

ILLINOIS COMMERCE COMMISSION

Agera Energy LLC :
Petition for Confidential Treatment of :
Confidential Items Contained in :
Agera Energy LLC's Application for :
Certificate of Service Authority :
Under Section 16-115 of the Public Utilities Act :

Docket No

14-0678

CHIEF CLERK'S OFFICE

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ILLINOIS COMMERCE COMMISSION

VERIFIED PETITION FOR PROTECTIVE ORDER TO PROTECT CONFIDENTIAL AND PROPRIETARY INFORMATION OF AGERA ENERGY LLC AND MOTION TO APPEAR PRO HAC VICE

NOW COMES Agera Energy LLC ("Petitioner" or "Agera") and hereby submits the instant petition to the Illinois Commerce Commission ("Commission" or "ICC") for relief to protect Petitioner's ("Confidential Items") from disclosure for not less than two years. Petitioner also petitions for entry of appearance, *pro hac vice*, of Michael Nordlicht, as counsel in the above-captioned matter pursuant to 83 Ill. Adm. Code 200.90 and 200.25, and Illinois Supreme Court Rule 707.

In support of the instant Petition, Petitioner respectfully submits the following:

Request for Protective Order

Each of the aforementioned Confidential Items are included as attachments to the Petitioner's Application for Certificate of Service Authority ("Application"), which is simultaneously being submitted with the instant Petition. The Confidential Items are being filed separately under seal, marked "Confidential". Specifically, the applicant demonstrates and certifies it is a member of one or more RTOs and purchases 100% of its physical electric energy from the RTOs for delivery to the service territories of the utilities for which the applicant is seeking a certificate. The purpose of the instant request is to protect proprietary and confidential information included in the Confidential Items attached as Exhibit 21 for not less than two (2) years. The disclosure of such information to competitors would be detrimental to Petitioner.

Statutory law, ICC regulations, and Commission precedent support the Petitioner's request for confidential treatment of its Confidential Items. First, the Public Utilities Act requires the Commission to protect confidential and proprietary information submitted by regulated entities.¹ Second, the Commission's Rules of Practice similarly provide for protection of "confidential,

¹ 220 ILCS 5/4-404 ("The Commission shall provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person corporation or other entity.")

proprietary or trade secrets nature of any data, information or studies.”² Third, the Illinois Freedom of Information Act (“Illinois FOIA”) provides for protection of confidential or proprietary information. Specifically, Section 7(g) of the Illinois FOIA exempts, “financial information obtained from a person or business where . . . disclosure of the . . . information may cause competitive harm.”³ The Confidential Information submitted as part of the Petitioner’s Application, which is the subject matter of this Petition, falls within this exemption. Fourth, on numerous occasions, the Commission has granted similar requests for two years of confidential treatment of financial information from other entities that are subject to the Commission’s jurisdiction.⁴

Whereas other ARES have requested confidential treatment of sensitive proprietary information for periods of time as long as five years, Petitioner here only requests that the information contained in its Confidential Items be protected from disclosure to the public for two years. Public disclosure of the Petitioner’s Confidential Items would be detrimental to Petitioner, and is not necessary. The retail electric industry is highly competitive in the Illinois marketplace. The Petitioner fears that any disclosure of the sensitive information contained in the Confidential Information may be used by its competitors in a manner that would be detrimental to the Petitioner. For example, the disclosure of Petitioner’s information contained in the Confidential Items could be used by Petitioner’s competitors to make informed estimates about the Petitioner’s finances.

The portions of the Application identified above contain highly confidential and proprietary business information. Agera is a closely held private company, and its financial statements are not released publicly. As such, this information is confidential and proprietary to Agera. Additional Financial Information includes a Transition Service Agreement, which Agera is providing in order to further demonstrate its financial standing, capability and security. This document is a confidential agreement between the parties to the agreement, and therefore Agera requests confidential treatment to protect its contents from public disclosure.

The Confidential Information is being submitted to the Commission under seal, and is provided to demonstrate that Agera satisfies the requirements to receive a certificate of service. Accordingly, Agera requests that the following Attachments to its Application be maintained under seal and not made part of the public record for a period of not less than two years: [].

² 83 Ill. Admin Code 200.430(a). ARES regulations further identify the same categories of information for protection. See 83 Ill. Admin. Code 451.60.

³ 5 ILCS 140/7(g).

⁴ See *FTR Energy Services, LLC, Application for Certificate of Service Authority under Section 16-115 of the Public Utilities Act, Case No. 13-0137 (May 1, 2013) (final order)* (granting request for confidential treatment and motion to appear *pro hac vice*); Order, *Xoom Energy Illinois, LLC, Application for Certificate of Service Authority under Section 19-110 of the Public Utilities Act*, Docket No. 11-0724 (December 13, 2011); *Interstate Gas Supply of Illinois, Inc.; Petition for Emergency Relief to Protect Portions of IGS’ Report of Continued Compliance as an Alternative Gas Supplier*, Docket No. 11-0086 (March 9, 2011) (holding that Petitioner’s “request for two years of confidential treatment is also consistent with what it received for its prior Compliance Report . . . as well as what other [alternative gas suppliers] have received for their Compliance Reports.”); see also *Dollar Phone Enterprises Inc. d/b/a DPE, Application for a Certificate of Prepaid Calling Service Provider Authority in the Entire State of Illinois*, Docket No. 08-0471 (October 8, 2008) (granting Petitioner’s request that its Financial Statements be exempt from public disclosure for a period of five years).

Pro Hac Vice Request

Furthermore, pursuant to 83 Ill. Adm. Code 200.90 and 200.25 and Illinois Supreme Court Rule 707, the undersigned, out-of-state attorney, Michael Nordlicht, requests to enter an appearance *pro hac vice* to appear on behalf of Agera in this proceeding. Mr. Nordlicht is admitted to practice law in New York, and is a member in good standing with the State of New York. Mr. Nordlicht's affidavit attesting to the above facts is attached to this motion. Agera seeks to involve Mr. Nordlicht in this matter based upon his role as General Counsel for Agera. The State of New York grants Illinois attorneys leave for admission *pro hac vice* in similar situations. Mr. Nordlicht agrees to abide by the Commission Rules of Practice and the Illinois Rules of Professional Conduct.

* * *

WHEREFORE, the Petitioner respectfully requests the Commission enter an Order, without hearing: (1) protecting from disclosure in its entirety the Confidential Items of Agera Energy LLC for a period of not less than two years; and (2) grant Mr. Nordlicht leave for admission *pro hac vice* in the above captioned matter.

Respectfully submitted,



Michael Nordlicht
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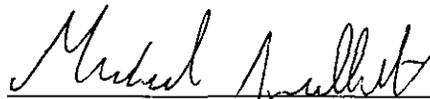
Dated: November _____, 2014

STATE OF New York
COUNTY OF Westchester

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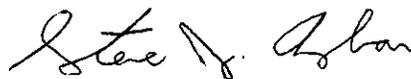
VERIFICATION

I, Michael Nordlicht, first being duly sworn upon oath depose that I have read the above and foregoing Verified Petition for Confidential Treatment by me subscribed and know the contents thereof; that said contents are true in substance and in face, except as to those matters stated upon information and belief, and as to those, I believe same to be true.



Michael Nordlicht
General Counsel, Agera Energy LLC

Subscribed and sworn to before me this 31st day of October, 2014.



STEVE J. AYBAR
Notary Public, State of New York
No. 01AY6235202
Qualified in Orange County
Commission Expires Feb. 07, 2015

