

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Alternative Energy)
Resources Report for Calendar Year 2010) Case No. 11-2449-EL-ACP
from Integrys Energy Services, Inc.)

ENTRY

The attorney examiner finds:

- (1) On April 15, 2011, Integrys Energy Services, Inc. (Integrys), filed its alternative energy resources report pursuant to Section 4928.64, Revised Code, and Rule 4901:1-40-05(A), Ohio Administrative Code (O.A.C.). In conjunction with its report, Integrys filed a motion for a protective order pursuant to Rule 4901-1-24(D), O.A.C., requesting that certain confidential and proprietary information contained in the report remain under seal.
- (2) In support of its motion for protective order, Integrys asserts that portions of the report contain information that, if released to the public, would harm Integrys by providing its competitors proprietary information in what is designed by statute to now be a competitive service. The information sought to be protected includes Integrys' sales for 2007, 2008, and 2009; the average annual sales of the active years; the projected amount of retail electric generation sales anticipated for calendar year 2010; the renewable energy credits (RECs) required and obtained for 2010; the ten-year forecast of solar RECs, non-solar RECs, and the total RECs; the supply portfolio projections; and the methodology used to evaluate compliance. Furthermore, Integrys asserts that public disclosure of this confidential information is not likely to assist the Commission in carrying out its duties.
- (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 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 Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

- (4) 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.”
- (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 redacted information, as well as the assertions set forth in the supportive memorandum accompanying Integrys’ motion for protective order. 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 Integrys’ projected amount of retail electric generation sales anticipated for calendar year 2010; the RECs required and obtained for 2010; and the ten-year forecast of solar RECs, non-solar RECs, and the total RECs is 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. The attorney examiner notes that Integrys has redacted the report in order to allow for a public filing.

¹ 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).

- (7) The attorney examiner, therefore, finds that there is good cause to grant Integrys' motion for a protective order as to the projected amount of retail electric generation sales anticipated for calendar year 2010; the RECs required and obtained for 2010; and the ten-year forecast of solar RECs, non-solar RECs, and the total RECs. The unredacted portions of the report set forth in finding (6) as filed on April 15, 2011, should receive protected status for an 18-month period from the date of this entry, and should remain under seal in the Docketing Division for that time period.
- (8) The attorney examiner notes that Integrys has also sought to protect its sales for 2007, 2008, and 2009, the average annual sales of the active years, its supply portfolio projections, and methodology used to evaluate compliance. Integrys has provided no specific explanation as to why its sales in prior years contain sensitive information, and none is apparent. Additionally, Integrys filed with the Commission annual reports for 2008² and 2009³ containing its retail sales for those years. Consequently, the attorney examiner finds that this information does not hold independent economic value and is not 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 Supreme Court of Ohio. Furthermore, the supply portfolio projections and methodology used to evaluate compliance consist of two brief descriptions in the report. Integrys has not redacted this information from the report. In these sections of the report, Integrys has provided no information that requires protection from disclosure.
- (9) In conclusion, the information consisting of Integrys' sales for 2007, 2008, and 2009 contained on page 1 in section 2.a, the average annual sales of the active years on page 1 in section 2.b, the supply portfolio projection on page 3 in section 5.b, and the methodology used to evaluate compliance on page 4 in section 5.c, has not been shown to contain trade secrets and

² *In the Matter of the Filing of Annual Reports for Calendar Year 2008 by Regulated Public Utilities Railroads and Service Providers*, Case No. 09-0001-AU-UNC (April 27, 2009).

³ *In the Matter of the Filing of Annual Reports for Calendar Year 2009 by Certified Competitive Retail Electric Service Providers, Natural Gas Suppliers, and Governmental Aggregators*, Case No. 10-0003-GE-RPT (April 29, 2010).

the attorney examiner finds that Integrys' motion for protective order with respect to this information should be denied. The Commission's Docketing Division should move these portions of Integrys' report, as filed under seal on April 15, 2011, to the public file, no sooner than 14 days after the date of this entry.

- (10) 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 Integrys 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 Integrys.

It is, therefore,

ORDERED, That Integrys' motion for a protective order is granted in part and denied in part as set forth in findings (7) and (9). It is, further,

ORDERED, That the redacted portions of the report as set forth in finding (7) remain under seal in the Commission's Docketing Division for an 18-month period. It is, further,

ORDERED, That, no sooner than 14 days after the date of this entry, the Commission's Docketing Division shall remove the portions of Integrys' report set forth in finding (9) from the sealed record in this case and place them in the public file. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Mandy Willey

By: Mandy L. Willey
Attorney Examiner

JRJ/sc

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in

Case No(s). 11-2449-EL-ACP

Summary: Attorney Examiner Entry granting in part and denying in part a motion for protective order filed by Integrys Energy Services, Inc. - electronically filed by Sandra Coffey on behalf of Mandy Willey, Attorney Examiner, Public Utilities Commission of Ohio