

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Independent Energy Consultants, Inc. for) Case No. 04-592-EL-AGG
Certification as a Competitive Retail)
Electric Broker/Aggregator.)

In the Matter of the Application of)
Independent Energy Consultants, Inc. for) Case No. 04-593-GA-AGG
Certification as a Competitive Retail)
Natural Gas Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On March 27, 2012, Independent Energy Consultants, Inc. (Independent Energy or company) filed renewal applications for certification as competitive retail electric and natural gas brokers/aggregators (Case Nos. 04-592-EL-AGG (04-592) and 04-593-GA-AGG (04-593), respectively). On that same day, Independent Energy filed motions for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits C-3 and C-5 of its applications, which were filed under seal in 04-592 and 04-593 on March 27, 2012, be kept under seal. These exhibits contain the company's financial information, including forecasted financial statements for 2012 and 2013.
- (2) In support of its motions for a protective order, Independent Energy explains that exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, Independent Energy requests that the information found in exhibits C-3 and C-5 be treated as confidential.
- (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 Ohio Supreme Court has

clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

- (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: (a) 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. (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Section 1333.61(D), Revised Code.
- (6) The attorney examiner has examined the information covered by the motions for a protective order filed by Independent Energy, as well as the assertions set forth in the supportive memoranda. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in exhibits C-3 and C-5 of Independent Energy's applications constitutes trade secret information. Release of these documents is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Accordingly, the attorney examiner finds that Independent Energy's motions for a protective order are reasonable with regard to exhibits C-3

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

and C-5, which were filed under seal in 04-592 and 04-593 on March 27, 2012; therefore, the motions should be granted.

- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to electric and gas marketers' certification renewal applications to expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketers' certification applications with the expiration of their certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment shall be afforded to exhibits C-3 and C-5 for a period ending 24 months from the effective date of the certificates issued to Independent Energy, or until May 23, 2014, in 04-592, and May 25, 2014, in 04-593. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, which were filed under seal in 04-592 and 04-593 on March 27, 2012.
- (8) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Independent Energy wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Independent Energy.
- (9) As a final matter, the attorney examiner notes that the previous protective orders granted to Independent Energy, by entries issued June 14, 2006, August 5, 2008, and June 1, 2010, in 04-593, have expired. No motions to extend those protective orders were filed. Therefore, the attorney examiner directs the Commission's docketing division to release into the public record, on June 22, 2012, exhibits C-3 and C-5, filed under seal in 04-593 on April 10, 2006, April 14, 2008, and April 12, 2010.

Likewise, a previous protective order granted to Independent Energy by entry issued May 9, 2006, in 04-592, has expired and no motion to extend this protective order was filed. Therefore, the attorney examiner directs the Commission's docketing division to release into the public record, on June 22, 2012,

exhibits C-3 and C-5, filed under seal in 04-592 on April 10, 2006.

In addition, the attorney examiner finds that, in light of the rulings set forth above, the motions for a protective order filed in 04-592 on April 14, 2008, and April 12, 2010, should be denied. Therefore, the attorney examiner directs the Commission's docketing division to release into the public record, on June 22, 2012, exhibits C-3 and C-5, filed under seal in 04-592 on April 14, 2008, and April 12, 2010.

It is, therefore,

ORDERED, That the motions for a protective order filed by Independent Energy on March 27, 2012, be granted with regard to the information contained in exhibits C-3 and C-5 of Independent Energy's applications. It is, further,

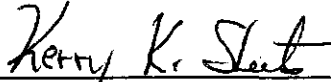
ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3 and C-5, which were filed under seal in 04-592 and 04-593 on March 27, 2012, for a period of 24 months, ending on May 23, 2014, in 04-592, and May 25, 2014, in 04-593. It is, further,

ORDERED, That the motions for a protective order filed by Independent Energy in 04-592 on April 14, 2008, and April 12, 2010, be denied. It is, further,

ORDERED, That the Commission's docketing division release into the public record, on June 22, 2012, exhibits C-3 and C-5, filed under seal in 04-592 and 04-593 on April 10, 2006, April 14, 2008, and April 12, 2010. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

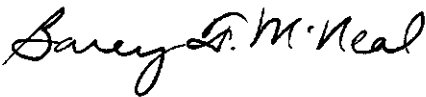
THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Kerry K. Sheets
Attorney Examiner


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Barcy F. McNeal
Secretary