

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Reflective Energy, LLC for Certification as) Case No. 09-949-EL-AGG
a Competitive Retail Electric)
Broker/Aggregator.)

In the Matter of the Application of)
Reflective Energy, LLC for Certification as) Case No. 09-950-GA-AGG
a Competitive Retail Natural Gas)
Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On November 15, 2013, Reflective Energy Solutions, LLC (Reflective Energy or company) filed renewal applications for certification as competitive retail electric and natural gas aggregators/brokers (Case Nos. 09-949-EL-AGG (09-949) and 09-950-GA-AGG (09-950), respectively). On that same day, Reflective Energy filed motions for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that exhibits C-3 and C-5 of its applications, which were filed under seal in 09-949 and 09-950 on November 15, 2013, be kept under seal. These exhibits contain the company's financial statements (C-3) and forecasted financial statements (C-5).
- (2) In support of its motions for a protective order, Reflective Energy 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, Reflective Energy requests that the information found in exhibits C-3 and C-5 be treated as confidential.
- (3) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43 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, Ohio Adm.Code 4901-1-24 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.” R.C. 1333.61(D).
- (6) The attorney examiner has examined the information covered by the motions for a protective order filed by Reflective Energy, 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 R.C. 1333.61(D), 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 Reflective Energy’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 Reflective Energy’s motions for a protective order are reasonable with regard to exhibits C-3 and C-5, which were filed under seal in 09-949 and 09-950 on November 15, 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) Ohio Adm.Code 4901-1-24(D)(4) 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 Ohio Adm.Code 4901-1-24(D)(4) 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 Reflective Energy, or until December 6, 2015, in 09-949, and December 7, 2015, in 09-950. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, which were filed under seal in 09-949 and 09-950 on November 15, 2013.
- (8) Ohio Adm.Code 4901-1-24(F) 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 Reflective Energy 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 Reflective Energy.
- (9) As a final matter, Reflective Energy did not file a motion to extend the confidential treatment accorded to its former exhibits C-3 and C-5, which were filed under seal in these dockets on November 23, 2011, as part of Reflective Energy's 2011 certificate renewal applications. Therefore, the Commission's docketing division should release Reflective Energy's former exhibits C-3 and C-5 into the public record on February 7, 2014.

It is, therefore,

ORDERED, That the motions for a protective order filed by Reflective Energy be granted with regard to the information contained in exhibits C-3 and C-5 of Reflective Energy's 2013 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 09-949 and 09-950 on

November 15, 2013, for a period of 24 months, ending on December 6, 2015, in 09-949, and December 7, 2015, in 09-950. It is, further,

ORDERED, That the Commission's docketing division release into the public record, on February 7, 2014, exhibits C-3 and C-5, which were filed under seal in 09-949 and 09-950 on November 23, 2011, as part of Reflective Energy's 2011 certificate renewal applications. 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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in

Case No(s). 09-0949-EL-AGG, 09-0950-GA-AGG

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Reflective Energy, LLC be granted with regard to confidential exhibits C-3 and C-5 of the company's renewal application for certification as a retail electric and natural gas broker/aggregator. The entry directs Commission's docketing division to keep exhibits C-3 and C-5 under seal for a period of 24 months. The entry also directs the Commission's docketing division to release into the public record former confidential exhibits C-3 and C-5 that were filed as part of the company's renewal applications in 2011; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio