

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of FirstEnergy Solutions     )  
Corp.'s Ten-Year Alternative Energy     ) Case No. 10-468-EL-ACP  
Compliance Plan.     )

ENTRY

The attorney examiner finds:

- (1) On April 15, 2010, FirstEnergy Solutions Corp. (FirstEnergy Solutions or applicant) filed its Ten-Year Alternative Energy Compliance Plan. In conjunction with its application, FirstEnergy Solutions filed a motion requesting protective treatment of certain portions of its Ten-Year Alternative Energy Compliance Plan pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.).
- (2) In support of its motion, FirstEnergy Solutions states that the specific documents in need of protective treatment contain information regarding the applicant's future baseline and its projections for satisfying its alternative energy benchmarks in the future based on the alternative energy resources it already owns, has under contract, or will need to procure in the future from the competitive renewable energy credit market or through self-development. According to FirstEnergy Solutions, the information set forth in its motion, if made public could be used by competitors to gain an advantage in the competitive market for renewable energy credits and renewable resources
- (3) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has clarified that the "state or federal law" exemption is intended to include trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.
- (4) Similarly, Rule 4901-1-24, O.A.C., allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal

law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

- (5) Ohio law defines a trade secret as "information . . . 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." Section 1333.61(D), Revised Code. The Supreme Court has adopted the following six factors to be used in analyzing a claim that information is a trade secret under that section:

- (a) The extent to which the information is known outside the business.
- (b) The extent to which it is known to those inside the business, i.e., by the employees.
- (c) The precautions taken by the holder of the trade secret to guard the secrecy of the information.
- (d) The savings affected and the value to the holder in having the information as against competitors.
- (e) The amount of effort or money expended in obtaining and developing the information.
- (f) The amount of time and expense it would take for others to acquire and duplicate the information.

*State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

- (6) Rule 4901-1-24(D)(1), O.A.C., also provides that, where confidential material can be reasonably redacted from a document without rendering the remaining document incomprehensible or of little meaning, redaction should be ordered rather than wholesale removal of the document from public scrutiny.

- (7) Thus, in order to determine whether to issue a protective order, it is necessary to review the materials in question, assess whether the information constitutes a trade secret under Ohio law, decide whether non-disclosure of the materials will be consistent with the purposes of Title 49, Revised Code, and evaluate whether the confidential material can reasonably be redacted.
- (8) The attorney examiner has reviewed the unredacted information and the assertions set forth in the memorandum in support of FirstEnergy Solutions' motion. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy, as well as the six-factor test set forth by the Ohio Supreme Court, the attorney examiner finds that the identified information sought to be protected are trade secrets. Their release is, therefore, prohibited under state law. The attorney examiner also finds that non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. The attorney examiner further notes that the applicant has redacted the report in order to allow for a public filing as well.
- (9) The attorney examiner, therefore, finds that there is good cause to grant FirstEnergy Solutions' motion for a protective order. The unredacted report should receive protected status for an 18-month period and should remain under seal in the Docketing Division for that time period. FirstEnergy Solutions should note that Rule 4901-1-24(F), O.A.C., provides that protective orders issued pursuant to the rule automatically expire after 18 months.
- (10) Accordingly, the Docketing Division should maintain under seal the unredacted report as filed on April 15, 2010, for a period of 18 months from the date of this Entry.

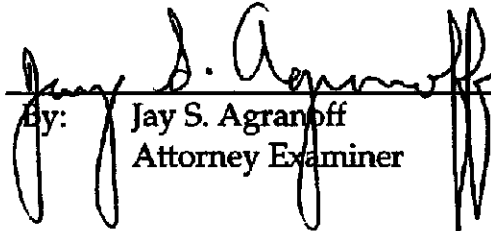
It is, therefore,

ORDERED, That FirstEnergy Solutions' motion for a protective order be granted in accordance with Findings (8) and (9). It is, further,

ORDERED, That the unredacted report remain under seal in the Commission's Docketing Division for that 18-month period. It is, further,

ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Jay S. Agranoff  
Attorney Examiner

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/dah

Entered in the Journal

**JAN 05 2011**



Renee J. Jenkins  
Secretary