

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Exelon Energy Ohio, Inc. for ) Case No. 02-1912-GA-CRS  
Certification as a Competitive Retail )  
Natural Gas Supplier. )

ENTRY

The attorney examiner finds:

- (1) On August 27, 2002, the Commission issued a certificate granting Exelon Energy Ohio, Inc. (Exelon) authority to operate as a competitive retail natural gas service (CRNGS) supplier for a period of two years.
- (2) In accordance with Section 4929.29 *et. seq.*, Revised Code, Exelon renewed its certification as a CRNGS in 2004, 2006, and 2008<sup>1</sup>. As part of its 2006 and 2008 renewal applications, Exelon 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 19, 2010, and July 20, 2010, as supplemented on September 13, 2010, and September 27, 2010, Exelon filed its fourth application for renewal of its certification. Also on July 20, 2010, as amended on on September 24, 2010, Exelon filed a motion for a protective order, which is under consideration in this entry, of exhibits C-4, Financial Arrangements, and C-5, Forecasted Financial Arrangements, of that application. In support of its motion, Exelon explains that the information in exhibits C-4 and C-5 is proprietary, highly confidential, and is not generally known to the general public, but rather is known only to Exelon employees who use such information during the course of their regular duties. Exelon adds that public disclosure of the information would jeopardize Exelon's business position in negotiations and its ability to compete in the marketplace.

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<sup>1</sup> On September 8, 2004, Exelon notified the Commission that the corporate name had been changed through an internal merger to Exelon Energy Company.

- (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 Exelon'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,<sup>2</sup> the attorney examiner finds that the information contained in exhibits C-4 and C-5 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

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<sup>2</sup> See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Exelon'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 be afforded to exhibits C-4 and C-5 for a period ending 24 months from the effective date of Exelon's certificate, or until August 26, 2012. Until that date, the docketing division should maintain, under seal, exhibits C-4 and C-5, which were filed under seal in this docket on July 20, 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 Exelon 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 Exelon.
- (10) The attorney examiner notes that the protective order covering exhibit C-5 of Exelon's 2006 renewal application, filed on July 24, 2006, and July 25, 2006, expired on March 14, 2008, while the protective order for exhibit C-5 of Exelon's 2008 renewal application, filed on July 25, 2008, expired on September 19, 2010. Since Exelon has not moved for extension of the confidential treatment afforded to these exhibits, the attorney examiner finds that, on November 26, 2010, the docketing division should release exhibit C-5 of Exelon's 2006 renewal application, filed on July 24, 2006 and July 25, 2006, and exhibit C-5 of Exelon's 2008 renewal application, filed on July 25, 2008.

It is, therefore,

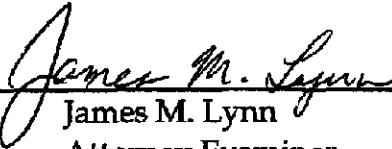
ORDERED, That the motion for a protective order filed by Exelon, be granted in accordance with Finding (7). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-4 and C-5, which were filed under seal in this docket on July 20, 2010, for a period of 24 months from the issuance of the renewal certificate, ending on August 26, 2012. It is, further,

ORDERED, That, on November 26, 2010, the docketing division release exhibit C-5 of Exelon's 2006 renewal application, filed on July 24, 2006, and July 25, 2006, and exhibit C-5 of Exelon's 2008 renewal application, filed on July 25, 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

grg/dah

Entered in the Journal

NOV 05 2010



Renee J. Jenkins  
Secretary