

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of                    )  
Legend Energy Advisors LLC for                    )  
Certification as a Competitive Retail                    )  
Electric Aggregator/Broker.                    )  
Case No. 14-1092-EL-AGG

In the Matter of the Application of                    )  
Legend Energy Advisors LLC for                    )  
Certification as a Competitive Retail                    )  
Natural Gas Aggregator/Broker.                    )  
Case No. 14-1093-GA-AGG

ENTRY

The attorney examiner finds:

- (1) On June 16, 2014, in Case No. 14-1092-EL-AGG (14-1092), Legend Energy Advisors LLC (Legend) filed an application for certification as a competitive retail electric service aggregator. On the same date, in Case No. 14-1093-GA-AGG (14-1093), Legend filed an application for certification as a competitive retail natural gas aggregator. In each case, on June 16, 2014, Legend 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 applications, namely exhibits C-3 (financial statements) and C-5 (forecasted financial statements), be kept under seal. In each case, the involved exhibits were filed, under seal, on June 17, 2014.
- (2) In support of its motions for a protective order, Legend explains that exhibits C-3 and C-5, in each case, contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, Legend requests that the information found in these two exhibits, in each case, 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 Legend, in each case, 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,<sup>1</sup> the attorney examiner finds that the information contained, in each case, in exhibits C-3 and C-5 of Legend’s certification applications 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, in each

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<sup>1</sup> 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).

case, Legend's motion for a protective order is reasonable with regard to exhibits C-3 and C-5, which were filed under seal; therefore, in both cases, 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 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, in each case, to exhibits C-3 and C-5 for a period ending 24 months from the effective date of the certificate issued to Legend, or until July 17, 2016. Until that date, the docketing division should maintain, under seal, in each case, exhibits C-3 and C-5, filed under seal in 14-1092 and 14-1093.
- (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 Legend 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 Legend.

It is, therefore,

ORDERED, That, in accordance with Finding (6), the motions for protective order filed by Legend in each case be granted, with regard to the information contained in exhibits C-3 and C-5 of Legend's June 16, 2014, certification applications. It is, further,

ORDERED, That, in each case, the Commission's docketing division maintain, under seal, the unredacted exhibits C-3 and C-5, which were filed under seal, for a period of 24 months, ending July 17, 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 E. Fullin

By: Daniel E. Fullin  
Attorney Examiner

JRJ/dah

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 14-1092-EL-AGG, 14-1093-GA-AGG**

Summary: Attorney Examiner Entry that grants protective treatment to certain exhibits filed as part of the applicant's 2014 electric and gas certification renewal applications; electronically filed by Debra Hight on behalf of Daniel E. Fullin, Attorney Examiner.