

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
OF EARTHGRID PBC CORPORATION
TO PROVIDE COMPETITIVE
TELECOMMUNICATIONS.

CASE No. 22-925-TP-ACE

ENTRY

Entered in the Journal on January 10, 2024

{¶ 1} EarthGrid PBC Corporation (EarthGrid) is a public utility as defined by R.C. 4905.02.

{¶ 2} On October 25, 2022, EarthGrid filed a motion seeking protective treatment of the information contained in Confidential Exhibit 9 of its application for certification to provide competitive telecommunications services throughout the state of Ohio. In support of its motion, EarthGrid submits that the specified information consists of financial statements that contain competitively sensitive and highly proprietary business financial information that are trade secrets and require confidential information. EarthGrid explains that it is not a publicly traded company, and its financial information is not publicly available. According to EarthGrid, the information in question has not been disclosed to anyone unless required as part of a legal proceeding.

{¶ 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 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 Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

{¶ 4} 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.”

{¶ 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 reviewed the arguments presented and the financial information included in the motion 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 that the subject operational and financial information constitutes trade secret information. Its release 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. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner determines that the motion for protective treatment should be granted due to the proprietary nature of the relevant information.

{¶ 7} 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

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).

months from the date of this Entry (i.e., until January 10, 2026). Until that date, the Docketing Division should maintain, under seal, the information addressed in the motion.

{¶ 8} Consistent with Ohio Adm.Code 4901-1-24(F), a party wishing to extend a protective order must file an appropriate motion at least 45 days in advance of the expiration of the existing order. Although EarthGrid may, pursuant to Ohio Adm.Code 4901-1-24, seek an extension of a protective order, it must demonstrate the need for the specific time frame requested. Therefore, it is directed to perform an evaluation 45 days in advance of the expiration of the existing order to determine whether the protected information continues to require protective treatment.

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That the motion for protective treatment be granted and the Docketing Division maintain the designated information under seal in accordance with Paragraphs 6 and 7. It is, further,

{¶ 11} ORDERED, That EarthGrid perform an evaluation of the protected information in accordance with Paragraph 8. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Jay S. Agranoff

By: Jay S. Agranoff
Attorney Examiner

PAS/dr

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in

Case No(s). 22-0925-TP-ACE

Summary: Attorney Examiner Entry granting the motion for protective treatment and directing the Docketing Division to maintain the designated information under seal in accordance with Paragraphs 6 and 7 and directing EarthGrid to perform an evaluation of the protected information in accordance with Paragraph 8 electronically filed by Debbie S. Ryan on behalf of Jay S. Agranoff, Attorney Examiner, Public Utilities Commission of Ohio.