

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Energy 95, LLC for Certification as a Competitive Retail Natural Gas Supplier.) Case No. 12-1023-GA-CRS)

ENTRY

The attorney examiner finds:

- (1) On February 20, 2014, Energy 95, LLC (Energy 95) filed an application for renewal of its certification as a competitive retail natural gas supplier. On that same day, Energy 95 also filed a motion for a protective order, requesting that exhibits B-3, C-3, C-4, and C-5 of its renewal application be kept under seal. These exhibits contain details about Energy 95's market share, customer numbers, and gas throughput (exhibit B-3), and financial information (exhibits C-3, C-4, and C-5).
- (2) In support of its motion for protective order, Energy 95 explains that exhibits B-3, C-3, C-4, and C-5 contain competitively sensitive information and proprietary business and financial information relating to Energy 95's business operations. Energy 95 claims that disclosure of this information could give its competitors an advantage that would compromise Energy 95's ability to compete. Therefore, Energy 95 requests that the information found in exhibits B-3, C-3, C-4, and C-5 of its renewal application be treated as confidential.
- (3) In its motion for a protective order, Energy 95 also requests, pursuant to Ohio Adm.Code 4901-1-24(F), that the protective order for its previously submitted financial information, exhibits C-3, C-4, and C-5, filed under seal on March 19 and 29, 2012, as part of the company's 2012 original application for certification, be extended. Energy 95 asserts that the information protected in those C-3, C-4, and C-5 exhibits continues to be competitively sensitive and proprietary business financial information. Energy 95 seeks to continue the protective order issued on September 6, 2012, for an additional 24-month period.

- (4) No memorandum contra was filed regarding Energy 95's motion for a protective order with regard to its current market and financial information or its request to extend the protective order for its previously submitted 2012 financial information.
- (5) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of R.C. Title 49. R.C. 149.43 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).
- (6) Similarly, Ohio Adm.Code 4901-1-24 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."
- (7) 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." R.C. 1333.61(D).
- (8) The attorney examiner has reviewed the information included in Energy 95'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 R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in

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).

exhibits B-3, C-3, C-4, and C-5 of its renewal application 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 R.C. Title 49. 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 Energy 95's motion for protective order is reasonable with regard to exhibits B-3, C-3, C-4, and C-5 of its renewal application and should be granted.

- (9) With regard to Energy 95'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 Energy 95's 2012 original application for certification still constitute trade secret information. Therefore, the attorney examiner finds that Energy 95's request to extend the protective order with respect to those C-3, C-4, and C-5 exhibits is reasonable and should be granted.
- (10) Ohio Adm.Code 4901-1-24(D)(4) 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 Ohio Adm.Code 4901-1-24(D)(4) 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 B-3, C-3, C-4, and C-5 of Energy 95's renewal application, and extended for exhibits C-3, C-4, and C-5 of its 2012 original application, for a period ending 24 months from the effective date of the certificate issued to Energy 95, or until April 20, 2016. Until that date, the docketing division should maintain, under seal, exhibits B-3, C-3, C-4, and C-5 of Energy 95's renewal application, which were filed under seal in this docket on February 20 and March 11, 2014, and exhibits C-3, C-4, and C-5 of Energy 95's 2012 original application, which were filed under seal in this docket on March 19 and 29, 2012.
- (11) Ohio Adm.Code 4901-1-24(F) 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 Energy 95 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 Energy 95.

It is, therefore,

ORDERED, That the motion for a protective order filed by Energy 95 on February 20, 2014, be granted with regard to the information contained in exhibits B-3, C-3, C-4, and C-5 of Energy 95's renewal application. It is, further,

ORDERED, That Energy 95's request to extend the protective order with respect to exhibits C-3, C-4, and C-5 of its 2012 original application be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits B-3, C-3, C-4, and C-5, which were filed under seal in this docket on February 20 and March 11, 2014, for a period of 24 months, ending on April 20, 2016. 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 Energy 95's 2012 original application, which were filed under seal in this docket on March 19 and 29, 2012, for a period of 24 months, ending on April 20, 2016. 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). 12-1023-GA-CRS

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Energy 95 on February 20, 2014, be granted with regard to the information contained in exhibits B-3, C-3, C-4, and C-5 of Energy 95's renewal application. Further, Energy 95's request to extend the protective order with respect to exhibits C-3, C-4, and C-5 of its 2012 original application is granted; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio