

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of
Exelon Energy Company
for Renewal Certification as a Retail
Natural Gas Supplier

Case No. 02-1912-GA-CRS

EXELON ENERGY COMPANY'S
MOTION FOR PROTECTIVE TREATMENT

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I. MOTION FOR PROTECTIVE TREATMENT

Pursuant to Ohio Administrative Code ("OAC"), Rule 4901-1-24, Exelon Energy Company ("Exelon Energy") respectfully moves the Public Utilities Commission of Ohio ("Commission") for an order protecting from disclosure the confidentiality of certain proprietary and trade secret documents filed concurrently with this motion in the above-captioned docket.

This motion for protective treatment is filed in conjunction with Exelon Energy's Renewal Certification for Retail Natural Gas Supplier ("Renewal Certification"). Protective treatment is sought for C-4: Financial Statements ("Exhibit C-4") and C-5: Forecasted Financial Statements ("Exhibit C-5") contained in the Renewal Certification. The information contained in Exhibits C-4 and C-5 is competitively sensitive and highly proprietary business and financial information, comprising trade secrets. In accordance with Rule 4901-1-24, OAC, Exhibits C-4 and C-5 have been clearly marked as confidential and are filed under seal, separate from the remainder of the materials that comprise Exelon Energy's Renewal Certification.

Because the information contained in Exhibits C-4 and C-5 constitutes trade secrets, Exelon Energy moves the Commission to issue an order of protection over Exhibits C-4 and C-5. Exelon Energy notes that the Commission has previously granted protective treatment to

similar information provided by Exelon Energy in prior renewal certifications.¹

II. DISCUSSION IN SUPPORT OF MOTION

Exelon Energy seeks protective treatment of Exhibit C-4 (C-4: Financial Statements) and Exhibit C-5 (C-5: Forecasted Financial Statements), submitted as part of Exelon Energy's Renewal Certification. Section 4905.07 of the Ohio Revised Code ("Revised Code") states that all facts and information in the possession of the Commission are public records, except as provided in Section 149.43, Revised Code, and as consistent with the overall purposes of Title 49, Revised Code. As set out in Section 149.43, Revised Code, the term "public records" excludes information which may not be released under state or federal law.

Under Ohio law, the "state or federal law" exception to the availability of public records applies to "trade secrets." *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399 (2000). A "trade secret" is defined as "information . . . including the whole or any portion [of] . . . financial 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." Section 1333.61(D), Revised Code (emphasis added). Further, the Ohio Supreme Court has set out a six-part test to determine whether information constitutes a trade secret under Section 1333.61.

- (a) The extent to which the information is known outside the business.
- (b) The extent to which it is known to those inside the business, i.e., by the employees.

¹ Exelon Energy Renewal Certification for Retail Natural Gas Supplier (July 25, 2008) (Order protecting confidential information issued September 19, 2008); Exelon Energy Renewal Certification for Retail Natural Gas Supplier (August 24, 2006) (Order protecting confidential information issued September 14, 2006).

- (c) The precautions taken by the holder of the trade secret to guard the secrecy of the information.
- (d) The savings effected and the value to the holder in having the information as against competitors.
- (e) The amount of effort or money expended in obtaining and developing the information.
- (f) The amount of time and expense it would take for other 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).

Exelon Energy acknowledges its obligation to provide the Commission with “information[] regarding a competitive retail natural gas service for which it is subject to certification, as the commission considers necessary” Section 4929.23(A), Revised Code. In receiving this information, however, the Commission “shall take such measures as it considers necessary to protect the confidentiality of any such information.” *Id.* And the Commission has historically issued protective orders in proceedings to maintain the confidentiality of competitively sensitive and proprietary information. *See, e.g.*, Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCRR (Entry, Aug. 17, 1990); Elyria Tel. Co., Case No. 89-965-TP-A-EC (Finding and Order, Sept. 21, 1989); Ohio Bell Tel. Co., Case No. 89-718 TP-ATA (Finding and Order, May 31, 1989).

The information contained in Exhibits C-4 and C-5 consists of financial statements, financial arrangements, and forecasted financial statements. This information is propriety and highly confidential. Public disclosure of this information would jeopardize Exelon Energy’s business position in negotiations with other parties and its ability to compete in the marketplace. Competitors would derive economic value from the disclosure of this information. Exelon Energy avers that this information is not generally known by the public and is held in confidence in the normal course of business, meaning that the exhibits are the “subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Section 1333.61(D),

Revised Code. Further, Exelon Energy avers that the information contained in Exhibits C-4 and C-5 is known only by employees of the business with a need to know in the course of their regular duties. For these reasons, Exelon Energy has met the two-part test of Section 1333.61(D) and the six-part test of *State ex rel. The Plain Dealer*.

Exelon Energy respectfully requests that the information contained in Exhibits C-4 and C-5 be deemed trade secrets, and therefore, protected by state law. Accordingly, Exelon Energy respectfully moves the Commission to grant an order to protect the confidentiality of Exhibits C-4 and C-5.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Craig Williams', written over a horizontal line.

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