

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Constellation NewEnergy, Inc. for)
Renewal of its Certification as a Retail) Case No. 00-1717-EL-CRS
Electric Service Provider.)

In the Matter of the Application of)
Constellation Energy Projects and Service)
Group, Inc. Now Known as Constellation)
Energy Projects and Services Group) Case No. 09-870-EL-AGG
Advisors, LLC for Renewal of its)
Certification as a Retail Electric Service)
Provider.)

ENTRY

The attorney examiner finds:

- (1) On June 16, 2011, pursuant to Rule 4901:1-24-10, Ohio Administrative Code (O.A.C.), Constellation NewEnergy Inc. (CNE) and Constellation Energy Projects and Services Group, Inc. now known as Constellation Energy Projects and Services Group Advisors, LLC (CEPS) jointly informed the Commission of material changes to their business operations. Concurrent with this notification, CNE and CEPS filed a joint motion for a protective order pursuant to Rule 4901-1-24(D), O.A.C., seeking to keep Attachment A of its June 16, 2011, (Attachment A), filing under seal inasmuch as it describes an internal corporate reorganization. Specifically, CNE and CEPS submit that the relevant internal corporate reorganization information constitutes a trade secret that should be protected.

In support of their joint motion, CNE and CEPS, citing *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), state that the Court of Appeals delineated the following factors to be considered in recognizing a trade secret:

- (i) the extent to which the information is known outside the business,
- (ii) the extent to which it is known to those inside the business, i.e., by the employees,

- (iii) the precautions taken by the holder of the trade secret to guard the secrecy of the information,
- (iv) the savings effected and the value to the holder in having the information as against competitors,
- (v) the amount of effort or money expended in obtaining and developing the information, and
- (vi) the amount of time and expense it would take for others to acquire and duplicate the information.

Applying these factors to the internal corporate reorganization contained in the exhibit sought to be protected, CNE and CEPS submit that it is clear that a protective order should be granted. Further, CNE and CEPS state that the information is generally not disclosed and that its disclosure will harm others. Finally, CNE and CEPS state that public disclosure of the internal corporate reorganization information is not likely to assist the Commission in carrying out its duties under the competitive retail electric service rules.

- (2) 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.
- (3) 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."
- (4) 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.

- (5) The attorney examiner has reviewed the information included in the joint 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 CNE and CEPS have failed to demonstrate that the information contained in Attachment A to the June 16, 2011, letter contains trade secret information. In particular, the attorney examiner notes that, rather than satisfying their burden of proof in support of their motion for a protective order, CNE and CEPS have simply made a subjective determination that “it is clear that a protective order should be granted.” Additionally, joint movants provide no support for its contention that “[i]ts disclosure could harm others.” Therefore, the motion for a protective order is denied.
- (6) Accordingly, seven days from the date of this Entry, the docketing division is directed to release Attachment A.

It is, therefore,

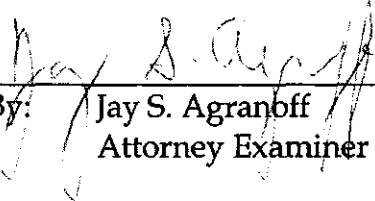
ORDERED, That the motion for protective order filed by CNE and CEPS be denied. It is, further,

ORDERED, That Attachment A be released to the public seven days from the date of this Entry. It is, further,

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

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


THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Jay S. Agranoff
Attorney Examiner

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/dah

Entered in the Journal

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Betty McCauley
Secretary