

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Sustainable Energy Works, LLC for) Case No. 10-1211-EL-AGG
Certification as a Competitive Retail)
Electric Service Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On August 20, 2010, Sustainable Energy Works, LLC (SEW) filed an application for certification as a competitive retail electric service (CRES) broker/aggregator. On August 30, 2010, SEW also filed a motion for a protective order, requesting that exhibits C-3 and C-5 and the income statements included in its application be kept under seal. Exhibits C-3 and C-5 contain current and forecasted financial statements, while the income statements contain projected revenues and expenses. No memorandum contra was filed regarding the motion for protective order.
- (2) In support of its motion for protective order, SEW states that the information contained in exhibits C-3 and C-5 and the income statements consists of extremely sensitive financial information which would be extremely detrimental to SEW if disclosed to the general public and its competitors.
- (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, 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."

- (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 reviewed the information included in SEW's motion for protective order, 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 C-3 and C-5 and the income statements included in SEW's application contains trade secret information. Its 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 documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that SEW's motion for protective order is reasonable with regard to exhibits C-3 and C-5 and the income statements, and should be granted.
- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to applications for certification as a CRES provider 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 CRES provider's 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

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

C-3 and C-5 and the income statements for a period ending 24 months from the effective date of the certificate issued to SEW, or until September 20, 2012. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5 and the income statements, which were filed under seal in this docket on August 20, 2010.

- (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 SEW 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 SEW.


It is, therefore,

ORDERED, That the motion for protective order filed by SEW be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, exhibits C-3 and C-5 and the income statements, which were filed under seal in this docket on August 20, 2010, for a period of 24 months, ending on September 20, 2012. It is, further,

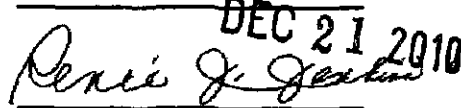
ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Henry H. Phillips-Gary
Attorney Examiner

jet/sc

Entered in the Journal


DEC 21 2010

Renee J. Jenkins
Secretary