

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Metromedia Energy, Inc. for Certification) Case No. 02-1926-GA-CRS
as a Competitive Retail Natural Gas)
Supplier.)

ENTRY

The attorney examiner finds:

- (1) On September 21, 2012, Metromedia Energy, Inc. (ME or company) filed an application for renewal of its certification as a competitive retail natural gas supplier. On December 17, 2012, and January 22, 2013, ME filed motions for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits B-3, C-3, C-4, and C-5 of its application be kept under seal. These exhibits include the following exhibits filed on October 1, 23, and 24, 2012: exhibit B-3, customer counts and pro forma volumes for 2011; exhibit C-3, financial statements for 2011; exhibit C-4, ME's financial arrangements; and exhibit C-5, forecasted financial statements for 2012-2014.
- (2) In support of its motions for a protective order, ME explains that exhibits B-3, C-3, C-4, and C-5 contain competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. ME submits that this information is highly sensitive data that it does not publicly release. ME contends that, if released, this information would provide a competitive advantage to other marketers, as ME's competitors and suppliers would be able to use it for pricing and product strategies. ME suggests that potential competitors would be able to use this information as a basis for entry into the market and that disclosure would adversely affect the company's finances and, therefore, its ability to compete effectively. Accordingly, ME requests that the information found in exhibits B-3, C-3, C-4, and C-5 filed on October 1, 23, and 24, 2012, 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 ME, 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 B-3, C-3, C-4, and C-5 of ME’s application 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. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to

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).

remove the confidential information contained therein. Therefore, the attorney examiner finds that ME's motions for a protective order are reasonable with regard to exhibits B-3, C-3, C-4, and C-5 filed on October 1, 23, and 24, 2012, and, therefore, the motions should be granted.

- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to 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 B-3, C-3, C-4, and C-5 for a period ending 24 months from the effective date of the certificate issued to ME, or until October 22, 2014. Until that date, the docketing division should maintain, under seal, exhibits B-3, C-3, C-4, and C-5 filed under seal in this docket on October 1, 23, and 24, 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 ME 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 ME.
- (9) As a final matter, the attorney examiner notes that ME did not request an extension of the protective order granted by entry issued November 17, 2010, for exhibits B-3, C-3, C-4, and C-5, filed under seal in this docket on September 23, 2010, as well as the information found in exhibit C-4, filed under seal in this docket on September 19, 2008. Therefore, the attorney examiner directs the Commission's docketing division to release these exhibits into the public record on February 6, 2013.

It is, therefore,

ORDERED, That the motion for protective order filed by ME be granted with regard to the information contained in exhibits B-3, C-3, C-4, and C-5 filed under seal in this docket on October 1, 23, and 24, 2012. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits B-3, C-3, C-4, and C-5 filed under seal in this docket on October 1, 23, and 24, 2012, for a period of 24 months, ending on October 22, 2014. It is, further,

ORDERED, That the Commission's docketing division release, on February 6, 2013, into the public record exhibits B-3, C-3, C-4, and C-5, filed under seal in this docket on September 23, 2010, and exhibit C-4, filed under seal in this docket on September 19, 2008. 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

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in

Case No(s). 02-1926-GA-CRS

Summary: Attorney Examiner Entry orders that the motions for a protective order filed by Metromedia Energy, Inc. be granted with regard to confidential exhibits B-3, C-3, C-4, and C-5 of the company's renewal application for certification as a competitive retail natural gas supplier. The protective order directs Docketing to keep exhibits B-3, C-3, C-4, and C-5 under seal for a period of 24 months. The entry also directs Docketing to release into the public record former confidential exhibits B-3, C-3, C-4, and C-5, filed under seal in this docket on September 23, 2010, as well as the information found in exhibit C-4, filed under seal in this docket on September 19, 2008. electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio