

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Dominion Retail, Inc. for Certification as a) Case No. 02-1757-GA-CRS
Competitive Retail Natural Gas Supplier.)

ENTRY

The attorney examiner finds:

- (1) On May 29, 2012, Dominion Retail, Inc. (Dominion Retail) filed an application for renewal of its certification as a competitive retail natural gas supplier. Thereafter, on August 6, 2012, Dominion Retail filed a motion for a protective order, under Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), with regard to its financial statements (exhibit C-3) and forecasted financial statements (exhibit C-5), as part of the renewal of its certification as a retail natural gas supplier. Exhibit C-3 includes the 2010 and 2011 audited financial statements for Dominion Retail's parent company, Dominion Resources, Inc. (Dominion Resources financial statements), as well as the 2010 and 2011 financial statements of Dominion Retail (Dominion Retail financial statements). No memorandum contra was filed regarding the motion for protective order.
- (2) In support of its motion for protective order, Dominion Retail explains that public disclosure of the information contained in exhibits C-3 and C-5 could give its competitors an unfair advantage that would hinder Dominion Retail's ability to compete. Dominion Retail states that it has taken active steps to maintain the financial information contained in these exhibits in a confidential manner. Therefore, Dominion Retail requests that the information found in exhibits C-3 and C-5 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 reviewed the information included in Dominion Retail’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 exhibit C-5, as well as the information contained in the Dominion Retail financial statements, filed as part of exhibit C-3, contain 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 Dominion Retail’s motion for protective order is reasonable with regard to both exhibit C-5

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).

and the Dominion Retail financial statements, filed as part of exhibit C-3, and should be granted.

- (7) 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-3, with regard to the Dominion Retail financial statements, and C-5 for a period ending 24 months from the effective date of the certificate issued to Dominion Retail, or until August 14, 2014. Until that date, the docketing division should maintain, under seal, the Dominion Retail financial statements in exhibit C-3, as well as exhibit C-5, which were filed under seal in this docket on May 29 and August 6, 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 Dominion Retail 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 Dominion Retail.
- (9) With regard to the Dominion Resource financial statements, which were also filed as part of exhibit C-3, the attorney examiner finds that these statements do not contain trade secret information. These financial statements are also found in the Securities and Exchange Commission Form 10-K publicly filed by Dominion Retail as part of exhibit C-2 of its renewal application. Since Dominion Retail has already released this information to the public, it cannot qualify as trade secret information, and, thus, does not need to remain under seal. Accordingly, the attorney examiner finds that Dominion Retail's motion for protective order should be denied with regard to the Dominion Resources financial statements, filed as part of exhibit C-3.

- (10) On September 14, 2012, the docketing division should release the Dominion Resources financial statements, filed as part of exhibit C-3 on May 29 and August 6, 2012.

It is, therefore,

ORDERED, That the motion for protective order filed by Dominion Retail be granted, in part, and denied in part in accordance with Findings (6) and (9). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, exhibit C-5 and the Dominion Retail financial statements, filed as part of exhibit C-3, which were filed under seal in this docket on May 29 and August 6, 2012, for a period of 24 months, ending on August 14, 2014. It is, further,

ORDERED, That, on September 14, 2012 the docketing division shall release the Dominion Resources financial statements, filed as part of exhibit C-3 on May 29 and August 6, 2012. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Kerry K. Sheets

By: Kerry K. Sheets
Attorney Examiner

jrj/vrm

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in

Case No(s). 02-1757-GA-CRS

Summary: Attorney Examiner Entry ordering that the motion for protective order filed by Dominion Retail be granted, in part, and denied in part electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio