

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION OF
BLITZ VENTURES LLC FOR
CERTIFICATION AS A COMPETITIVE
RETAIL ELECTRIC SERVICE BROKER.**

CASE No. 17-2457-EL-AGG

**IN THE MATTER OF THE APPLICATION OF
BLITZ VENTURES LLC FOR
CERTIFICATION AS A COMPETITIVE
RETAIL NATURAL GAS BROKER.**

CASE No. 17-2499-GA-AGG

ENTRY

Entered in the Journal on January 12, 2018

{¶ 1} On December 4, 2017, in Case No. 17-2457-EL-AGG, Blitz Ventures LLC (Blitz) filed an application for certification as a competitive retail electric service (CRES) broker. On December 13, 2017, in Case No. 17-2499-GA-AGG, Blitz filed an application for certification as a competitive retail natural gas service (CRNGS) broker.

{¶ 2} Ohio Adm.Code 4901:1-24-08(A) and 4901:1-27-08(A) provide that an applicant for CRES or CRNGS certification, respectively, may file certain specified financial information under seal, which will then be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided. Additionally, under Ohio Adm.Code 4901:1-24-08(B) and 4901:1-27-08(B), an applicant for CRES or CRNGS certification, respectively, may file a motion for a protective order with respect to information not covered under paragraph (A). A properly filed motion is automatically approved on the thirty-first day after the date of filing, and the information is afforded protective treatment for a six-year period from the date of the certificate, unless the Commission or an attorney examiner rules otherwise.

{¶ 3} On December 4, 2017, in Case No. 17-2457-EL-AGG, Blitz filed a motion for protective order, seeking to protect certain portions of its application for CRES certification, specifically exhibits A-12 (principal officers, directors, and partners), B-1 (jurisdictions of operation), C-2 (U.S. Securities and Exchange Commission filings), C-5 (forecasted financial

statements), C-6 (credit rating), C-8 (bankruptcy information), and C-10 (corporate structure).

{¶ 4} On December 13, 2017, in Case No. 17-2499-GA-AGG, Blitz filed a motion for protective order, seeking to protect certain portions of its application for CRNGS certification, specifically exhibits A-14 (principal officers, directors, and partners), B-1 (jurisdictions of operation), C-2 (U.S. Securities and Exchange Commission filings), C-5 (forecasted financial statements), C-6 (credit rating), C-8 (bankruptcy information), and C-10 (corporate structure).

{¶ 5} In support of its motions, Blitz asserts that the exhibits include trade secret and proprietary information that should be protected from public disclosure. Blitz submits that the exhibits contain confidential and proprietary corporate structure and financial information, which, if disclosed, would likely result in a competitive disadvantage for Blitz at the initial stage of the Commission's certification process. Blitz further submits that it derives independent economic value from the information identified in the exhibits and that appropriate precautions are taken to guard the information from public disclosure. Blitz, therefore, requests that the information found in the exhibits be treated as confidential.

{¶ 6} 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 Title 49 of the Revised Code. 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).

{¶ 7} Similarly, under Ohio Adm.Code 4901-1-24, an attorney examiner may 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

nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

{¶ 8} 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).

{¶ 9} The attorney examiner has reviewed the information that is the subject of Blitz’s motions for protective order, 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 motions should be granted, in part, and denied, in part. Specifically, the attorney examiner finds that exhibit C-5 of Blitz’s CRES and CRNGS certification applications should be afforded protective treatment, consistent with Ohio Adm.Code 4901:1-24-08(A) and 4901:1-27-08(A), respectively.

{¶ 10} With respect to the remaining exhibits, the attorney examiner finds that Blitz has not shown that the information contained within the exhibits derives independent economic value from not being generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use, or demonstrated that the information in the exhibits is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Further, much of the information that is the subject of Blitz’s motions is publicly available on the website of its parent company, Vistra Energy Corp, or on other third-party websites such as Moody’s. Therefore, these exhibits do not qualify as a trade secret under R.C. 1333.61(D) and are not entitled to protection. In reaching

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).

this conclusion, the attorney examiner notes that, apart from indicating that the information is not generally known outside its organization, Blitz proffered no information or argument to support its trade secret claim under the factors set forth for consideration in *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997). Nor is satisfaction of these factors self-evident upon review of the information. The attorney examiner finds that Blitz has not sustained its burden to demonstrate that the exhibits constitute trade secret information. Accordingly, the Commission's docketing division should move exhibits A-12, B-1, C-2, C-6, C-8, and C-10 of Blitz's CRES certification application, as well as exhibits A-14, B-1, C-2, C-6, C-8, and C-10 of Blitz's CRNGS certification application, to the public record ten days from the issuance of this Entry.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the motions for protective order filed by Blitz on December 4, 2017, in Case No. 17-2457-EL-AGG, and on December 13, 2017, in Case No. 17-2499-GA-AGG, be granted, in part, and denied, in part. It is, further,

{¶ 13} ORDERED, That the Commission's docketing division maintain, under seal, exhibit C-5, as filed by Blitz on December 4, 2017, in Case No. 17-2457-EL-AGG. It is, further,

{¶ 14} ORDERED, That the Commission's docketing division maintain, under seal, exhibit C-5, as filed by Blitz on December 13, 2017, in Case No. 17-2499-GA-AGG. It is, further,

{¶ 15} ORDERED, That the Commission's docketing division move exhibits A-12, B-1, C-2, C-6, C-8, and C-10, as filed by Blitz on December 4, 2017, in Case No. 17-2457-EL-AGG, to the public docket ten days after the issuance of this Entry. It is, further,

{¶ 16} ORDERED, That the Commission's docketing division move exhibits A-14, B-1, C-2, C-6, C-8, and C-10, as filed by Blitz on December 13, 2017, in Case No. 17-2499-GA-AGG, to the public docket ten days after the issuance of this Entry. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Sarah J. Parrot

By: Sarah J. Parrot
Attorney Examiner

jrj/vrm

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in

Case No(s). 17-2457-EL-AGG, 17-2499-GA-AGG

Summary: Attorney Examiner Entry granting in part and denying part motions for protective order; electronically filed by Vesta R Miller on behalf of Sarah J. Parrot, Attorney Examiner, Public Utilities Commission of Ohio