

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Energy )  
Alliances, Inc. for Certification as a ) Case No. 14-491-EL-AGG  
Competitive Retail Electric Broker/ )  
Aggregator. )

In the Matter of the Application of Energy )  
Alliances, Inc. for Certification as a ) Case No. 14-492-GA-AGG  
Competitive Retail Natural Gas )  
Broker/Aggregator. )

ENTRY

The attorney examiner finds:

- (1) On March 31, 2014, Energy Alliances, Inc. (Energy Alliances or Company) filed applications for certifications as competitive retail electric and natural gas brokers/aggregators, Case Nos. 14-491-EL-AGG and 14-492-GA-AGG, respectively. On that same day, Energy Alliances also filed motions for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that exhibits C-3, C-5, C-6, and C-7 of its applications be kept under seal. These exhibits contain Energy Alliances' financial statements, forecasted financial statements, credit rating information, and credit report.
- (2) In support of its motions for a protective order, Energy Alliances explains that exhibits C-3, C-5, C-6, and C-7 of its applications contain sensitive financial information, and that the disclosure of this proprietary information would be extremely detrimental to Energy Alliances. Therefore, Energy Alliances requests that the information found in exhibits C-3, C-5, C-6, and C-7 of its applications should 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: (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).
- (6) The attorney examiner has examined the information set forth in the renewal applications that is covered by Energy Alliances’ motions for a protective order, 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,<sup>1</sup> the attorney examiner finds that the information contained in exhibits C-3 and C-5 of Energy Alliances’ certificate 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 R.C. Title 49. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Energy Alliances’ motions for a protective order are reasonable with

---

<sup>1</sup> 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).

regard to exhibits C-3 and C-5 of its certificate applications and should be granted.

- (7) Ohio Adm.Code 4901-1-24(D)(4) provides for protective orders relating to retail electric and gas marketers' certificate 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 retail electric and gas marketers' certificate 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 of the certificate applications for a period ending 24 months from the effective date of the certificates issued to Energy Alliances, or until May 1, 2016. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, which were filed under seal on April 1, 2014.
- (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 Energy Alliances 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 Energy Alliances.
- (9) With regard to exhibits C-6 and C-7 of Energy Alliances' certification applications, the attorney examiner finds that the information filed by the Company in these exhibits does not constitute trade secret information. The information, contained in exhibits C-6 and C-7, Energy Alliances' credit rating and credit report, is available to any subscriber of the credit reporting service and, therefore, is public information. Since the information contained in these exhibits is already available to the public, it cannot qualify as trade secret information, and thus does not need to remain under seal. Therefore, the attorney examiner finds that Energy Alliances' motions for a protective order should be denied with regard to the information filed in exhibits C-6 and C-7 of its certificate applications. Accordingly, on June 27, 2014, the docketing

division should release into the open record exhibits C-6 and C-7, which were filed under seal on April 1, 2014.

It is, therefore,

ORDERED, That Energy Alliances' motions for a protective order be granted with regard to the information contained in exhibits C-3 and C-5 of the Company's certificate 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 this docket on April 1, 2014, for a period of 24 months, ending on May 1, 2016. It is, further,

ORDERED, That Energy Alliances' motion for a protective order be denied with regard to the information contained in exhibits C-6 and C-7 of the Company's certificate applications and, on June 27, 2014, the docketing division shall release into the open record exhibits C-6 and C-7, which were filed under seal in this docket on April 1, 2014. 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**

**Commission of Ohio Docketing Information System on**

**6/11/2014 4:02:29 PM**

**in**

**Case No(s). 14-0491-EL-AGG, 14-0492-GA-AGG**

Summary: Attorney Examiner Entry ordering that Energy Alliances' motions for a protective order be granted with regard to the information contained in exhibits C-3 and C-5 of the Company's certificate applications. Further, Energy Alliances' motion for a protective order are denied with regard to the information contained in exhibits C-6 and C-7 of the Company's certificate applications and, on June 27, 2014, the docketing division shall release into the open record exhibits C-6 and C-7, which were filed under seal in this docket on April 1, 2014; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio