

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Jay)
Plastics Division of Jay Industries, Inc. for)
Integration of Mercantile Customer Energy) Case No. 13-2440-EL-EEC
Efficiency or Peak-Demand Reduction)
Programs with The Ohio Edison Company.)

FINDING AND ORDER

The Commission finds:

- (1) R.C. 4928.01(A)(19) defines a "mercantile customer" as a commercial or industrial customer that consumes more than 700,000 kilowatt hours (kWh) of electricity per year or that is part of a national account involving multiple facilities in one or more states. R.C. 4928.66 imposes certain energy efficiency and peak demand reduction requirements upon Ohio's electric distribution utilities, but also enables mercantile customers to commit their peak demand reduction, demand response, and energy efficiency (EEDR) programs for integration with an electric utility's programs in order to meet the statutory requirements. R.C. 4928.66 also establishes a three-year period for the measurement of EEDR programs. Ohio Adm.Code 4901:1-39-05(G) permits a mercantile customer to file, either individually or jointly with an electric utility, an application to commit the customer's EEDR programs for integration with the electric utility's programs.
- (2) On September 10, 2012, Am.Sub.S.B. No. 315 of the 129th General Assembly (S.B. 315) amended R.C. 4928.01(A)(40) and 4928.66 to include combined heat and power (CHP) systems as EEDR programs that mercantile customers may choose to commit for integration with an electric utility's programs.
- (3) On July 17, 2013, the Commission adopted a pilot program (EEC Pilot) in Case No. 10-834-EL-POR to expedite the review and approval process for applications filed by mercantile customers under Ohio Adm.Code 4901:1-39-05(G), until such time as the provisions of the EEC Pilot can be codified in Ohio Adm.Code Chapter 4901:1-39. The EEC Pilot program is intended to simplify the application process through the use of a standard

application template for mercantile customers who commit their programs for integration with an electric utility. The EEC Pilot program includes an automatic approval process whereby applications conforming to the standard template are deemed to be approved 60 days after filing, unless suspended or otherwise ordered by the Commission or an attorney examiner.

- (4) The Ohio Edison Company (OE or Utility) is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission. OE recovers its costs of complying with the EEDR requirements imposed by R.C. 4928.66, Revised Code, from its customers through its Rider DSE2 (EEDR rider).
- (5) On December 27, 2013, the Jay Plastics Division of Jay Industries, Inc. (Jay Plastics or Customer) filed an application, pursuant to Ohio Adm.Code 4901:1-39-05(G), to integrate the installation of a CHP system at the Jay Plastics facility in Mansfield, Ohio, with OE's EEDR programs.
- (6) Concurrent with the filing of the application, Jay Plastics filed a motion for protective order and memorandum in support, to prevent public disclosure of Attachments 1, 4, and 5 of the application, relating to the Customer's electric usage and project pricing, which Jay Plastics asserts constitute proprietary trade secrets.
- (7) 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 that, 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). Ohio Adm.Code 4901-1-24 allows the Commission to issue an order to protect the confidentiality of information 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. R.C. 1333.61(D) defines a trade secret as information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program,

device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that: (1) 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; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997). In that case, the Court also listed six factors for analyzing a trade secret claim: (1) the extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information. *Plain Dealer*, 524-525, 687 N.E.2d 672, citing *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-135, 454 N.E.2d 588, 592 (8th Dist. 1983). Further, an entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under the statute and additionally must take some active steps to maintain its secrecy. See, *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 181, 707 N.E.2d 853, 862 (1999).

- (8) Applying the statutory requirements and the Court's six-factor test in *Plain Dealer* and *Besser*, we find that the Customer's motion should be granted, and this information should remain under seal in the Commission's Docketing Division for a 24-month period from the date of this Order. Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Jay Plastics should note that any motion to extend such period of confidential treatment should be filed at least 45 days in advance of the expiration date, pursuant to Ohio Adm.Code 4901-1-24(F), or this information ~~may be released~~ without further notice.

- (9) On January 3, 2014, Jay Plastics filed an amendment to the application, revising its energy savings and rebate calculations.
- (10) By Entry issued January 10, 2014, the 60-day automatic approval process under the EEC Pilot program was suspended at Staff's request to allow further review, as this application raises issues of first impression involving a CHP system following the enactment of S.B. 315.
- (11) On January 14, 2014, OE filed a motion to intervene in this proceeding, pursuant to R.C. 4903.221, and requested that the 20-day comment/objection period under Ohio Adm.Code 4901:1-38-05(F) be suspended. In support of its motion, OE asserts that the Customer's application deviates from standard filings for both mercantile applications and requests for reasonable arrangements. The Utility notes that Jay Plastics is ultimately seeking a proposed rebate of approximately \$250,000 to be paid by the Utility's customers through OE's energy efficiency rider. Further, OE asserts that the proposed CHP system raises issues of first impression regarding the calculation of energy savings associated with CHP projects. OE contends that the Customer's proposed method of calculating its CHP energy savings is unprecedented. Further, OE asserts that the Utility has already implemented a program for approval of customer project incentives, which Jay is attempting to circumvent by filing the instant application under the EEC Pilot program. Moreover, OE argues that the Utility's intervention in this proceeding is necessary to protect its interests in both the instant case and future proceedings involving CHP projects. No one filed a memorandum contra OE's motion to intervene.
- (12) As the interests of OE's customers and/or shareholders may be impacted by this application, the Utility's motion to intervene in this proceeding should be granted. We note, however, that the Utility has not subsequently filed any further pleadings or objections to Staff's recommendations discussed below.
- (13) Correspondence in support of the application was subsequently filed by GE Power & Water, the Alliance for Industrial Efficiency, the University of Illinois at Chicago's Energy Resources Center, the Ohio Coalition for Combined Heat and Power (comprised of the CHP Association, Midwest

Cogeneration Association, Ohio Environmental Council, Natural Resources Defense Council, Environmental Defense Fund, and Policy Matters Ohio), Congressional Representative Patrick J. Tiberi, and State Representative Mark Romanchuk.

- (14) On December 1, 2014, Staff filed its report and recommendations. After reviewing the application and supporting documentation, and discussions with the Customer's representatives, Staff objects to the proposed time period for commitment of the facility to OE, as well as the level of proposed compensation. Staff asserts that the energy to be generated by this CHP facility should be viewed as equivalent to energy savings that would be achieved in a typical energy efficiency project. Staff reports that the application includes calculations of the expected energy production along with cost estimates for the proposed new equipment, and that Jay Plastics uses more than 700,000 kWh annually, thereby meeting the statutory requirement to be classified as a mercantile customer. Staff, however, objects to the application's proposal to only commit this project to OE for the first 5.39 years, rather than the life of the CHP system, which is estimated to be 25 years. Staff notes that the application states that the Customer intends to pursue additional incentives in future proceedings after the expiration of the initial 5.39 year commitment period. This is not consistent with the Commission's past practice that requires a customer to commit its energy efficiency project to the utility for the life of the project. Further, Staff believes that the incentive level for this project should be \$0.005 per kWh produced each year, to be paid annually over a period of five years, consistent with the EEC Pilot program, and the CHP template and rule revisions issued in the January 29, 2014 Entry in Case No. 13-0651-EL-ORD. Staff reasons that the energy savings, as electricity production, attributed to the CHP system proposed within this application could fluctuate with the electrical needs of the manufacturing process, the price of the natural gas needed to run this equipment, or the price differential between electricity and natural gas. Considering that the production levels of the equipment could be dependent upon a variety of future unknown factors, and can be varied depending upon the operational needs of the manufacturing process, Staff recommends using a compensation payment for this CHP project that is similar to the behavioral project incentive

structure adopted by the Commission under the EEC Pilot program.

- (15) While Staff objects to the application as filed, Staff recommends that the application be modified to conform to the \$0.005 per kWh payment structure used by the EEC Pilot program. Under this modification, Jay Plastics would file a production (savings) report quantifying the production achieved since the CHP system was placed into service. Using this production report, OE would calculate the expected annual payment based on the kWh production level and a rate of \$0.005 per kWh produced. Annually thereafter, Jay Plastics would provide Staff and OE with a compliance report to demonstrate the production (savings) achieved that OE would use to calculate annual rebate payments over a five-year period. For example, using the 2,471,040 kWh estimate of electrical energy savings claimed in the application and the recommended incentive rate of \$0.005 per kWh, Staff calculates an annual payment of \$12,355.20. Assuming consistent kWh savings from year to year, the total of incentive payments over five years would be \$61,776.00, and the average savings over the five-year period would remain committed to OE for the life of the CHP system.
- (16) On February 4, 2015, Jay Plastics filed a statement regarding the calculation of a sample incentive payment, indicating that the Customer does not object to Staff's recommendations. On February 5, 2015, Staff filed its response to the Customer's statement.
- (17) Upon review of the application, as amended, and supporting documentation, and Staff's recommendations, the Commission finds that the requirements related to this application, as modified consistent with Staff's recommendations, have been met. The request for mercantile commitment pursuant to Ohio Adm.Code 4901:1-39-05, as modified by Staff's recommendations, does not appear to be unjust or unreasonable. Thus, a hearing on this matter is unnecessary. Accordingly, we find that Staff's recommendations should be adopted, and that this application, as modified, should be approved.
- (18) Jay Plastics should file in this docket within 10 days of the issuance of this Finding and Order, the production report

referenced above. OE should take such actions necessary to implement Staff's recommendations, and adjust its baselines, pursuant to R.C. 4928.66(A)(2)(c) and Ohio Adm.Code 4901:1-39-05. We note that, although this CHP project is approved, such approval is subject to evaluation, measurement, and verification in the portfolio status report proceeding initiated by the filing of the Utility's annual portfolio status report under Ohio Adm.Code 4901:1-39-05(C). Further, every arrangement approved by this Commission remains under our supervision and regulation, and is subject to change, alteration, or modification by the Commission.

It is, therefore,

ORDERED, That the motion of Jay Plastics for a protective order with respect to Attachments 1, 4, and 5 of the application be granted, and such information shall remain under seal in the Docketing Division for a 24-month period. It is, further,

ORDERED, That the motion to intervene filed by OE be granted. It is, further,

ORDERED, That the application, as amended and modified by Staff's recommendations, be approved. It is, further,

ORDERED, That Jay Plastics file in this docket, within 10 days of the issuance of this Finding and Order, the production report referenced in Finding (15) above. It is, further,

ORDERED, That OE take all actions necessary to implement the Customer's commitment of this CHP project, consistent with Staff's recommendations, and adjust its baselines, pursuant to R.C. 4928.66(A)(2)(c) and Ohio Adm.Code 4901:1-39-05, as discussed above. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

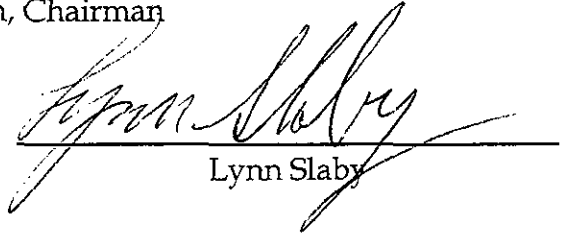
THE PUBLIC UTILITIES COMMISSION OF OHIO



Thomas W. Johnson, Chairman



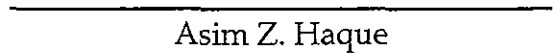
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