BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Application of Metromedia Energy, Inc., for Certification as a Competitive Retail Natural Gas Supplier. | ) ) ) ) | Case No. 02-1926-GA-CRS |

ENTRY

The attorney examiner finds:

(1) On July 29, 2002, Metromedia Energy, Inc., (ME) filed an application for certification as a competitive retail natural gas supplier. On August 20, 2004, ME filed an application for renewal of its certificate and, on August 25, 2004, filed a motion for a protective order covering exhibits B-3 and C-3. On September 16, 2004, that motion was granted, in part, for a period of 18 months from the date of the entry. Inasmuch as no motion for extension was ever filed, that protective order expired on March 16, 2006.

(2) On September 19, 2006, ME filed an application for renewal of its certificate, together with a motion for a protective order covering exhibits B-3, C-3, and C-4. On October 5, 2006, that motion was granted for a period of 18 months. Inasmuch as no motion for extension was ever filed, that protective order expired on April 5, 2008.

(3) On September 19, 2008, ME filed an application for renewal of its certificate, together with the motion under consideration here, asking for a protective order covering exhibits B-3, C-3, and C-4.

(4) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, 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 (2000).

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(5) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), 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."

(6) 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." Section 1333.61(D), Revised Code. The Ohio Supreme Court has adopted the following six factors to be used in analyzing a claim that information is a trade secret under that section:

(a) The extent to which the information is known outside the business.

(b) The extent to which it is known to those inside the business, i.e., by the employees.

(c) The precautions taken by the holder of the trade secret to guard the secrecy of the information.

(d) The savings effected and the value to the holder in having the information as against competitors.

(e) The amount of effort or money expended in obtaining and developing the information.

(f) The amount of time and expense it would take for others to acquire and duplicate the information.

*State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 (1997).

(7) The Ohio Supreme Court has found that an *in camera* inspection is necessary to determine whether materials are entitled to

protection from disclosure. *State ex rel. Allright Parking of Cleveland Inc. v. Cleveland*, 63 Ohio St.3d 772 (1992).

(8) Rule 4901-1-24(D)(1), O.A.C., also provides that, where confidential material can be reasonably redacted from a document without rendering the remaining document incomprehensible or of little meaning, redaction should be ordered rather than wholesale removal of the document from public scrutiny.

(9) Therefore, in order to determine whether to grant or to extend a protective order, it is necessary to review the materials in question; to assess whether the information constitutes a trade secret under Ohio law; to decide whether non-disclosure of the materials will be consistent with the purposes of Title 49, Revised Code; and to evaluate whether the confidential material can reasonably be redacted.

(10) The information redacted from exhibits covered by ME's 2008 motion consists of customer counts, pro forma volumes, financial statements, and discretionary credit and security agreements. ME submits that this information is highly sensitive data that is not publicly released by it. It contends that, if released, this information would provide a competitive advantage to other marketers, as ME's competitors and suppliers would be able to use it for pricing and product strategies. It also suggests that potential competitors would be able to use this information as a basis for entry into the market. ME confirms that his information is not readily ascertainable by other persons and would have substantial economic value if generally known to other gas marketers. The attorney examiner has reviewed the information sought to be maintained as confidential, as well as the assertions set forth in its motion. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy, as well as the six-factor test set forth by the Ohio Supreme Court, the attorney examiner finds that the exhibits at issue contain trade secret information. Their release is therefore prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner

concludes that these exhibits are reasonably redacted to remove the confidential information contained therein.

(11) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders under Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification renewal applications to expire after 24 months.

(12) The examiner finds that ME's 2008 motion should be granted for a period of 24 months from the date of this entry. Therefore, until that date, the docketing division of the Commission should maintain exhibits B-3, C-3, and C-4 of ME's 2008 certification renewal application under seal.

(13) Rule 4901-1-24(F), O.A.C., 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 ME 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 is filed, the Commission may release this information to the public upon expiration of the protective order, without prior notification to ME.

It is, therefore,

ORDERED, That the motion by Metromedia Energy, Inc., for protective treatment of exhibits B-3, C-3, and C-4, filed on September 19, 2008, be granted for a period of 24 months from the date of this entry. It is, further,

ORDERED, That the Commission's docketing division shall maintain, under seal, exhibits B-3, C-3, and C-4 of ME's 2008 certification renewal application, as filed on September 19, 2008, for a period of 24 months from the date of this entry. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: Jeanne W. Kingery
Attorney Examiner

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Entered in the Journal

Reneé J. Jenkins
Secretary