

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Liberty)
 Power Delaware, LLC for Certification as a) Case No. 06-1387-EL-CRS
 Competitive Retail Electric Service Provider)
 in Ohio.)

In the Matter of the Application of Liberty)
 Power Holdings, LLC for Certification as a) Case No. 06-1388-EL-CRS
 Competitive Retail Electric Service Provider)
 in Ohio.)

ENTRY

The attorney examiner finds:

- (1) On November 24, 2006, Liberty Power Delaware, LLC in Case No. 06-1387-EL-CRS (06-1387) and Liberty Power Holdings, LLC in Case No. 06-1388-EL-CRS (06-1388) (collectively referred to as "Liberty") filed applications to become competitive retail electric service providers in Ohio.
- (2) On December 13, 2006, Liberty's applications were suspended in order to allow review by the Commission and staff.
- (3) On December 15, 2006, Liberty requested protective orders under Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), for certain exhibits attached to the applications in Case Nos. 06-1387 and 06-1388 including: Exhibit C-3 (current financial statements) and Exhibit C-5 (forecasted financial statements). No memorandum contra was filed regarding the requests for protective orders.
- (4) The Commission has emphasized, in *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*, Case No. 93-487-TP-ALT, entry issued November 23, 2003, that:

[a]ll proceedings at the Commission and all documents and records in its possession are public records, except as provided in Ohio's public records law (Section 149.43, Revised Code) and as consistent with the purposes of Title 49 of the

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Revised Code. Ohio public records law is intended to be liberally construed to "ensure that governmental records be open and made available to the public...subject to only a few very limited exceptions." *State ex rel. Williams v. Cleveland* (1992), 64 Ohio St. 3d 544, 549, [other citations omitted].

- (5) In determining whether to issue a protective order in these instances, it is necessary to assess whether the materials for which such an order is sought:
 - (a) are prohibited to be released by state or federal law under Section 149.43(A)(1)(v), Revised Code;
 - (b) are maintained as confidential by the company seeking the order (see, *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, 524-525, citing *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App. 3d 131); and
 - (c) the non-disclosure of which will not be inconsistent with the purposes of Title 49, Revised Code, as required by Rule 4901-1-24(D), O.A.C.
- (6) The mere filing of materials required by the Commission does not satisfy the requirements for non-disclosure of what is otherwise a public document. An *in camera* inspection is necessary to determine whether the materials are entitled to protection from disclosure. *State ex rel. Allright Parking of Cleveland Inc. v. Cleveland* (1992), 63 Ohio St. 3d 772. During that inspection, the question is whether the materials have actual or potential independent economic value from not being generally known. See, *State ex rel. Besser v. Ohio State Univ.* (2000), 89 Ohio St. 3d 396.
- (7) Liberty has filed two exhibits in each case for which it seeks protection pursuant to Rule 4901-1-24(D), O.A.C., and the company has made an effort to preserve the confidential nature of the materials. Exhibits C-3 and C-5 contain sensitive information of competitive value regarding Liberty's financial condition that are sensitive and should be afforded protection.

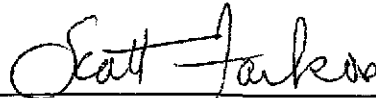
- (8) Upon review, Liberty's request for a protective order should be granted. Exhibits C-3 and C-5 in their applications filed in 06-1387 and 06-1388, should be granted protective status and be placed under seal for the 18-month period after the date of this entry. Pursuant to Rule 4901-1-24(F), O.A.C., this protective order will automatically expire 18 months after the date of its issuance. Extensions of the protective order may be requested by filing an appropriate motion at least 45 days in advance of the expiration date of the existing order.

It is, therefore,


ORDERED, That the request of Liberty for a protective order is granted. Exhibits C-3 and C-5 in Case Nos. 06-1387-EL-CRS and 06-1388-EL-CRS are granted protected status and will be placed under seal for the 18-month period from the date of this entry. It is, further,

ORDERED, That a copy of this entry be served upon Liberty and its counsel and all other interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Scott Farkas
Attorney Examiner

/cf 

Entered in the Journal

JAN 13 2001



Renee J. Jenkins
Secretary