

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Hess)
Corporation for Renewal of Its Certification) Case No. 04-683-GA-CRS
as a Competitive Retail Natural Gas)
Supplier.)

ENTRY

The attorney examiner finds:

- (1) On March 26, 2012, Hess Corporation (Hess) filed an application for renewal of its certification as a competitive retail natural gas supplier. On March 28, 2012, Hess filed a motion for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting, among other things, that Exhibit C-5 of its certification renewal application, filed on March 27, 2012, be kept under seal. Exhibit C-5 consists of Hess' forecasted financial statements for a two-year period. On April 25, 2012, Hess filed, under seal, in unredacted form, a supplemental response to the contents of Exhibit C-5, along with a public filing of the same, from which was redacted certain information that Hess considers proprietary. Hess is additionally seeking, pursuant to its March 28, 2012, motion for protective order, to protect the confidentiality of the information redacted from the publicly filed version of the supplemental response to its Exhibit C-5.
- (2) In support of its motion for a protective order, Hess explains that Exhibit C-5, as well as the unredacted version of the supplemental response to that exhibit, each contain competitively sensitive and highly proprietary business information, which is not generally known or available to the general public. Therefore, Hess requests that the information found in Exhibit C-5 and the unredacted version of the supplemental response to that exhibit, be treated as confidential.
- (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*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

- (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 by Hess, 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 both the information contained in Exhibit C-5 of Hess' certification renewal application, as well as the information redacted from the publicly filed version of the supplemental response to that exhibit, consists of trade secret information. Release of this information 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

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

that Exhibit C-5 could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Hess' motion for protective order is reasonable with regard to Exhibit C-5, filed on March 27, 2012, as well as the unredacted version of the supplemental response to Hess' Exhibit C-5, filed under seal on April 25, 2012, and, therefore, the motion should be granted.

- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification 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 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 shall be afforded to both Exhibit C-5, filed on March 27, 2012, as well as the unredacted version of the supplemental response to Hess' Exhibit C-5, filed under seal on April 25, 2012, for a period ending 24 months from the effective date of the certificate issued to Hess, or until July 1, 2014. Until that date, the docketing division should maintain, under seal, both Exhibit C-5, filed on March 27, 2012, as well as the unredacted version of the supplemental response to Hess' Exhibit C-5, filed under seal on April 25, 2012.
- (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 Hess 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 Hess.

It is, therefore,

ORDERED, That the motion for protective order filed by Hess be granted with regard to the information contained in both Exhibit C-5, filed on March 27, 2012, as well as the unredacted version of the supplemental response to Hess' Exhibit C-5, filed under seal on April 25, 2012. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, both Exhibit C-5, filed on March 27, 2012, as well as the unredacted version of the supplemental response to Hess' Exhibit C-5, filed under seal on April 25, 2012, for a period of 24 months, ending on July 1, 2014. It is, further,

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

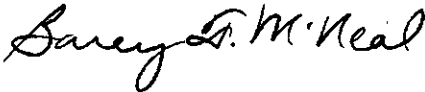
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Daniel E. Fullin
Attorney Examiner

GRJ
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MAY 24 2012



Barcy F. McNeal
Secretary