

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Norton)
 Energy Storage, LLC for a Certificate of)
 Environmental compatibility and Public) Case No. 99-1626-EL-BGN
 Need for an Electric Power Generating)
 Facility in Norton, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On March 20, 2006, the Board directed Norton Energy Storage, LLC (Norton) to provide the Board staff with an annual update of the progress of the project that is the subject of this proceeding.
- (2) On February 22 2007, Norton filed three copies of the confidential unredacted information under seal and a public redacted version of the information in the public docket. In conjunction with the filing of the information, Norton also filed a motion for a protective order, under Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), seeking to protect this information from release to the public. According to Norton, the redacted information is the identity of a party with whom Norton is engaged in on-going business negotiations and this information is competitively-sensitive trade secret information and the public disclosure of this information could compromise these negotiations. Norton also states that the Board and its staff will have full access to the information for which protection is requested. No memorandum contra was filed regarding the motion for protective order.
- (3) The Commission has emphasized, in *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*, Case No. 93-487-TP-ALT, entry issued November 23, 2003, that:

[a]ll proceedings at the Commission and all documents and records in its possession are public records, except as provided in Ohio's public records law (Section 149.43, Revised Code) and as

consistent with the purposes of Title 49 of the Revised Code. Ohio public records law is intended to be liberally construed to "ensure that governmental records be open and made available to the public...subject to only a few very limited exceptions." *State ex rel. Williams v. Cleveland* (1992), 64 Ohio St. 3d 544, 549, [other citations omitted].

- (4) In determining whether to issue a protective order in these instances, it is necessary to assess whether the materials for which such an order is sought:
 - (a) are prohibited to be released by state or federal law under Section 149.43(A)(1)(v), Revised Code;
 - (b) are maintained as confidential by the company seeking the order (see, *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, 524-525, citing *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App. 3d 131); and
 - (c) the non-disclosure of which will not be inconsistent with the purposes of Title 49, Revised Code, as required by Rule 4901-1-24(D), O.A.C.
- (5) Section 4929.23(A), Revised Code, requires that, "the Commission take such measures as it considers necessary to protect the confidentiality of any such [competitive retail natural gas service] information." However, the mere filing of materials required by the Commission pursuant to this statute does not satisfy the requirements for non-disclosure of what is otherwise a public document. An *in camera* inspection is necessary to determine whether the materials are entitled to protection from disclosure. *State ex rel. Allright Parking of Cleveland Inc. v. Cleveland* (1992), 63 Ohio St. 3d 772. During that inspection, the question is whether the materials have actual or potential independent economic value from not being generally known. See, *State ex rel. Besser v. Ohio State Univ.* (2000), 89 Ohio St. 3d 396.
- (6) Norton has filed information for which it seeks protection pursuant to Section 4929.23, Revised Code, and the company

has made an effort to preserve the confidential nature of the materials. This information contains sensitive information of competitive value.

- (7) Upon review, Norton's motion for a protective order should be granted. The information filed by Norton in this docket on February 22, 2007, should receive protected status for the 18-month period after the date of this entry. Pursuant to Rule 4901-1-24(F), O.A.C., this protective order will automatically expire 18 months after the date of its issuance. Extensions of the protective order may be requested by filing an appropriate motion at least 45 days in advance of the expiration date of the existing order.

It is, therefore,


ORDERED, That the motion of Norton for a protective order is granted. The information filed by Norton in this docket on February 22, 2007, is granted protected status and will remain under seal for the 18-month period from the date of this entry. It is, further,

ORDERED, That a copy of this entry be served upon Norton and its counsel and all other interested parties of record.

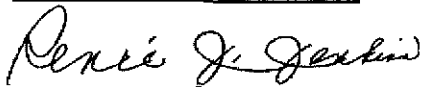
THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Scott Farkas
Administrative Law Judge

/ct 

Entered in the Journal
MAR 13 2007



Renee J. Jenkins
Secretary