

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Affiliated Power Purchasers International, ) Case No. 01-134-EL-AGG  
LLC for Certification as a Retail Electric )  
Service Supplier. )

ENTRY

The attorney examiner finds:

- (1) On June 4, 2009, the Commission issued Certificate No. 01-062E (5) to Affiliated Power Purchasers International, LLC (APPI) to provide aggregation and power broker services within Ohio as a competitive retail electric services (CRES) provider. The expiration date for Certificate 01-062E (5) was May 31, 2011.
- (2) On May 23, 2011, APPI filed a renewal application and a motion for an extension of the expiration date of its existing CRES certificate. However, the motion was not signed by an attorney licensed to practice in Ohio.
- (3) On June 6, 2011, APPI filed a recertification application and a motion to extend the effective date of its existing CRES certificate. In its memorandum in support, APPI states that, as a result of an administrative error, it failed to file its renewal application until May 23, 2011. APPI pledged that all filings going forward will be timely and properly made in compliance with the governing rules. APPI also states that its application does not contain any material changes in its business practices.
- (4) The attorney examiner believes that an extension of the expiration date of Certificate No. 01-062E (5) to June 30, 2011, is warranted so that APPI's customers will not be adversely affected while its renewal application is under consideration. By granting APPI's motion, the attorney examiner intends that there will be no adverse effect while the company's application is under consideration. APPI is cautioned that filing an application for renewal on a timely basis is critical. It should not be assumed that another extension will be granted.

The next renewal application must be made in compliance with Rule 4901:1-24-09, Ohio Administrative Code (O.A.C.). Failure to do so could lead to certificate suspension or recession or to the assessment of civil forfeitures by the Commission.

- (5) On June 6, 2011, APPI filed a motion for a protective order regarding its renewal application for certification as a CRES power broker and aggregator. In support of its motion, APPI explains that the redacted information includes forecasted financial statements, which APPI asserts is entirely private and has never appeared in the public record. APPI maintains that, if the information were to be disclosed, it would harm APPI by giving an undue advantage to APPI's aggregator and power broker competitors.
- (6) 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.
- (7) 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."
- (8) 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.

- (9) The attorney examiner has examined the information covered by the motion for protective order filed by APPI, 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 APPI's motion for protective order is reasonable and should be granted with regard to the confidential information contained in the application filed confidentially on June 6, 2011.
- (10) Rule 4901-1-24(D)(4), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 24 months, beginning with the date of the renewal certificate. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of the renewed certificate. Until that date, the docketing division should maintain, under seal, the information filed confidentially.
- (11) 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 APPI 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 APPI.

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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.

It is, therefore,

ORDERED, That APPI's motion for an extension of the certificate expiration date be granted. It is, further,

ORDERED, That the May 31, 2011, expiration date of Certificate No. 01-062E (5) be extended to June 30, 2011. It is, further,

ORDERED, That the motion for protective order filed by APPI on June 6, 2011, be granted in accordance with Finding (9). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted application filed under seal in this docket on June 6, 2011, in accordance with Finding (10). 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

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Entered in the Journal  
**JUN 14 2011**

Betty McCauley

Betty McCauley  
Secretary