

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company and Sterling of Ohio to) Case No. 11-2021-EL-EEC
Commit Energy Efficiency/Peak Demand)
Reduction Programs.)

ENTRY

The attorney examiner finds:

- (1) On May 9, 2011, Ohio Edison Company (OE) filed a joint application with Sterling of Ohio (Sterling) for approval of a reasonable arrangement to commit Sterling's energy efficiency and demand reduction programs in furtherance of OE's compliance with the energy efficiency and demand reduction requirements set forth in Section 4928.66, Revised Code. On May 24, 2011, OE filed, in conjunction with the joint application, a motion for protective order, requesting that certain proprietary and confidential information provided in support of the joint application be protected from public disclosure.
- (2) In support of the motion for protective order, OE explains that the proprietary and confidential documents pertain to the calculation of energy savings realized by Sterling as a result of energy efficiency projects. They also consist of confidential information concerning Sterling's energy usage and diagrams related to the equipment installed by Sterling. OE asserts that the information provided in support of the joint application is competitively sensitive customer data that should be considered trade secrets and, accordingly, may not be released pursuant to state law. OE claims that, if this information were released to the public, it would harm Sterling and its competitive position by providing its competitors confidential and proprietary information. Additionally, OE asserts that nondisclosure of the information will not impair the purposes of Title 49 of the Revised Code, as the Commission and Staff have full access to the information in order to fulfill their statutory obligations. Therefore, OE requests that the proprietary and confidential information provided in support of the joint application be treated as such.

- (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 that, 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 nondisclosure 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 OE’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 Attachments A, B, and C, which pertain to Sterling’s energy usage, equipment installation, and energy savings, respectively, constitute 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

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

49 of the Revised Code. Therefore, the attorney examiner finds that OE's motion for protective order is reasonable and should be granted with regard to Attachments A, B, and C.

- (7) Attachment D consists of a Honeywell VFD Product Catalog that is readily available on Honeywell's website. The attorney examiner finds that this information is not maintained as confidential and, therefore, is not a trade secret. Accordingly, the motion for protective order with regard to Attachment D should be denied. The Commission's docketing division should move Attachment D to the public file, no sooner than 14 days after the date of this entry, or September 29, 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, confidential treatment shall be afforded to Attachments A, B, and C for a period ending 18 months from the date of this entry, or until March 15, 2013. Until that date, the Commission's docketing division should maintain, under seal, Attachments A, B, and C.
- (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. If OE 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 OE.
- (10) On June 1, 2011, the Ohio Environmental Council (OEC) filed a motion to intervene in this case. In support of its motion, OEC states that it is a nonprofit environmental advocacy organization with the purpose of securing a healthier environment for all Ohioans. OEC asserts that it has a real and substantial interest in this proceeding and that the disposition of this case may impede its ability to protect that interest. Further, OEC notes that its participation will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of this matter. No memorandum contra was filed in opposition to OEC's motion. Accordingly, the attorney examiner finds that OEC's motion to intervene is reasonable and should be granted.

It is, therefore,

ORDERED, That OE's motion for protective order, filed on May 24, 2011, be granted, in part, and denied, in part, such that Attachments A, B, and C be granted protective status. However, the motion is denied as to Attachment D. It is, further,

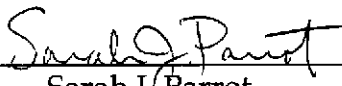
ORDERED, That, no sooner than 14 days after the date of this entry, or September 29, 2011, the Commission's docketing division shall remove Attachment D from the sealed record in this case and place it in the public file. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, Attachments A, B, and C, which were filed under seal in this docket on May 24, 2011, for a period of 18 months, ending on March 15, 2013. It is, further,

ORDERED, That the motion to intervene filed by OEC be granted. It is, further,

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

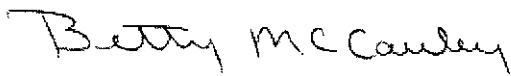
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Sarah J. Parrot
Attorney Examiner

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Entered in the Journal

SEP 15 2011


Betty McCauley

Betty McCauley
Secretary