

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of T.E.S.       )  
Energy Services, L.P. for Certification as       )     Case No. 11-1209-GA-AGG  
a Competitive Retail Natural Gas Broker.       )

ENTRY

The attorney examiner finds:

- (1) On March 7, 2011, as amended on March 24, 2011, T.E.S. Energy Services, L.P. (T.E.S.) filed an application for certification as a competitive retail natural gas broker. On March 25, 2011, T.E.S. filed, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), a motion for protective order by which it seeks to protect the confidentiality of the information which is contained in Exhibits C-3, C-5, and C-7, which were filed under seal on March 7, 2011, March 21, 2011, and March 25, 2011. Exhibit C-3, contains T.E.S.' audited financial statements. Exhibit C-5 contains T.E.S. forecasted financial statements. Exhibit C-7 contains T.E.S. credit report.
- (2) In support of its motion for protective order, T.E.S. explains that the information sought to be protected is highly confidential, and is not generally known or available to the general public. T.E.S. contends that it falls within the scope of the definition of a trade secret under Ohio law.
- (3) 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.
- (4) 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."

- (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." Section 1333.61(D), Revised Code.
- (6) The attorney examiner has examined the information covered by the motion for protective order filed in this case by T.E.S. on March 25, 2011, as well as the assertions set forth in the memorandum in support of that motion. Applying the requirements that the information must have independent economic value and be the subject of reasonable efforts to maintain secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,<sup>1</sup> the attorney examiner finds that the information which is the subject of the motion for protective order constitutes trade secret information. Release of the information in question 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. Therefore, the attorney examiner finds that T.E.S.' motion for protective order is reasonable and should be granted with regard to Exhibits C-3, C-5, and C-7, which were filed under seal on March 7, 2011, March 21, 2011, and March 25, 2011.
- (7) Rule 4901-1-24(D), O.A.C., provides that protective orders relating to gas marketers' certification renewal applications should expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(C)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketers' certification applications with the expiration of their certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment should be afforded to Exhibits C-3, C-5, and C-7, which were filed under seal on March 7, 2011, March 21, 2011,

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<sup>1</sup> See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, 534-525.

and March 25, 2011, for a period ending 24 months from the effective date of the certificate issued to T.E.S., or until April 7, 2013. Until that date, the Commission's docketing division should maintain these exhibits under seal.

- (8) 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 T.E.S. wishes to extend the confidential treatment granted here, 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 T.E.S.

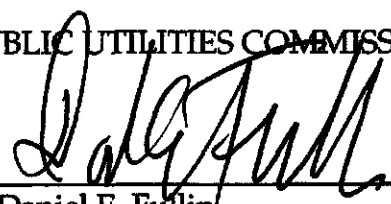
It is, therefore,

ORDERED, That the motion for protective order filed in this case by T.E.S. on March 25, 2011, be granted with regard to Exhibits C-3, C-5, and C-7, which were filed under seal on March 7, 2011, March 21, 2011, and March 25, 2011. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, for a period of 24 months, concluding on April 7, 2013, Exhibits C-3, C-5, and C-7, which were filed under seal on March 7, 2011, March 21, 2011, and March 25, 2011. It is, further,


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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Daniel E. Fullin  
Attorney Examiner

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Entered in the Journal  
APR 14 2011

  
Betty McCauley  
Secretary