

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the )  
Alternative Energy Rider Contained in the )  
Tariffs of Ohio Edison Company, The ) Case No. 11-5201-EL-RDR  
Cleveland Electric Illuminating Company, )  
and The Toledo Edison Company. )

ENTRY

The attorney examiner finds:

- (1) On September 20, 2011, the Commission issued an Entry on Rehearing in *In re Annual Alternative Energy Status Report of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 11-2479-EL-ACP. In that Entry on Rehearing, the Commission stated that it had opened the above-captioned case for the purpose of reviewing the alternative energy rider (Rider AER) of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies). Additionally, the Commission stated that its review would include the Companies' procurement of renewable energy credits (RECs) for purposes of compliance with R.C. 4928.64.
- (2) On August 7, 2013, following a hearing, the Commission issued an Opinion and Order in this case. As part of that decision, the Commission granted motions for protective order regarding REC procurement data, including specific information related to bids by FirstEnergy Solutions Corp. (FES), quantity and price of RECs contained in bids, and whether such bids were accepted by the Companies. Additionally, the Commission upheld attorney examiner rulings made orally on November 20, 2012, and by entry issued February 14, 2013, granting motions for protective order regarding the same information, with the exception that the attorney examiner rulings were modified to allow generic disclosure of FES as a successful bidder in the competitive solicitations.

- (3) Thereafter, multiple parties filed applications for rehearing. In conjunction with applications for rehearing and memoranda contra, motions for protective order were filed on September 6, 2013, by the Environmental Law and Policy Center (ELPC), Ohio Environmental Council, and the Sierra Club (collectively, Environmental Advocates), and the Office of the Ohio Consumers' Counsel (OCC), and on September 16, 2013, by OCC, the Environmental Advocates, and FirstEnergy. The Commission issued a Second Entry on Rehearing denying the applications for rehearing on December 18, 2013.
- (4) Subsequently, the Companies, ELPC, and OCC appealed from the Commission's decision to the Supreme Court of Ohio.
- (5) On April 4, 2014, the Companies filed a motion for renewal of the Commission's protective order of the REC procurement data. FirstEnergy asserts that dissemination of this information would reveal proprietary bidding strategies, which could lead potential REC suppliers to engage in collusive behavior and harm consumers. Additionally, FirstEnergy asserts that it provided the REC procurement data to Staff and the auditors with the expectation of strict confidentiality. Consequently, FirstEnergy asserts that the Commission should renew its protective order covering the REC procurement data, which FirstEnergy states is due to expire on May 20, 2014.
- (6) On April 16, 2014, OCC filed a motion for extension of time to file a memorandum contra FirstEnergy's motion for renewal of the protective order. By Entry issued April 18, 2014, the attorney examiner granted OCC's motion for extension, finding that memoranda contra should be filed by April 28, 2014.
- (7) On April 24, 2014, a telephone status conference was held at the request of several parties, during which participating parties sought clarification of the term of the protective orders issued in this proceeding.

- (8) Thereafter, on April 25, 2014, OCC filed another motion for extension of time to file a memorandum contra FirstEnergy's motion for renewal of the protective order. In its motion, OCC noted the telephone status conference and requested an extension until May 6, 2014. By Entry issued April 28, 2014, the attorney examiner granted OCC's motion for extension, finding that memoranda contra should be filed by May 6, 2014.
- (9) The attorney examiner notes that, during the April 24, 2014 telephone status conference, several parties expressed that the August 7, 2013 Opinion and Order was ambiguous as to the time frame of motions for protective order. More specifically, parties noted that, although the Commission granted multiple pending motions for protective order, it was unclear whether the Commission was also extending the time period of the protective orders issued by the attorney examiners on November 20, 2012, and February 14, 2013. Additionally, parties noted that the protective orders granted by the Commission on August 7, 2013, are set to expire on January 19, 2015, while the protective order granted by the attorney examiner on February 14, 2013, is set to expire on February 13, 2015.
- (10) The attorney examiner acknowledges the ambiguity pointed out by the parties and finds that it is appropriate to clarify that all motions for protective order granted by the attorney examiners or the Commission in this proceeding will remain in effect until February 13, 2015, unless otherwise ordered by the Commission.
- (11) Turning to the pending motions for protective order filed on September 6, 2013, and September 16, 2013, the attorney examiner notes that 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 Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio 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).

- (12) 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.”
- (13) 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.” R.C. 1333.61(D).
- (14) The attorney examiner has reviewed the information included in the motions for protective order, as well as the assertions set forth in the supportive memorandums. 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 Supreme Court of Ohio, the attorney examiner finds that, consistent with the ruling at the November 20, 2012 prehearing conference, the February 14, 2013 Entry, and the Commission’s Opinion and Order on August 7, 2013, confidential supplier pricing and supplier-identifying information contains trade secret information. *See State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997). Its release is, therefore, prohibited under state law. The attorney examiner finds that the motions for protective order filed on September 6, 2013, and September 16, 2013, are reasonable and should be granted. Additionally, the attorney examiner finds that, for the ease of the Commission as well as the parties, the information shall be protected until February 13, 2015, to maintain the same timeline as the protective orders previously granted.

- (15) Finally, 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 any party 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 the parties.

It is, therefore,

ORDERED, That, in accordance with Finding (10), all motions for protective order granted by the attorney examiners or the Commission in this proceeding are in effect until February 13, 2015. It is, further,

ORDERED, That, as set forth in Finding (14), the pending motions for protective order filed on September 6, 2013, and September 16, 2013, are granted. 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 W. Chiles

By: Mandy Willey Chiles  
Attorney Examiner

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 11-5201-EL-RDR**

Summary: Attorney Examiner Entry granting pending motions for protective order and clarifying prior protective orders. - electronically filed by Sandra Coffey on behalf of Mandy Willey Chiles, Attorney Examiner, Public Utilities Commission of Ohio