

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Atlas)
Commodities, L.L.C. for Certification as a) Case No. 13-394-EL-AGG
Competitive Retail Electric)
Broker/Aggregator.)

In the Matter of the Application of Atlas)
Commodities, L.L.C. for Certification as a) Case No. 13-395-GA-AGG
Competitive Retail Natural Gas)
Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On February 11, 2013, Atlas Commodities, L.L.C. (Atlas or company) filed applications for certification as competitive retail electric and natural gas brokers/aggregators (Case Nos. 13-394-EL-AGG (13-394) and 13-395-GA-AGG (13-395), respectively). On that same day, Atlas 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), C-5 (forecasted financial statements), and C-7 (credit report) of its applications, which were filed under seal in 13-394 and 13-395 on February 12, 2013, be kept under seal.
- (2) In support of its motions for a protective order, Atlas explains that exhibits C-3, C-5, and C-7 contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, Atlas requests that the information found in exhibits C-3, C-5, and C-7 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 Atlas, 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 Atlas’ 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 Atlas’ 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 12, 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 Atlas, or until March 14, 2015, in 13-394 and 13-395. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, which were filed under seal in 13-394 and 13-395 on February 12, 2013.
- (8) The attorney examiner finds that Atlas' financial information filed in exhibit C-7 does not constitute trade secret information. This information, contained in a Dunn and Bradstreet credit report, is available to any subscriber of that service and, therefore, is public information. Since the information is already available to the public, it cannot qualify as trade secret information, and, thus, does not need to remain under seal. Accordingly, the attorney examiner finds that Atlas' motion for a protective order should be denied with regard to the information filed in exhibit C-7.
- (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 Atlas 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 Atlas.

It is, therefore,

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

ORDERED, That Atlas' motion for a protective order be denied with regard to the information contained in exhibits C-7 of the company's certificate applications. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the un-redacted exhibits C-3 and C-5, which were filed under seal in 13-394 and 13-395 on February 12, 2013, for a period of 24 months, ending on March 14, 2015. It is, further,

ORDERED, That, on April 5, 2013, the Commission's docketing division should release into the public record the information filed in exhibit C-7 of Atlas' certificate applications, which was filed under seal in these dockets on February 12, 2013. 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

This foregoing document was electronically filed with the Public Utilities

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3/27/2013 8:43:10 AM

in

Case No(s). 13-0394-EL-AGG, 13-0395-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. The entry also finds that Atlas' motion for a protective order should be denied with regard to the information filed in exhibit C-7 and that should Docketing release into the public record the information filed in exhibit C-7; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio