

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of PJM)
Wholesale Brokers, LLC for Certification as) Case No. 13-403-EL-AGG
a Competitive Retail Electric)
Broker/Aggregator.)

In the Matter of the Application of PJM)
Wholesale Brokers, LLC for Certification as) Case No. 13-405-GA-AGG
a Competitive Retail Natural Gas)
Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On February 11, 2013, PJM Wholesale Brokers, LLC (PJM or company) filed applications for certification as competitive retail electric and natural gas brokers/aggregators (Case Nos. 13-403-EL-AGG (13-403) and 13-405-GA-AGG (13-405), respectively). On that same day, PJM filed motions for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits C-3 (financial statements) and C-5 (forecasted financial statements) of its applications, which were filed under seal in 13-403 and 13-405 on February 11, 2013, be kept under seal.
- (2) In support of its motions for a protective order, PJM explains that exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, PJM requests that the information found in exhibits C-3 and C-5 be treated as confidential.
- (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*, 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: (a) 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. (b) 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 examined the information covered by the motions for a protective order filed by PJM, as well as the assertions set forth in the supportive memoranda. 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 the information contained in exhibits C-3 and C-5 of PJM’s applications constitutes trade secret information. Release of these documents 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. Accordingly, the attorney examiner finds that PJM’s motions for a protective order are reasonable with regard to exhibits C-3 and C-5, which were filed under seal in 13-403 and 13-405 on February 11, 2013; therefore, the motions should be granted.

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) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to electric and gas marketers' certification renewal applications to expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketers' certification applications with the expiration of their certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment shall be afforded to exhibits C-3 and C-5 for a period ending 24 months from the effective date of the certificates issued to PJM, or until March 14, 2015, in 13-403 and 13-405. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, which were filed under seal in 13-403 and 13-405 on February 11, 2013.
- (8) 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 PJM 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 PJM.

It is, therefore,

ORDERED, That the motions for a protective order filed by PJM be granted with regard to the information contained in exhibits C-3 and C-5 of PJM's applications. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3 and C-5, which were filed under seal in 13-403 and 13-405 on February 11, 2013, for a period of 24 months, ending on March 14, 2015. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Kerry K. Sheets

By: Kerry K. Sheets
Attorney Examiner

jrj/vrm

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in

Case No(s). 13-0403-EL-AGG, 13-0405-GA-AGG

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by PJM Wholesale Brokers, LLC be granted with regard to confidential exhibits C-3 and C-5 of the company's applications for certification as competitive retail electric and natural gas brokers/aggregators. The protective order directs Docketing to keep exhibits C-3 and C-5 under seal for a period of 24 months; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio