

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Telco)
Pros, Inc. for Certification as a Competitive) Case No. 14-946-GA-AGG
Retail Natural Gas Broker/Aggregator.)

In the Matter of the Application of Telco)
Pros, Inc. for Certification as a Competitive) Case No. 14-947-EL-AGG
Retail Power Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On May 27, 2014, Telco Pros, Inc. (Telco Pros) filed applications for certification as competitive retail natural gas and power brokers/aggregators (Case Nos. 14-946-GA-AGG (14-946) and 14-947-EL-AGG (14-947), respectively). On that same day, as amended on June 18, 2014, Telco Pros filed motions for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that the financial statements and forecasted financial statements, exhibits C-3 and C-5 of its applications, be kept under seal.
- (2) Telco Pros submits that the information in exhibits C-3 and C-5 is competitively sensitive and highly proprietary. Telco Pros contends that public disclosure of this information would jeopardize its business position in negotiations with other parties and its ability to compete.
- (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 the Commission 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.” R.C. 1333.61(D).
- (6) The attorney examiner has examined the information covered by the motions for a protective order filed by Telco Pros, 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 Telco Pros’ applications 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 R.C. Title 49. Accordingly, the attorney examiner finds that Telco Pros’ motions for a protective order are reasonable with regard to exhibits C-3 and C-5, which were filed under seal in 14-946 and 14-947 on May 27 and June 18, 2014; therefore, the motions should be granted.
- (7) Ohio Adm.Code 4901-1-24(F) provides for protective orders to expire after 24 months. 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 Telco Pros, or until June 27, 2016, in 14-946 and 14-947. Until that date, the docketing division should maintain, under seal,

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).

exhibits C-3 and C-5, which were filed under seal in 14-946 and 14-947 on May 27 and June 18, 2014.

- (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 Telco Pros 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 Telco Pros.

It is, therefore,

ORDERED, That the motions for a protective order filed by Telco Pros be granted with regard to the information contained in exhibits C-3 and C-5 of Telco Pros' 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 14-946 and 14-947 on May 27 and June 18, 2014, for a period of 24 months, ending on June 27, 2016. It is, further,

ORDERED, That copies 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

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7/18/2014 2:02:21 PM

in

Case No(s). 14-0946-GA-AGG, 14-0947-EL-AGG

Summary: Attorney Examiner Entry directing that the motions for a protective order filed by Telco Pros be granted with regard to the information contained in exhibits C-3 and C-5 of Telco Pros' applications. Further, the Commission's docketing division is directed to maintain the un-redacted exhibits C-3 and C-5 under seal for a period of 24 months, ending on June 27, 2016; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio