

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF VADATA, INC. AND
OHIO POWER COMPANY FOR APPROVAL
OF A UNIQUE ECONOMIC DEVELOPMENT
ARRANGEMENT FOR OHIO DATA CENTER
CAMPUSES.

CASE NO. 17-1827-EL-AEC

ENTRY

Entered in the Journal on January 7, 2020

{¶ 1} On January 10, 2018, the Commission approved a joint application for an economic development arrangement between Vadata, Inc. (Vadata) and Ohio Power Company, pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-03.

{¶ 2} Previously, Vadata and the Office of the Ohio Consumers' Counsel (OCC) had filed motions for protective order to keep confidential certain information contained within the direct testimony filed by Vadata witness Charles Daitch and OCC witness Michael Haugh. The attorney examiner granted these motions for protective order on January 9, 2018 for a period of 24 months.

{¶ 3} On November 22, 2019, Amazon Data Services, Inc. (ADS), formerly known as Vadata, filed a motion to extend the protective order to keep confidential the information contained within the testimonies for witnesses Daitch and Haugh pursuant to Ohio Adm.Code 4901-1-24(F).

{¶ 4} ADS explains that the information it continues to seek to protect involves its operation and financial data; actual and potential investment levels; electric use and pricing information; and employment figures and plans related to the development of its Ohio campuses, all of which constitutes trade secret information under Ohio law. ADS further states that it has not shared this trade secret information with the general public and it has taken and continues to take steps to prevent the disclosure of this information. According to ADS, it would be at a competitive disadvantage against its competitors and in the marketplace worldwide if this trade secret information becomes publicly available and

disclosure of the confidential information could result in misuse of this confidential, proprietary and trade secret information. For these reasons, ADS requests the Commission to grant its motion.

{¶ 5} No memoranda contra to ADS's motion to extend the protective order was filed.

{¶ 6} 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 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. 396, 399, 732 N.E.2d 373 (2000).

{¶ 7} Similarly, Ohio Adm.Code 4901-1-24 allows the Commission 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

{¶ 8} 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).

{¶ 9} The attorney examiner has reviewed the arguments presented, and the information included in the motions for protective treatment. 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 the information subject to ADS's motion to extend protective order constitute trade secrets and, therefore, their release is prohibited under state law.

{¶ 10} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry (i.e., January 7, 2022). Until that date, the docketing division should continue to maintain, under seal, the information addressed in this motion.

{¶ 11} 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 ADS wishes to extend this confidential treatment, it should file an appropriate motion in respect to the protected information within 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.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the ADS's motion to extend protective order be granted and the docketing division maintain the designated information under seal in accordance with Paragraphs 10 and 11. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Anna Sanyal

By: Anna Sanyal
Attorney Examiner

JRJ/mef

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).

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1/7/2020 12:08:44 PM

in

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Summary: Attorney Examiner Entry granting the motion for an extension of the protective order electronically filed by Ms. Mary E Fischer on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission