

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Cleveland Thermal Chilled Water )  
Distribution, LLC, for Approval of a ) Case No. 10-2413-CC-AEC  
Chilled Water Distribution Agreement )  
with WKYC-TC, Inc. )

ENTRY

The attorney examiner finds:

- (1) Cleveland Thermal Chilled Water Distribution, LLC (Cleveland Thermal or Company), is a public utility and a cooling company as defined in Section 4905.03(A)(8), Revised Code, and, as such, is subject to the jurisdiction of the Commission. Cleveland Thermal has been authorized by the Commission and franchised by the city of Cleveland to supply chilled water through pipes or tubing to customers within the city of Cleveland for cooling purposes.
- (2) On October 22, 2010, Cleveland Thermal filed an application requesting approval under Section 4905.31, Revised Code, of a special contractual arrangement (Agreement) that would permit Cleveland Thermal to provide chilled water distribution service to WKYC-TV, Inc. (WKYC).
- (3) In conjunction with its application, Cleveland Thermal filed a motion for protective order requesting confidentiality for the Distribution Capacity, Distribution Consumption, and Purchased Chilled Water Cost Recovery rates contained in Appendix 1 of the Agreement.
- (4) By finding and order issued November 22, 2010, the Commission granted the application of Cleveland Thermal for approval of the Chilled Water Agreement with WKYC. Additionally, the Commission granted Cleveland Thermal's motion for protective order, noting that the protective order would automatically expire after 18 months, or on May 22, 2012, pursuant to Rule 4901-1-24(F), Ohio Administrative Code (O.A.C.). Further, the Commission noted that, if Cleveland Thermal should wish to extend confidential treatment beyond the 18-month period, the Company should file an appropriate

motion at least 45 days in advance of the expiration date pursuant to Rule 4901-1-24(F), O.A.C.

- (5) On April 5, 2012, Cleveland Thermal filed a motion for extension of the protective order granted on November 22, 2010. In its motion, the Company states that the reasons for which protection was originally granted still apply. Cleveland Thermal specifies that continued confidentiality of the rates is necessary to protect the ability of the Company to fairly negotiate for rates for service to other customers. Further, Cleveland Thermal notes that this information has independent economic value and is the subject of reasonable efforts to maintain its secrecy, and that its protection is not inconsistent with the purposes of Title 49, Revised Code.
- (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*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (7) Similarly, Rule 4901-1-24, 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."
- (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 reviewed the information included in Cleveland Thermal's motion for extension of the 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,<sup>1</sup> the attorney examiner finds that the information contained in the Distribution Capacity, Distribution Consumption, and Purchased Chilled Water Cost Recovery rates contained in Appendix 1 of the Agreement 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 this document could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Cleveland Thermal's motion for extension of the November 22, 2010, protective order is reasonable with regard to the Distribution Capacity, Distribution Consumption, and Purchased Chilled Water Cost Recovery rates contained in Appendix 1 of the Agreement and should be granted.
- (10) 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 for a period ending 18 months from the date of this entry or until November 21, 2013. 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. If Cleveland Thermal 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 Cleveland Thermal.

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<sup>1</sup> See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

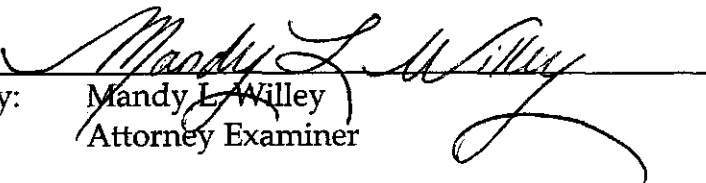
It is, therefore,


ORDERED, That the motion for extension of the protective order filed by Cleveland Thermal regarding the Distribution Capacity, Distribution Consumption, and Purchased Chilled Water Cost Recovery rates contained in Appendix 1 of the Agreement is granted. It is, further,

ORDERED, That the Distribution Capacity, Distribution Consumption, and Purchased Chilled Water Cost Recovery rates contained in Appendix 1 of the Agreement shall be maintained under seal for a period of 18 months from May 21, 2012, or until November 21, 2013. It is, further,

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

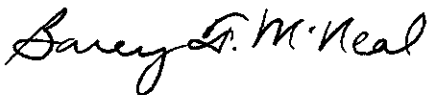
THE PUBLIC UTILITIES COMMISSION OF OHIO

By:   
Mandy L. Willey  
Attorney Examiner

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Entered in the Journal

MAY 21 2012

  
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Barcy F. McNeal  
Secretary