

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Trademark Merchant Energy, LLC for ) Case No. 10-3115-GA-CRS  
Certification as a Competitive Retail )  
Natural Gas Supplier. )

ENTRY

The attorney examiner finds:

- (1) On December 19, 2012, Trademark Merchant Energy, LLC (Trademark or company) filed a renewal application for certification as a competitive retail natural gas supplier. On February 14, 2013, Trademark filed a motion for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits C-3 (financial statements), C-4 (financial arrangements), and C-5 (forecasted financial statements) of its 2012 renewal application be kept under seal. In that same motion, Trademark also requests that the Commission extend, by 24 months, the confidential treatment granted to the company's previously filed financial information, former exhibits C-3, C-4, and C-5, which were submitted with its 2010 original application for certification.
- (2) In support of its motion for a protective order, Trademark explains that exhibits C-3, C-4, and C-5 of its 2012 renewal application contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, Trademark requests that the information found in exhibits C-3, C-4, and C-5 of its 2012 renewal application be treated as confidential. In addition, Trademark asserts that the information protected in exhibits C-3, C-4, and C-5 of its 2010 original application for certification continues to be competitively sensitive and proprietary business financial information.
- (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 Trademark’s motion for a 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>1</sup> the attorney examiner finds that exhibits C-3, C-4, and C-5 of Trademark’s 2012 renewal application contain trade secret information. Their 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 Trademark’s motion for a protective order with respect to

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<sup>1</sup> 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).

exhibits C-3, C-4, and C-5 of the company's 2012 renewal application is reasonable and should be granted.

- (7) With regard to Trademark's request to extend the protective order for its previously submitted financial statements, the attorney examiner finds that exhibits C-3, C-4, and C-5 of Trademark's 2010 original application for certification still constitute trade secret information. Therefore, the attorney examiner finds that Trademark's request to extend the protective order with respect to exhibits C-3, C-4, and C-5 of its 2010 original application 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-3, C-4, and C-5 of Trademark's 2012 renewal application and exhibits C-3, C-4, and C-5 of the company's 2010 original application for a period ending 24 months from the effective date of the certificate issued to Trademark, or until January 23, 2015. Until that date, the docketing division should maintain, under seal, exhibits C-3, C-4, and C-5 of Trademark's 2012 renewal application and exhibits C-3, C-4, and C-5 of the company's 2010 original application, which were filed under seal in this docket on December 22, 2010, December 19, 2012, and February 14, 2013.
- (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 Trademark 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 Trademark.

It is, therefore,

ORDERED, That the motion for a protective order filed by Trademark be granted in accordance with Findings (6) and (7). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3, C-4, and C-5 of Trademark's 2012 renewal application, which were filed under seal in this docket on December 19, 2012, and February 14, 2013, for a period of 24 months, ending on January 23, 2015. It is, further,

ORDERED, That the Commission's docketing division continue to maintain, under seal, the unredacted exhibits C-3, C-4, and C-5 of Trademark's 2010 original application, which were filed under seal in this docket on December 22, 2010, for a period of 24 months, ending on January 23, 2015. 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

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By: Kerry K. Sheets  
Attorney Examiner

jrj/vrm

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/26/2013 11:01:46 AM**

**in**

**Case No(s). 10-3115-GA-CRS**

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Trademark Merchant Energy LLC be granted with regard to the information contained in exhibits C-3, C-4, and C-5, of Trademark's 2012 application; that Trademark's request to extend the protective order with respect to exhibits C-3, C-4, and C-5 of its 2010 original application is reasonable and should be granted; that exhibits C-3, C-4, and C-5 of Trademark's 2012 and 2010 applications shall remain under seal in the Commission's docketing division for a 24-month period; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio