

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of T.E.S.)
Energy Services, L.P. for Certification as a) Case No. 11-2541-EL-AGG
Competitive Retail Electric Service)
Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On April 1, 2013, T.E.S. Energy Services, L.P. (T.E.S.) filed an application for renewal of Certificate No. 11-361E(1), which authorizes it, as a competitive retail electric service provider, to provide aggregation and power broker services in the state of Ohio. On April 1, 2013, T.E.S. filed a motion 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 certification renewal application be kept under seal. Exhibit C-3 contains the company's audited financial statements. Exhibit C-5 contains the company's forecasted financial statements.
- (2) In support of its motion for a protective order, T.E.S. explains that the involved exhibits contain competitively sensitive and highly proprietary business financial information, which is not generally known or available to the general public. Therefore, T.E.S. requests that the information found in exhibits C-3 and C-5 of its certification renewal application, filed under seal on April 1, 2013, 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 motion for protective order filed by T.E.S., 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 the certification renewal application constitutes trade secret information. Release of this document 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 the document could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that the motion for protective order is reasonable with regard to exhibits C-3 and C-5 of the certification renewal application, filed under seal on April 1, 2013, and, therefore, the motion should be granted.

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).

- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to competitive retail electric service provider 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 service providers' 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 of the certification renewal application for a period ending 24 months from the effective date of Renewal Certificate 11-361E(2) issued to T.E.S., or until May 18, 2015. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5 of the certification renewal application, which were filed under seal in this docket on April 1, 2013.
- (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 T.E.S. 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 T.E.S.
- (9) As a final matter, the attorney examiner notes that the previous protective order granted in this docket to T.E.S., by entry issued June 20, 2011, has expired. No motion to extend that protective order was filed. Therefore, the attorney examiner directs the Commission's docketing division to release exhibits C-3, C-5, C-6, and C-7, filed under seal in this docket on April 18, 2011, into the public record on June 27, 2013.

It is, therefore,

ORDERED, That the motion for protective order filed by T.E.S. be granted with regard to the information contained in exhibits C-3 and C-5 of the certification renewal application, filed under seal on April 1, 2013. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, for a period of 24 months, ending on May 18, 2015, the unredacted exhibits C-3 and C-5 of the certification renewal application, which were filed under seal in this docket on April 1, 2013. It is, further,

ORDERED, That the Commission's docketing division release into the public record, on June 27, 2013, exhibits C-3, C-5, C-6, and C-7, filed under seal in this docket on April 18, 2011. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Daniel Fullin

By: Daniel E. Fullin
Attorney Examiner

JRJ/sc

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in

Case No(s). 11-2541-EL-AGG

Summary: Attorney Examiner Entry grants motion for protective order filed 04/01/2013 by T.E. S. - electronically filed by Sandra Coffey on behalf of Daniel Fullin, Attorney Examiner, Public Utilities Commission of Ohio