

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of MP2 )  
Energy NE, LLC for Certification as a ) Case No. 13-2211-EL-CRS  
Competitive Retail Power Marketer. )

In the Matter of the Application of MP2 )  
Energy NE, LLC for Certification as a ) Case No. 14-802-GA-CRS  
Competitive Retail Natural Gas Marketer. )

ENTRY

The attorney examiner finds:

- (1) On November 14, 2013, and April 29, 2014, MP2 Energy NE, LLC (MP2 Energy or Applicant) filed applications for certification as a competitive retail power marketer (Case No. 13-2211-EL-CRS [13-2211]) and retail natural gas marketer (Case No. 14-802-GA-CRS [14-802]), respectively. On those same days, as supplemented on May 28, 2014, MP2 Energy filed motions for protective orders, pursuant to Ohio Adm.Code 4901-1-24(D) requesting that exhibits C-4 (financial arrangements) and C-5 (forecasted financial statements) of its 13-2211 application, and exhibits C-3 (financial statements), C-4, and C-5 of its 14-802 application, which were filed under seal in 13-2211 on November 14 and December 9, 2013, and in 14-802 on April 29 and May 28, 2014, be kept under seal.
- (2) In support of its motions for protective orders, MP2 Energy explains that exhibits C-4 and C-5 contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, MP2 Energy requests that the information found in exhibits C-4 and C-5 be treated as confidential.
- (3) With regard to exhibit C-3 in 14-802, MP2 Energy states that, upon a review of the information initially supplied in exhibit C-3, it was discovered that the Applicant's 2011 and 2012 financial statements were inadvertently filed in the public docket. MP2 Energy states that exhibit C-3 also contains trade secret information. MP2 Energy maintains that, if released to the public, the information contained in exhibit C-3 would harm MP2 Energy, as it would provide its competitors with sensitive,

proprietary information which is not generally known or available to the public.

- (4) 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).
- (5) 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.”
- (6) 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).
- (7) The attorney examiner has examined the information covered by the motions for protective orders filed by MP2 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,<sup>1</sup> the attorney examiner finds that the information contained in

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<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).

exhibits C-4 and C-5 of MP2 Energy's 13-2211 application and exhibits C-3, C-4, and C-5 of its 14-802 application 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. Accordingly, the attorney examiner finds that MP2 Energy's motions for protective orders are reasonable with regard to exhibits C-4 and C-5, which were filed under seal in 13-2211 on November 14 and December 9, 2013, and exhibits C-3, C-4, and C-5, which were filed under seal in 14-802 on April 29 and May 28, 2014; therefore, the motions should be granted. The attorney examiner notes that, prior to issuance of this Entry, the information contained in exhibit C-3 of MP2 Energy's application in 14-802 was removed from the public record.

- (8) 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 electric and gas marketers' certification applications with the expiration of their certifications 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-4 and C-5 in 13-2211 and exhibits C-3, C-4, and C-5 in 14-802 for a period ending 24 months from the effective date of the certificates issued to MP2 Energy, or until December 15, 2015, in 13-2211 and May 30, 2016, in 14-802. Until those dates, the docketing division should maintain, under seal, exhibits C-4 and C-5, which were filed under seal in 13-2211 on November 14 and December 9, 2013, and exhibits C-3, C-4, and C-5, which were filed under seal in 14-802 on April 29 and May 28, 2014.
- (9) 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 MP2 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 MP2 Energy.

It is, therefore,

ORDERED, That the motions for protective orders filed by MP2 Energy be granted with regard to the information contained in C-4 and C-5 of MP2 Energy's application in 13-2211 and exhibits C-3, C-4, and C-5 of MP2 Energy's application in 14-802. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-4 and C-5, which were filed in 13-2211 on November 14 and December 9, 2013, and exhibits C-3, C-4, and C-5, which were filed in 14-802 on April 29 and May 28, 2014, for a period of 24 months, ending on December 15, 2015, in 13-2211 and May 30, 2016, in 14-802. 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

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By: Kerry K. Sheets  
Attorney Examiner

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

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 13-2211-EL-CRS, 14-0802-GA-CRS**

Summary: Attorney Examiner Entry directing that the motions for a protective order filed by MP2 Energy be granted with regard to the information contained in exhibits C-4 and C-5 of MP2 Energy's application in 13-2211 and exhibits C-3, C-4, and C-5 of MP2 Energy's application in 14-802. Further, the Commission's docketing division is directed to maintain, under seal, the unredacted exhibits C-4 and C-5, which were filed in 13-2211 on November 14 and December 9, 2013, and exhibits C-3, C-4, and C-5, which were filed in 14-802 on April 29 and May 28, 2014, for a period of 24 months, ending on December 15, 2015, in 13-2211 and May 30, 2016, in 14-802; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio