

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Calisolar, Inc. for Approval of a Unique ) Case No. 11-2336-EL-AEC  
Arrangement for Calisolar Inc.'s Ontario, )  
Ohio Facility. )

ENTRY

The attorney examiner finds:

- (1) Pursuant to Section 4905.31, Revised Code, and Rule 4901:1-38-05(B), Ohio Administrative Code (O.A.C.), a mercantile customer of an electric utility may apply to the Commission for a unique arrangement with the electric utility.
- (2) On April 8, 2011, Calisolar, Inc., (Calisolar) filed an application for approval of a unique arrangement for electric service with the Ohio Edison Company (Ohio Edison) to facilitate Calisolar's efforts to convert the former General Motors stamping plant located in Ontario, Ohio, into a solar manufacturing complex.
- (3) On April 8, 2011, Calisolar filed a motion for a protective order regarding its application. Specifically, Calisolar requests that information regarding its energy usage, electricity pricing, and electric generation purchasing strategy be maintained under protective order. In support of its motion, Calisolar explains that it treats this information as confidential in the general course of business and has taken precautions in order to guard its secrecy. Calisolar maintains that, if the information were to be disclosed, it would hinder Calisolar's Ohio manufacturing facility's ability to compete nationally and internationally.
- (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* (2000), 89 Ohio St.3d 396, 399.

- (5) Similarly, Rule 4901-1-24, O.A.C., allows the 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.
- (7) The attorney examiner has examined the information covered by the motion for protective order filed by Calisolar, 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,<sup>1</sup> the attorney examiner finds that the information contained in the application constitutes trade secret information. Release of this document 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 application has been reasonably redacted to remove the confidential information contained therein and have been docketed as such. Therefore, the attorney examiner finds that Calisolar's motion for protective order is reasonable and should be granted with regard to the confidential information contained in the application filed confidentially on April 8, 2011.
- (8) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore,

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

confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until December 3, 2012. Until that date, the docketing division should maintain, under seal, the information filed confidentially.

- (9) 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. Therefore, if Calisolar 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 docketing division may release this information without prior notice to the Calisolar.
- (10) On April 28, 2011, Ohio Edison, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (Companies) filed a motion to intervene. The attorney examiner finds that the motion to intervene is reasonable and should be granted.
- (11) On May 31, 2011, Calisolar, Ohio Edison, and Staff (collectively the Signatory Parties) filed a stipulation and recommendation, (stipulation) and a request for an expedited decision. The Signatory Parties state that the stipulation represents a just and reasonable resolution of the issues raised in this proceeding.
- (12) The attorney examiner finds that a hearing should be held in order to consider the stipulation. Accordingly, this matter should be set for a hearing on June 14, 2011, at 10:30 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-C, Columbus, Ohio 43215-3793.

It is, therefore,

ORDERED, That the motion for protective order filed by Calisolar on April 8, 2011, be granted in accordance with Finding (7). It is, further,

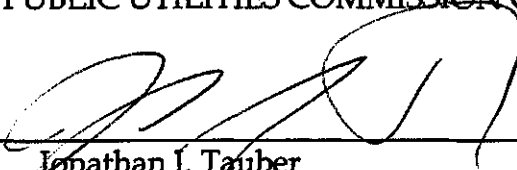
ORDERED, That the Commission's docketing division maintain, under seal, the unredacted application filed under seal in this docket on April 8, 2011, for a period of 18 months, ending on December 3, 2012. It is, further,

ORDERED, That the Companies' motion to intervene be granted. It is, further,

ORDERED, That a hearing in this case should be held as set forth in finding (12). It is, further,

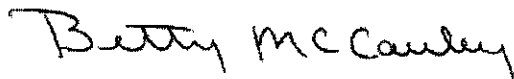
ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Jonathan J. Tauber  
Attorney Examiner

gjt /sc

Entered in the Journal  
JUN 03 2011



Betty McCauley  
Secretary