

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
 Dominion Retail, Inc. for Certification as a) Case No. 02-1757-GA-CRS
 Retail Natural Gas Supplier.)
)

ENTRY

The attorney examiner finds:

- (1) On July 11, 2006, Dominion Retail, Inc. (Dominion Retail), filed a motion for a protective order under Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), with regard to its financial statements (Exhibits C-3[a] and C-3[b]) and forecasted financial statements (Exhibit C-5), as part of the renewal of its certification as a retail natural gas supplier.
- (2) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purpose of Title 49 of the Revised Code. Section 149.43, Revised Code, 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 (2000).
- (3) Similarly, Rule 4901-1-24, O.A.C., 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."
- (4) Ohio law defines a trade secret as "information . . . that satisfies both of the following: (1) It derives independent economic value, actual and potential, from not being generally known to,

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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.” Section 1333.61(D), Revised Code. The Ohio Supreme Court has adopted the following six factors to be used in analyzing a claim that information is a trade secret under that section:

- (1) [t]he extent to which the information is known outside the business;
- (2) the extent to which it is known to those inside the business, i.e., by the employees;
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;
- (4) the savings effected and the value to the holder in having the information as against competitors;
- (5) the amount of effort or money expended in obtaining and developing the information; and
- (6) the amount of time and expense it would take for others to acquire and duplicate the information.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-525 (1997).

- (5) The Ohio Supreme Court has found that an *in camera* inspection is necessary to determine whether materials are entitled to protection from disclosure. *State ex rel. Allright Parking of Cleveland Inc. v. Cleveland*, 63 Ohio St.3d 772 (1992).
- (6) Rule 4901-1-24(D)(1), O.A.C., also provides that, where confidential material can be reasonably redacted from a document without rendering the remaining document incomprehensible or of little meaning, redaction should be ordered rather than wholesale removal of the document from public scrutiny.
- (7) Thus, in order to determine whether to issue a protective order, it is necessary to review the material in question; to assess whether the information constitutes a trade secret under Ohio

law; to decide whether non-disclosure of the materials will be consistent with the purpose of Title 49, Revised Code; and to evaluate whether the confidential material can reasonably be redacted.

- (8) The attorney examiner has reviewed Exhibits C-3(a), C-3(b), and C-5 and the assertions set forth in the memorandum in support of Dominion Retail's motion. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy, as well as the six-factor test set forth by the Ohio Supreme Court, the attorney examiner finds that the information in Exhibits C-3(a), C-3(b), and C-5 are trade secrets. The release of these exhibits is, therefore, prohibited under state law. The attorney examiner also finds that non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that Exhibits C-3(a), C-3(b), and C-5 cannot be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that there is good cause to grant Dominion Retail's motion for a protective order for Exhibits C-3(a), C-3(b), and C-5.
- (9) Rule 4901-1-24(F), O.A.C., currently provides that, "[u]nless otherwise ordered, any order prohibiting public disclosure pursuant to paragraph (D) of this rule shall automatically expire eighteen months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order." By Finding and Order issued on December 6, 2006, in *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, the Commission modified Rule 4901-1-24(D)(4), O.A.C., stating that information included in gas marketers' renewal certification applications that is determined to be a trade secret shall be protected for 24 months instead of 18 months. While this new rule is not yet in effect, the attorney examiner finds it appropriate at this time to extend the 18-month period and protect the information for the 24-month period consistent with the Commission's recent order.

- (10) Accordingly, the docketing division should maintain under seal Exhibits C-3(a), C-3(b), and C-5, as filed on July 11, 2006, for a period of 24 months from the date of this entry.

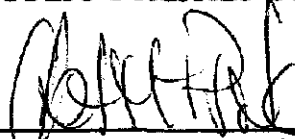
It is, therefore,

ORDERED, That Dominion Retail's motion for a protective order for Exhibits C-3(a), C-3(b), and C-5 be granted. It is, further,

ORDERED, That Exhibits C-3(a), C-3(b), and C-5 shall be maintained under seal for a period of 24 months from the date of this entry. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

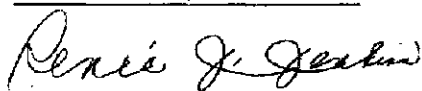


By: Christine M.T. Pirik
Attorney Examiner

RJB /hw

Entered in the Journal

JAN 08 2007



Renee J. Jenkins
Secretary