

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Direct)
Energy Source, LLC dba Vectren Source,) Case No. 02-1668-GA-CRS
for Certification as a Retail Natural Gas)
Supplier.)

ENTRY

The attorney examiner finds:

- (1) On June 13 2014, as amended July 9, 2014, Direct Energy Source, LLC, dba Vectren Source (Direct Energy or Company), a previously certified competitive retail natural gas supplier pursuant to R.C. 4929.20 et seq. filed its renewal application to retain its certified status. As part of those filings, Direct Energy requested a protective order under Ohio Adm.Code 4901-1-24(F) for its financial statements, financial arrangements, and forecasted financial statements, exhibits C-3, C-4 and C-5, respectively.
- (2) Direct Energy submits that the information in exhibits C-3, C-4, and C-5 is competitively sensitive and highly proprietary. The Company contends that public disclosure of this information would jeopardize its business position in negotiations with other parties and its ability to compete. Direct Energy states that this information is not generally known by the public and is held in confidence in the normal course of business.
- (3) No memorandum contra was filed regarding Direct Energy's motions for a protective order.
- (4) 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).

- (5) 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.”
- (6) 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).
- (7) The attorney examiner has examined the information covered by the motion for a protective order filed by Direct Energy, 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 exhibits C-3, C-4, and C-5 of Direct Energy’s 2014 certification renewal application contains trade secret information. Release of these documents 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 Direct Energy’s motion for protective order of exhibits C-3, C-4, and C-5 of its 2014 certification renewal application is reasonable and should be granted.

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).

- (8) Ohio Adm.Code 4901-1-24(F) provides for protective orders to expire after 24 months. Therefore, confidential treatment should be afforded to exhibits C-3, C-4, and C-5 of the Company's 2014 renewal application, for a period ending 24 months from the effective date of the most recent certificate issued to Direct Energy, or until July 14, 2016. Until that date, the Docketing Division should maintain, under seal, exhibits C-3, C-4, and C-5 of the Company's 2014 renewal application, filed on June 13 and July 9, 2014.
- (9) 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 Direct Energy 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 Direct Energy.
- (10) As a final matter, the attorney examiner notes that Direct Energy did not request an extension of the protective order granted by Entry issued August 13, 2012, for exhibits C-4 and C-5 of its 2012 renewal application, filed on June 12, 2012. Therefore, the attorney examiner directs the Commission's Docketing Division to release these exhibits into the public record on August 15, 2014.

It is, therefore,

ORDERED, That the motion by Direct Energy for protective treatment of exhibits C-3, C-4, and C-5 of its 2014 renewal application, filed on June 13, 2014, and amended on July 9, 2014, be granted for a period ending 24 months from the effective date of the most recent certificate issued to Direct Energy, or until July 14, 2016. 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 June 13 and July 9, 2014, for a period of 24 months, ending on July 14, 2016. It is, further,

ORDERED, That, on August 15, 2014, the Commission's Docketing Division release into the public record exhibits C-4 and C-5 of Direct Energy's 2012 renewal application, filed on June 12, 2012. It is, further,

ORDERED, That a copy of this Entry be served upon Direct Energy and all other parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Kerry S. Sheets

By: Kerry K. Sheets
Attorney Examiner

sef/vrm

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8/8/2014 2:16:47 PM

in

Case No(s). 02-1668-GA-CRS

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Direct Energy be granted with regard to exhibits C-3, C-4, and C-5 of Direct Energy's 2014 renewal application. Further, the Commission's docketing division is directed to release into the public record, on August 15, 2014, exhibits C-4 and C-5, filed under seal in this docket on June 12, 2012; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio