

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

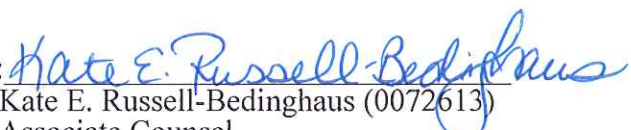
In the Matter of the Application of)	
Stand Energy Corporation for)	Case No. 02-2549-GA-CRS
Certification as a Retail Natural)	
Gas Supplier)	

MOTION TO EXTEND PROTECTIVE ORDER

Stand Energy Corporation ("Stand"), by its undersigned attorney, pursuant to Rule 4901-1-24(F), Ohio Administrative Code ("O.A.C"), the Entry in this docket entered January 24, 2013 (the "2013 Docket Entry"), and the Entry in Case No. 12-925-GA-ORD, *Review of Rules for Competitive Retail Natural Gas Service*, entered October 15, 2014 (the "2014 Rule Entry"), hereby moves for a further extension of the order affording protective treatment for the confidential information originally submitted November 10, 2010 and November 24, 2010 as part of its supplemental confidential documents to its 2010 CRNGS Renewal Certification Application to the PUCO. The reasons underlying this motion are detailed in the attached Memorandum in Support.

Respectfully submitted,

STAND ENERGY CORPORATION

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THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Stand Energy Corporation for)	Case No. 02-2549-GA-CRS
Certification as a Retail Natural)	
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MEMORANDUM IN SUPPORT OF MOTION TO EXTEND PROTECTIVE ORDER

Stand seeks to extend the period of confidential treatment of the financial information originally filed under seal in this docket on November 10, 2010 and November 24, 2010 as Exhibits C-3 (Financial Statements), C-4 (Financial Arrangements) and C-5 (Financial Forecast) as part of its supplemental confidential documents to its 2010 CRNGS Renewal Certification Application. These exhibits will collectively be referred to here as the “2010 Financial Exhibits”. By Entry dated January 21, 2011, Stand’s motion for protective order for the 2010 Financial Exhibits was granted through December 19, 2012, the expiration date of the then current renewal certificate. [Certificate No. 02-043G(5)]. A motion for extension of the protective order was filed October 17, 2012. The 2013 Docket Entry granted the further extension through December 12, 2014, the expiration date of Stand’s then current renewal certificate. [Certificate No. 02-043G(6)].

In connection with its biennial renewal certification application, Stand filed a motion to further extend the period of protective treatment for the 2010 Financial Exhibits on August 29, 2014. At the time of the filing, however, the Commission had adopted a new procedural rule applicable to initial and renewal competitive retail natural gas service (CRNGS) certification

applications.¹ Under new Rule 4901:1-27:08, O.A.C., which became effective December 1, 2014, if an applicant files required financial statements, financial arrangements and forecasted financial statements under seal, those exhibits are automatically afforded protective treatment for a period of six (6) years from the date of the certificate issuance. The 2014 Rule Entry was issued to “facilitate the implementation of the new process set forth in the newly adopted rules” for all then pending motions for protective order as well as all existing protective orders granted after January 1, 2008. The process, in effect, granted or extended the period of protective treatment for the requested information until December 31 six years after the issuance date of the certificate for which the information was provided. Here, since the 2010 Financial Exhibits were filed in connection with the renewal certification application resulting in the issuance of Certificate No. 02-043G(5) on December 28, 2010, the period of protective treatment will expire on December 31, 2016. By this filing, Stand seeks to extend the period of protective treatment for the 2010 Financial Exhibits beyond that date.

Ohio R.C. § 4905.07, provides that all facts and information in the possession of the Commission shall be public, except as provided in Ohio R.C. § 149.43, and as consistent with the purposes of Title 49 of the Revised Code. Ohio 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* (2000), 89 Ohio St.3d 396, 399, 732 N.E.2d 373. Similarly, Rule 4901-1-24 of the Ohio Admin. Code, 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.”

¹ See Case No. 12-925-GA-ORD, *Review of Rules for Competitive Retail Natural Gas Service*, Finding and Order entered December 18, 2013.

In its original motion for protective order and its prior motions for extension of protective treatment, Stand has asserted that the 2010 Financial Exhibits contain highly proprietary and competitively sensitive information that clearly falls within the statutory definition of “trade secrets” under Ohio law [Section 1333.61(D), Ohio Revised Code].² The Ohio Supreme Court outlined a six factor test to determine whether information is a trade secret in *State Ex Rel The Plain Dealer v. Ohio Dept. of Ins.* (1997) 80 Ohio St.3d 513, 524-525. Those six factors include:

- a. The extent to which the information is known outside the business;
- b. The extent to which it is known to those inside the business, i.e. by the employees;
- c. The precautions taken by the holder of the trade secret to guard the secrecy of the information;
- d. The savings affected and the value to the holder in having the information as against competitors;
- e. The amount of effort or money expended in obtaining and developing the information;
- f. The amount of time and expense it would take for others to acquire and duplicate the information.

While the information in the 2010 Financial Exhibits was made available to the Commission in order for it to perform its evaluation, Stand’s financial and banking information should not be made available to parties that are not directly charged by the legislature with authority to review its competitive retail natural gas provider certification application. Additionally, the general public should not have access to this information because Stand is a privately-owned company.

Stand’s 2010 Financial Exhibits comprise strategic information and public disclosure of these proprietary financial and banking documents might have a material and profoundly

² “Trade secret” means information, including the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, devise, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both 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 person 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.

detrimental impact on Stand's ability to negotiate with other parties and to compete in the marketplace. By examining the 2010 Financial Exhibits competitors could reasonably estimate Stand's gross profit margin, return on investment and return on owner's equity. These financial ratios provide information about Stand's liquidity, profitability, debt, operating performance, cash flow and investment valuation. This information might allow competitors to use the 2010 Financial Exhibits to make strategic decisions including whether to enter or exit certain geographic markets in which Stand operates.

Furthermore, the 2010 Financial Exhibits that were previously granted protective treatment remain competitively sensitive and proprietary within the energy industry. Stand's business model, including margins, pricing and creditor relationships has not changed significantly since 2010. In addition, by comparing Stand's financial results from year to year, competitors could determine the areas in which Stand's business is expanding and contracting. Accordingly, the 2010 Financial Exhibits derive independent economic value from not being generally known to, and not being readily ascertainable by proper means by other persons. Public disclosure of the 2010 Financial Exhibits will cause substantial harm to Stand's business and competitive interests. Stand requests that the Commission and Staff maintain the confidential nature of these documents and protect the documents from public disclosure.

Stand, as a privately-held company, would be especially vulnerable if protective treatment were not granted. As a private entity, its financial records, including financial statements and banking information are not available to the general public. Stand requires all of its employees to sign confidentiality agreements upon employment promising not to disclose trade secrets. The financial statements and banking information are only available to select Stand employees. Obtaining trade secret information occurs only on a "need-to-know" basis at Stand Energy Corporation. Additionally, when suppliers and trading partners request financial information, the disclosure of financial statements is always preceded by the execution of an industry-standard confidentiality agreement. Furthermore, access to Stand's general ledger

financial software is likewise limited to select employees and is password protected. When paper copies of financials and banking records are no longer required, they are shredded. For all of these reasons, public disclosure of Stand's financial and banking information could jeopardize Stand's business position in negotiations with third parties and potentially compromise Stand's ability to compete. Stand respectfully asserts that the financial and banking information contained in the 2010 Financial Exhibits is not generally known by the public and is held in strict confidence in the normal course of business by Stand Energy Corporation.

Ohio law and previous Commission precedent prohibits the release of information meeting the definition of trade secret. Conversely, non-disclosure of this information will not impair the purposes of Title 49 as the Commission and its Staff will have full access to the requested information to complete their review process. The strategic and financial information is now the subject of Stand's reasonable efforts to maintain its secrecy to prevent unauthorized disclosure or use. Both prongs of the statutory analysis favor confidentiality of Stand's financial information. Therefore, Stand reasonably requests that the financial and banking information contained in the 2010 Financial Exhibits be deemed to contain trade secrets, and thus, be treated as confidential by the Commission and its Staff.

Stand has consistently represented and maintained that the data and information contained in the 2010 Financial Exhibits was developed only after a considerable expenditure of time and resources, has been made known only to senior management and a limited number of employees on a "need to know" basis, has not otherwise been disseminated within Stand and cautiously safeguarded to avoid public disclosure, and would have the potential for economic harm to Stand if made available to its competitors. Stand has also noted the provision of Ohio law which prohibits the public release of information meeting the definition of a trade secret (Section 149.43, Ohio Revised Code).

The entries granting Stand's original motion for protective order as well as the subsequent extension contain specific findings that the 2010 Financial Exhibits constitute "trade

secret information” and, as such, that their release is prohibited under state law [See Finding (6) of Entry dated January 21, 2011 and Finding (9) of the 2013 Docket Entry]. These same findings are implicit in the 2014 Rule Entry by which the period of protective treatment of the 2010 Financial Exhibits has been extended through the end of this year. Stand would submit that the mere passage of time does not warrant or support contrary findings. It remains true that the 2010 Financial Exhibits include details of the operations and finances of Stand that would be of significant interest to competitors. As a result, the data and information set forth in the 2010 Financial Exhibits should continue to be afforded confidential treatment and excluded from the public record.

WHEREFORE, for the reasons stated herein, continued confidential treatment of the 2010 Financial Exhibits is both appropriate and required by Ohio law and Commission rule. For the foregoing reasons, Stand requests that the information contained in 2010 Financial Exhibits confidentially filed under seal to the 2010 Renewal Certification Application continue to be protected from public disclosure by granting this motion.

Respectfully submitted,

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Summary: Motion Motion and Memorandum to Extend Protective Order electronically filed by Mrs. Kate E Russell-Bedinghaus on behalf of Stand Energy Corporation