

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Integrys)
Energy Services -- Natural Gas, LLC for) Case No. 10-396-GA-CRS
Certification as a Competitive Retail)
Natural Gas Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On March 22, 2012, Integrys Energy Services – Natural Gas, LLC (Integrys) filed an application for certification as a competitive retail natural gas supplier. On that same day, Integrys filed a motion for a protective order, requesting that exhibits C-3, C-4, and C-5 of its application be kept under seal. These exhibits contain details about Integrys’ financial information, as well as its forecasted financial statements. No memorandum contra was filed regarding the motion for protective order.
- (2) In support of its motion for protective order, Integrys explains that exhibits C-3, C-4, and C-5 contain extremely sensitive financial information that is generally not disclosed. Integrys claims that disclosure of this information could give its competitors an advantage that would hinder Integrys’ ability to compete. Therefore, Integrys requests that the information found in exhibits C-3, C-4, 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, Ohio Administrative Code (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 Integrys’ 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, 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 documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Integrys’ motion for protective order is reasonable 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

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).

adequate time for consideration of any motion for extension. Therefore, confidential treatment shall be afforded to exhibits C-3, C-4, and C-5 for a period ending 24 months from the effective date of the certificate issued to Integrys, or until April 26, 2014. Until that date, the docketing division should maintain, under seal, exhibits C-3, C-4, and C-5, which were filed under seal in this docket on March 22, 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 Integrys 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 Integrys.
- (9) As a final matter, the attorney examiner notes that the previous protective order granted to Integrys, by entry issued May 18, 2010, has expired. No motion to extend that protective order was filed. Therefore, the attorney examiner directs the Commission's docketing division to release exhibits C-4 and C-5, filed under seal in this docket on March 25, 2010, into the public record on September 14, 2012.

It is, therefore,

ORDERED, That the motion for protective order filed by Integrys be granted in accordance with Finding (6). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3, C-4, and C-5, which were filed under seal in this docket on March 22, 2012, for a period of 24 months, ending on April 26, 2014. It is, further,

ORDERED, That the Commission's docketing division release into the public record, on September 14, 2012, exhibits C-4 and C-5, filed under seal in this docket on March 25, 2010. It is, further,

ORDERED, That a copy of this entry be served upon all parties 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). 10-0396-GA-CRS

Summary: Attorney Examiner Entry granting motion for protective order electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio