

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
MCEnergy, Inc. for Certification as a) Case No. 12-825-EL-AGG
Competitive Retail Electric Generation)
Broker.)

ENTRY

The attorney examiner finds:

- (1) On March 3, 2014, MCEnergy, Inc. (MCEnergy) filed an application to renew its certification, issued by the Commission on April 2, 2012, as a competitive retail generation broker. Also on March 3, 2014, MCEnergy filed a motion for a protective order, which is under consideration in this entry, of application exhibits C-3 and C-5. In support of the motion, MCEnergy explains that exhibits C-3 and C-5 contain confidential financial information, including audited, financial statements, and financial forecasts. MCEnergy adds that such information is generally not publically disclosed, as it is a privately held company, and disclosure could place it at a disadvantage to its competitors.
- (2) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43 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).
- (3) Similarly, Ohio Adm.Code 4901-1-24 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."

- (4) R.C. 1333.61(D) 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.”
- (5) The attorney examiner has reviewed the information included in MCEnergy’s motion for a protective order, 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 R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information in exhibits C-3 and C-5 contains trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. 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 MCEnergy’s motion for protective order is reasonable and should be granted.
- (6) Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders under Ohio Adm.Code 4901-1-24(D) shall automatically expire after 18 months. The examiner finds that MCEnergy’s motion shall be granted for a period of 24 months from the date of this entry. Therefore, until that date, the docketing division of the commission should maintain exhibits C-3 and C-5 of MCEnergy’s certification application under seal.
- (7) Ohio Adm.Code 4901-1-24(F) 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 MCEnergy wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the

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).

expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to MCEnergy.

It is, therefore,

ORDERED, That the motion for a protective order filed by MCEnergy be granted in accordance with Finding (5). 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 this docket on March 3, 2014, for a period of 24 months from the date of this Entry. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/James Lynn

By: James M. Lynn
Attorney Examiner

JRJ/sc

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Case No(s). 12-0825-EL-AGG

Summary: Attorney Examiner Entry grants MCEnergy's motion for protective order in accordance with Finding (5). - electronically filed by Sandra Coffey on behalf of James Lynn, Attorney Examiner, Public Utilities Commission of Ohio