

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
HB Hayes & Associates, LLC d/b/a)
Alternative Energy Sources for) Case No. 14-743-GA-AGG
Certification as a Competitive Retail)
Natural Gas Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On April 21, 2014, HB Hayes & Associates, LLC d/b/a Alternative Energy Sources (Alternative) filed an application for certification as a competitive retail natural gas aggregator. On the same day Alternative filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that certain exhibits, filed under seal as part of its application, namely exhibits C-3 (financial statements) and C-5 (forecasted financial statements), be kept under seal.
- (2) In support of its motion for a protective order, Alternative 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, Alternative requests that the information found in these two exhibits be treated as confidential.
- (3) 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).
- (4) 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.”

- (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.” R.C. 1333.61(D).
- (6) The attorney examiner has examined the information covered by the motion for a protective order filed by Alternative, 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 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 contained in exhibits C-3 and C-5 of Alternative’s application 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 R.C. Title 49. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Accordingly, the attorney examiner finds that Alternative’s motion for a protective order is reasonable with regard to exhibits C-3 and C-5, which were filed under seal; therefore, the motions should be granted.
- (7) Ohio Adm.Code 4901-1-24(F) provides for protective orders to expire after 24 months. The attorney examiner finds that the 24-month provision in Ohio Adm.Code 4901-1-24(F) is intended to synchronize the expiration of protective orders related to electric and gas marketers’ certification

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).

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 certificate issued to Alternative, or until May 22, 2016. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, both filed under seal in this case.

- (8) 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 Alternative 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 Alternative.

It is, therefore,

ORDERED, That, in accordance with Finding (6), the motion for protective order filed by Alternative be granted, with regard to the information contained in exhibits C-3 and C-5, filed under seal as part of Alternative's April 21, 2014 certification application. 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 on April 21, 2014, for a period of 24 months, ending May 22, 2016. 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). 14-0743-GA-AGG

Summary: Attorney Examiner Entry granting protective order. - electronically filed by Sandra Coffey on behalf of Daniel Fullin, Attorney Examiner, Public Utilities Commission of Ohio