

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
American Utility Management, Inc. for) Case No. 12-1925-GA-AGG
Certification as a Competitive Retail)
Natural Gas Broker/Aggregator.)

In the Matter of the Application of)
American Utility Management, Inc. for) Case No. 12-1926-EL-AGG
Certification as a Competitive Retail)
Electric Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On June 20, 2014, American Utility Management, Inc. (American Utility) filed renewal applications for certification as competitive retail natural gas and electric power brokers, Case Nos. 12-1925-GA-AGG (12-1925) and 12-1926-EL-AGG (12-1926), respectively. On that same day, American Utility filed motions for protective orders, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that exhibits C-3 and C-5 of its applications, which were filed under seal in 12-1925 and 12-1926 on June 20, 2014, be kept under seal. These exhibits contain the company's financial statements (exhibit C-3) and forecasted financial statements (exhibit C-5).
- (2) On June 12, 2014, American Utility filed motions to renew the protective orders for the financial statements in exhibits C-3 and C-5 of American Utility's original 2012 applications for certification, which were filed under seal in 12-1925 and 12-1926 on June 25 and July 13, 2012. American Utility seeks to continue the protective orders issued on August 23, 2012, for an additional 24-month period.
- (3) In support of its motions for protective orders, American Utility 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, American Utility requests that the information found in exhibits C-3 and C-5 be treated as confidential.

- (4) 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).
- (5) 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.”
- (6) 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).
- (7) The attorney examiner has examined the information covered by the motions for protective orders filed by American Utility, 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 American Utility’s 2014 renewal applications constitutes trade secret information. Release of these documents is, therefore, prohibited under state law. 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).

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 American Utility's motions for protective orders are reasonable with regard to exhibits C-3 and C-5 filed under seal in 12-1925 and 12-1926 on June 20, 2014; therefore, the motions should be granted.

- (8) With regard to American Utility's request to extend the protective orders for its previously submitted financial statements, the attorney examiner finds that exhibits C-3 and C-5 of American Utility's 2012 original applications for certification still constitute trade secret information. Therefore, the attorney examiner finds that American Utility's requests to extend the protective orders with respect to those C-3 and C-5 exhibits is reasonable and should be granted.
- (9) Ohio Adm.Code 4901-1-24(F) provides for protective orders relating to electric and gas marketers' certification renewal applications to expire after 24 months. Therefore, confidential treatment shall be afforded to exhibits C-3 and C-5 of American Utility's 2014 renewal applications, and extended for exhibits C-3 and C-5 of its 2012 original applications, for a period ending 24 months from the effective date of the certificates issued to American Utility, or until July 27, 2016, in 12-1925, and July 26, 2016, in 12-1926. Until those dates, the docketing division should maintain, under seal, exhibits C-3 and C-5 of American Utility's 2014 renewal applications, which were filed under seal in these dockets on June 20, 2014, and exhibits C-3 and C-5 of American Utility's 2012 original applications, which were filed under seal in these dockets on June 25 and July 13, 2012.
- (10) 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 American Utility wishes to extend this confidential treatment, it should file an appropriate motions at least 45 days in advance of the expiration date. If no such motions to extend confidential treatment are filed, the Commission may release this information without prior notice to American Utility.

It is, therefore,

ORDERED, That the motions for protective orders filed by American Utility be granted with regard to the information contained in exhibits C-3 and C-5 of American Utility's 2014 renewal applications. It is, further,

ORDERED, That American Utility's request to extend the protective orders with respect to exhibits C-3 and C-5 of its 2012 original applications be granted. 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 12-1925 and 12-1926 on June 20, 2014, for a period of 24 months, ending on July 27, 2016, in 12-1925, and July 26, 2016, in 12-1926. It is, further,

ORDERED, That the Commission's docketing division continue to maintain, under seal, the unredacted exhibits C-3 and C-5 of American Utility's 2012 original applications, which were filed under seal in these dockets on June 25 and July 13, 2012, for a period of 24 months, ending on July 27, 2016, in 12-1925, and July 26, 2016, in 12-1926. 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). 12-1925-GA-AGG, 12-1926-EL-AGG

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by American Utility Management on June 20, 2014, be granted with regard to the information contained in exhibits C-3 and C-5 of American Utility's renewal application. Further, American Utility's request to extend the protective order with respect to exhibits C-3 and C-5 of its 2012 original application is granted; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio