

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Pinnacle)
Energy Services, LLC for Certification as a) Case No. 12-2725-EL-AGG
Competitive Retail Electric Service)
Aggregator/Power Broker.)

In the Matter of the Application of Pinnacle)
Energy Services, LLC for Certification as a) Case No. 12-2726-GA-AGG
Competitive Retail Natural Gas)
Aggregator/Broker.)

ENTRY

The attorney examiner finds:

- (1) On October 17, 2012, Pinnacle Energy Services, LLC (Pinnacle Energy or company) filed applications for certification as a competitive retail electric and natural gas aggregators/brokers (Case Nos. 12-2725-EL-AGG (12-2725) and 12-2726-GA-AGG (12-2726), respectively). On that same day, Pinnacle 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 (financial statements) and C-5 (forecasted financial statements) of its applications, which were filed under seal in 12-2725 and 12-2726 on October 17, 2012, be kept under seal.
- (2) In support of its motions for a protective order, Pinnacle Energy explains that exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. Therefore, Pinnacle 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: (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.
- (6) The attorney examiner has examined the information covered by the motions for a protective order filed by Pinnacle Energy, as well as the assertions set forth in the supportive memorandum. 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 Pinnacle Energy’s applications constitute 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. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Pinnacle Energy’s motions for a protective order are reasonable

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).

with regard to exhibits C-3 and C-5 which were filed under seal in 12-2725 and 12-2726 on October 17, 2012, and, therefore, the motions should be granted with respect to those exhibits.

- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to competitive retail 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 competitive retail electric and 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 Pinnacle Energy, or until November 17, 2014. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, which were filed under seal in 12-2725 and 12-2726 on October 17, 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 Pinnacle Energy wishes to extend this confidential treatment, it should file appropriate motions at least 45 days in advance of the expiration date. If no such motions to extend confidential treatment are filed, the Commission may release this information without prior notice to Pinnacle Energy.

It is, therefore,

ORDERED, That the motions for a protective order filed by Pinnacle Energy be granted with regard to the information contained in exhibits C-3 and C-5 of the company'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 12-2725 and 12-2726 on October 17, 2012, for a period of 24 months from the effective date of the certificates issued to Pinnacle Energy, or until November 17, 2014. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Kerry K. Sheets

By: Kerry K. Sheets
Attorney Examiner

jrj/vrm

Entered in the Journal



Barcy F. McNeal
Secretary

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Case No(s). 12-2725-EL-AGG, 12-2726-GA-AGG

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Pinnacle Energy Services, LLC be granted with regard to confidential exhibits C-3 and C-5 of the company's applications for certification as a competitive retail electric and natural gas broker/aggregator. The protective order directs Docketing to keep exhibits C-3 and C-5 under seal for a period of 24 months, electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio