

ORIGINAL

ILLINOIS COMMERCE
COMMISSION

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Docket No. 11-0705

CHIEF CLERK'S OFFICE

BEFORE THE
ILLINOIS COMMERCE COMMISSION

OFFICIAL FILE

ILLINOIS COMMERCE COMMISSION

In the Application of XOOM Energy Illinois, LLC)
For Confidential Treatment of 2012 kWh Annual Report)
)

**MOTION FOR PROTECTIVE ORDER TO PROTECT
CONFIDENTIAL PROPRIETARY INFORMATION**

13-0342

I. INTRODUCTION

XOOM Energy Illinois, LLC ("XOOM Energy Illinois") respectfully requests that the Illinois Commerce Commission (the "Commission") grants an exemption from public disclosure confidential and proprietary information contained in its annual report. Specifically, Section 451.770 of 83 Ill. Admin. Code 451, "Certification of Alternative Retail Electric Suppliers," ("Part 451") requires the reporting by alternative retail electric suppliers ("ARES") of the total kilowatt-hours ("kWh") delivered and sold to retail customers during the preceding year within each incumbent electric utility company's service area. XOOM Energy Illinois is an ARES and as such must submit such an Annual kWh Report for the 2012 calendar year. XOOM Energy Illinois is submitting to the Commission both a public redacted version and a confidential unredacted version of its 2012 kWh annual report.

This protective order is requested to be in place for a period of two (2) years to protect the confidential and proprietary financial and operational information of XOOM Energy Illinois, a privately held company incorporated in the State of Illinois. Pursuant to Sections 451.60 and 200.430 of Part 451 and Section 7(1)(g) of the Freedom of Information Act ("FOIA"), 5 ILCS 140/1 et seq. XOOM Energy Illinois respectfully submits this motion for protective order in its assertion of a confidentiality claim.

II. LEGAL STANDARD

The Illinois Commerce Commission may exempt confidential information from public disclosure through an appropriate representative to issue an order protecting certain proprietary information. 83 Ill. Admin. Code 451.60 states in part that:

If an applicant or ARES...or AGS...believes any of the information to be disclosed by an applicant for ARES...or AGS...is privileged or confidential, the applicant or ARES...or AGS... should request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of any data, information or studies pursuant to 83 Ill. Admin. Code 200.430.”

Title 83 of the Illinois Administrative Code section 200.430 states in part that:

A document submitted and marked as proprietary shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document and a ruling on that motion by the Commission or the Hearing Examiner. (emphasis added)

Section 7(1)(g) of the FOIA exempts the following from public disclosure:

Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial 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 to the person or business, and only insofar as the claim applies to the records.

XOOM Energy Illinois believes in good faith that its annual load information for 2012 constitutes “confidential information” as defined under Title 83 of the Code Rule 451.60.

III. THE MATERIALS ARE PROPRIETARY AND CONFIDENTIAL AND WARRANT PROTECTION FROM DISCLOSURE

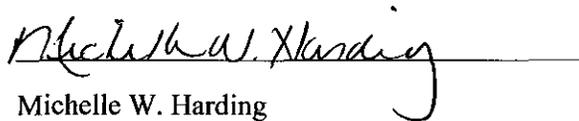
The 2012 Annual kWh Report for XOOM Energy Illinois contains trade information and market sensitive information regarding its provision of service to customers in Illinois. XOOM Energy Illinois considers this information to be both proprietary and confidential and, thus, the public disclosure of which would be detrimental to it. Additionally, disclosure of this information would reveal sensitive information regarding the market share of XOOM Energy Illinois within the various utility markets. Furthermore, competitive harm would result because this type of data is used to formulate current and future business plans and would give competitors information about the operations of XOOM Energy Illinois that is not otherwise available in any public forum. Accordingly, protecting this information will be beneficial to the future customers of XOOM Energy Illinois as they will benefit from XOOM Energy Illinois’s ability to obtain a positive position in the competitive market.

The Commission has authority under Section 200.430 to enter an order protecting the confidentiality of any data or information submitted in a proceeding. 83 Ill. Admin. Code §200.430. The Commission regularly uses the discretionary language of Section 200.430 to protect confidential business information. XOOM Energy Illinois respectfully requests that the Commission exercise its discretion and provide protection and confidential treatment of XOOM Energy Illinois'2012 kWh Annual Report submitted in support of this motion.

IV. CONCLUSION

For the reasons set forth above, XOOM Energy Illinois requests that the Commission enter an Order, without hearing, protecting from public disclosure the annual kWh report for XOOM Energy Illinois, LLC for a period of not less than two (2) years.

Respectfully Submitted,



Michelle W. Harding
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Counsel for XOOM Energy Illinois, LLC

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AFFIDAVIT OF XOOM ENERGY ILLINOIS, LLC

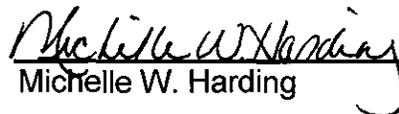
State of North Carolina)
)
County of Mecklenburg) SS Docket No. _____

The undersigned, under oath, deposes and states as follows:

1. My name is Michelle W. Harding. I am an executive officer of XOOM Energy, LLC, the single-member manager of XOOM Energy Illinois, LLC ("ARES") and I submit that in accordance with the ARES' Operating Agreement, the officers of the member-manager XOOM Energy, LLC are authorized to enter into agreements and transact on behalf of ARES and, as such, I am authorized to execute this Affidavit.

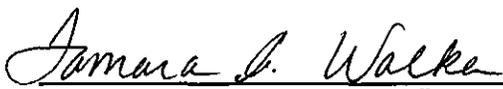
2. I have read ARES' Motion For Protective Order to Protect Confidential Proprietary Information (the "Protective Order") in connection with ARES' 2012 Annual Kilowatt-hour Report (the "kWh Report") prepared pursuant to Sections 451.60 and 451.770 of Title 83 of the Illinois Administrative Code.

3. I have personal knowledge of the facts discussed in the above-mentioned Protective Order and the kWh Report and, to the best of my knowledge, information and belief, those facts are true and correct and, if sworn as a witness, I could testify concerning them.


Michelle W. Harding

Subscribed and sworn to before me

this 2nd day of May, 2013


Notary Public *Tamara A. Walker*
 my Commission expires
 May 24, 2017

