

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Volunteer Energy Services, Inc. for) Case No. 02-1786-GA-CRS
Certification as a Competitive Retail)
Natural Gas Supplier.)

ENTRY

The attorney examiner finds:

- (1) On August 19, 2002, the Commission issued a certificate to Volunteer Energy Services, Inc. (VESI), authorizing it to operate as a competitive retail natural gas service (CRNGS) supplier for a period of two years, until August 15, 2004.
- (2) In accordance with Section 4929.29 *et. seq.*, Revised Code, VESI renewed its certification as a CRNGS in 2004, 2006, and 2008. As part of its initial application filed in 2002, and its applications to renew its certification, VESI requested and was granted protective orders pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), for certain exhibits or portions of exhibits filed in support of its applications.
- (3) On July 28, 2010, as supplemented on August 19, 2010, VESI filed its fourth application for renewal of its certification, as well as a motion for a protective order, which is under consideration in this entry, of exhibits C-3 and C-5 of VESI's 2010 renewal application. These exhibits contain company financial statements for 2008 and 2009, as well as forecasted financial statements for 2010 and 2011.
- (4) 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 purposes 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* (2000), 89 Ohio St.3d 396, 399.

- (5) 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."
- (6) 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." Section 1333.61(D), Revised Code.
- (7) The attorney examiner has reviewed the information included in VESI's motion for protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in exhibits C-3 and C-5 of VESI's 2010 renewal application contains 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 finds that VESI's motion for protective order is reasonable and should be granted.
- (8) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketer's renewal applications to expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to a gas marketer's certification application with the expiration of its certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment shall

¹ See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

be afforded to exhibits C-3 and C-5 of VESI's 2010 renewal application for a period ending 24 months from the effective date of the certificate issued to VESI, or until August 31, 2012. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5 of VESI's 2010 renewal application, which were filed under seal in this docket on July 28, 2010.

- (9) Rule 4901-1-24(F), O.A.C., 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 VESI 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 VESI.
- (10) The attorney examiner notes that the protective order covering exhibits C-1, C-3, C-4, and C-5 of VESI's initial application, filed on July 16, 2002, expired on January 14, 2004, while the protective order for exhibits C-3, C-4, and C-5 of VESI's 2004 renewal application, filed on July 21, 2004, expired on February 12, 2006. Also, the protective order for exhibits C-3, C-4, and C-5 of VESI's 2006 renewal application, filed on July 7, 2006, expired on January 8, 2009. Finally, the protective order covering exhibits C-3 and C-5 of VESI's 2008 renewal application, filed on July 30, 2008, expired on September 19, 2010. Since VESI has not moved for extension of the confidential treatment afforded to these exhibits, the attorney examiner finds that on October 29, 2010, the docketing division should release exhibits C-1, C-3, C-4, and C-5 of VESI's initial application, filed on July 16, 2002; exhibits C-3, C-4, and C-5 of VESI's 2004 renewal application, filed on July 21, 2004; exhibits C-3, C-4, and C-5 of VESI's 2006 renewal application, filed on July 7, 2006; and exhibits C-3 and C-5 of VESI's 2008 renewal application, filed on July 30, 2008.

It is, therefore,

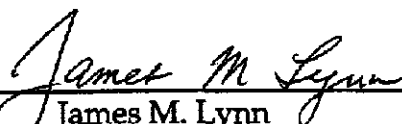
ORDERED, That the motion for a protective order filed by VESI be granted in accordance with Finding (7). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3 and C-5, which were filed under seal in this docket on July 28, 2010, for a period of 24 months, ending on August 31, 2012. It is, further,

That on October 29, 2010, the docketing division release exhibits C-1, C-3, C-4, and C-5 of VESI's initial application, filed on July 16, 2002; exhibits C-3, C-4, and C-5 of VESI's 2004 renewal application, filed on July 21, 2004, exhibits C-3, C-4, and C-5 of VESI's 2006 renewal application, filed on July 7, 2006; and exhibits C-3 and C-5 of VESI's 2008 renewal application, filed on July 30, 2008. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: James M. Lynn
Attorney Examiner

/dah ^{PD}

Entered in the Journal

OCT 13 2010


Renee J. Jenkins

Renee J. Jenkins
Secretary