

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On September 20, 2010, Metromedia Energy, Inc. (ME or company) filed an application for renewal of its certification as a competitive retail natural gas supplier. On September 23, 2010, ME filed a motion for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits B-3, C-3, C-4, and C-5 of its application be kept under seal. These exhibits include the following exhibits filed on September 23, 2010: exhibit B-3, customer counts and pro forma volumes for 2009; exhibit C-3, financial statements for 2009 and 2008; exhibit C-4, the latest amendment to ME's natural gas supply agreement; and exhibit C-5, forecasted financial statements for 2010. In addition, ME requests an extension of the protective order granted to exhibit C-4, the continuing discretionary credit and security agreements, filed on September 19, 2008, which were granted protection by the attorney examiner's entry issued in this docket on October 27, 2008.
- (2) In support of its motion for a protective order, ME explains that exhibits B-3, C-3, C-4, and C-5 contain competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. ME submits that this information is highly sensitive data that it does not publicly release. ME 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. ME suggests that potential competitors would be able to use this information as a basis for entry into the market and that disclosure would adversely affect the company's finances and, therefore, its ability to compete effectively. ME also confirms that the discretionary credit and security agreements filed in Exhibit C-

4 are still in place and have not been changed or amended. Therefore, ME requests that the information found in exhibits B-3, C-3, C-4, and C-5 filed on September 23, 2010, as well as the information found in exhibit C-4 filed on September 19, 2008, be treated as confidential.

- (3) 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* (2000), 89 Ohio St.3d 396, 399.
- (4) Similarly, Rule 4901-1-24, 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.
- (5) 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.
- (6) The attorney examiner has examined the information covered by the motion for protective order filed by ME, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio

Supreme Court,¹ the attorney examiner finds that the information contained in exhibits B-3, C-3, C-4, and C-5 of ME's application constitutes trade secret information. Release of these documents 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 documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that ME's motion for a protective order is reasonable with regard to exhibits B-3, C-3, C-4, and C-5 filed on September 23, 2010, as well as the information found in exhibit C-4 filed on September 19, 2008, and, therefore, the motion should be granted.

- (7) 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. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketers' certification applications with the expiration of their certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment shall be afforded to exhibits B-3, C-3, C-4, and C-5 for a period ending 24 months from the effective date of the certificate issued to ME, or until October 21, 2012. Until that date, the docketing division should maintain, under seal, exhibits B-3, C-3, C-4, and C-5 filed under seal in this docket on September 23, 2010, as well as the information found in exhibit C-4 filed under seal in this docket on September 19, 2008.
- (8) 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 to extend confidential treatment is filed, the Commission may release this information without prior notice to ME.

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, (1997) 80 Ohio St.3d 513, 524-525.

- (9) As a final matter, the attorney examiner notes that the October 27, 2008, and July 23, 2009, entries issued in this docket acknowledged that the protective orders granted to ME by entries issued September 16, 2004, and October 5, 2006, had expired. Therefore, the attorney examiner directs the Commission's docketing division to release exhibits B-3 and C-3 filed under seal in this docket on August 20, 2004, and exhibits B-3, C-3, and C-4 filed under seal in this docket on September 19, 2006, into the public record.
- (10) Likewise, the attorney examiner recognizes that ME did not request an extension of the protective order granted by entry issued October 27, 2008, for exhibits B-3 and C-3 which were filed under seal in this docket on September 19, 2008. Therefore, the attorney examiner directs the Commission's docketing division to release these exhibits into the public record.

It is, therefore,

ORDERED, That the motion for protective order filed by ME be granted with regard to the information contained in exhibits B-3, C-3, C-4, and C-5 filed under seal in this docket on September 23, 2010, as well as the information found in exhibit C-4 filed under seal in this docket on September 19, 2008. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits B-3, C-3, C-4, and C-5 filed under seal in this docket on September 23, 2010, as well as the information found in exhibit C-4 filed under seal in this docket on September 19, 2008 for a period of 24 months, ending on October 21, 2012. It is, further,

ORDERED, That the Commission's docketing division release into the public record exhibits B-3 and C-3 filed under seal in this docket on August 20, 2004, and August 26, 2004; exhibits B-3, C-3, and C-4 filed under seal in this docket on September 19, 2006; and exhibits B-3 and C-3 which were filed under seal in this docket on September 19, 2008. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Kerry K. Sheets
By: Kerry K. Sheets
Attorney Examiner

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Entered in the Journal

NOV 17 2010

Reneé J. Jenkins

Reneé J. Jenkins
Secretary