practice law (and is in good standing) in the Commonwealth of Virginia and the District of Columbia. Mr. Perrow's affidavit testifying to the above facts is attached to this Petition.

(14) EIPS wishes to involve Mr. Perrow in the above-styled cause based upon his previous experience representing EIPS in similar matters in other jurisdictions. The District of Columbia grants Illinois attorneys leave for admission *pro hac vice* in similar situations.

(15) Mr. Perrow agrees to abide by the Commission Rules of Practice and the Illinois Rules of Professional Conduct.

¹ Office of Retail Market Development, Illinois Commerce Commission, 2011 Annual Report Submitted Pursuant to Section 20-110 of the Public Utilities Act (June 30, 2011), p. 3.

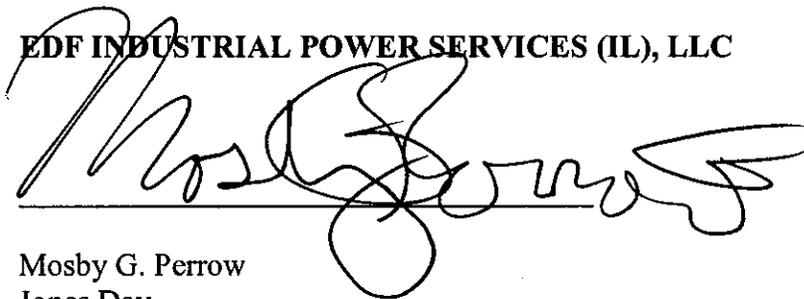
(16) Mr. Perrow's address for the purposes of service is:

Mosby G. Perrow
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3939 (voice)
(202) 626-1700 (fax)
mgperrow@jonesday.com

WHEREFORE, PREMISES CONSIDERED, EIPS respectfully requests that the Commission enter an Order, without hearing, (1) protecting from disclosure the proprietary information submitted to the Commission for a period of not less than two years, and (2) permitting Mosby G. Perrow permission to appear *pro hac vice* in this proceeding.

Respectfully submitted,

EDF INDUSTRIAL POWER SERVICES (IL), LLC

A handwritten signature in black ink, appearing to read "Mosby G. Perrow", written over a horizontal line.

Mosby G. Perrow
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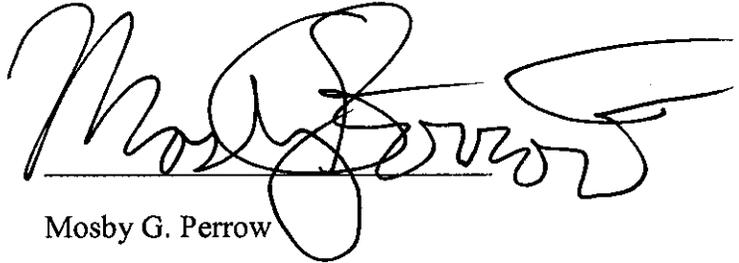
Attorney for EDF Industrial Power Services (IL), LLC

Dated: February 29, 2012

AFFIDAVIT OF MOSBY G. PERROW

DISTRICT OF COLUMBIA)
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)

I, Mosby G. Perrow, being first duly sworn upon my oath, depose and state that I am an attorney with Jones Day; that I have reviewed the forgoing Petition for Relief and Motion to Appear *Pro Hac Vice*; and that said contents are true, correct and complete to the best of my knowledge, information and belief. In connection with my representation of EDF Industrial Power Services (IL), LLC in this case, I agree to abide by the Illinois Rules of Professional Conduct and the rules and orders of the Illinois Commerce Commission. Under penalties described in Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements made above are true and correct.


Mosby G. Perrow

Subscribed and sworn to before me this ^{4th} 29 day of February, 2012.



Notary Public

RUBY M. BULLOCK
NOTARY PUBLIC, DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JANUARY 1, 2013



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