

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF VADATA, INC. AND
OHIO POWER COMPANY FOR APPROVAL
OF A UNIQUE ECONOMIC DEVELOPMENT
ARRANGEMENT FOR OHIO DATA
CENTER CAMPUSES.

CASE NO. 17-1827-EL-AEC

ENTRY

Entered in the Journal on February 7, 2022

{¶ 1} On January 10, 2018, the Commission approved a joint application for an economic development arrangement between Vadata, Inc. (Vadata) and Ohio Power Company, pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-03.

{¶ 2} Previously, Vadata and the Office of the Ohio Consumers' Counsel (OCC) had filed motions for protective order to keep confidential certain information contained within the direct testimony filed by Vadata witness Charles Daitch and OCC witness Michael Haugh. The attorney examiner granted these motions for protective order on January 9, 2018, for a period of 24 months.

{¶ 3} Pursuant to a motion filed by Amazon Data Services, Inc. (ADS), formerly known as Vadata, the protective order was extended for another 24 months on January 7, 2020.

{¶ 4} On November 19, 2021, ADS filed a motion to extend the protective order to keep confidential the information contained within the testimonies for Mr. Daitch and Mr. Haugh pursuant to Ohio Adm.Code 4901-1-24(F).

{¶ 5} ADS explains that the information it continues to seek to protect involves its operation and financial data; actual and potential investment levels; electric use and pricing information; and employment figures and plans related to the development of its Ohio campuses, all of which constitutes trade secret information under Ohio law. ADS further states that it has not shared this trade secret information with the general public, and it has

taken and continues to take steps to prevent the disclosure of this information. According to ADS, it would be at a competitive disadvantage if this trade secret information becomes publicly available, and disclosure of the confidential information could result in misuse of this confidential, proprietary and trade secret information. For these reasons, ADS requests the Commission to grant its motion.

{¶ 6} No memoranda contra to ADS's motion to extend the protective order were filed.

{¶ 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 Title 49 of the Revised Code. 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. 396, 399, 732 N.E.2d 373 (2000).

{¶ 8} 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

{¶ 9} 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).

{¶ 10} The attorney examiner has reviewed the arguments presented, and the information included in the motions for protective treatment. 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 the information subject to ADS's motion to extend protective order constitute trade secrets and, therefore, their release is prohibited under state law.

{¶ 11} 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. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry (i.e., February 7, 2024). Until that date, the docketing division should continue to maintain, under seal, the information addressed in this motion.

{¶ 12} 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 ADS wishes to extend this confidential treatment, it should file an appropriate motion in respect to the protected information within 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 the parties.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the ADS's motion to extend protective order be granted and the docketing division maintain the designated information under seal in accordance with Paragraphs 11 and 12. It is, further,

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).

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Attorney Examiner

MJA/kck

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Case No(s). 17-1827-EL-AEC

Summary: Attorney Examiner Entry granting ADS's motion to extend protective order and ordering the docketing division maintain the designated information under seal in accordance with Paragraphs 11 and 12. electronically filed by Kelli C. King on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio