

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Stand Energy Corporation for)
Certification as a Competitive)
Retail Natural Gas Supplier)

Case No. 02-2549-GA-CRS

**INTERLOCUTORY APPEAL AND MEMORANDUM IN SUPPORT OF
STAND ENERGY CORPORATION**

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INTERLOCUTORY APPEAL

Pursuant to Ohio Administrative Code (“OAC”) 4901-1-15(A)(1), Stand Energy Corporation (“Stand Energy”) respectfully appeals the Attorney Examiner’s November 23, 2016 Entry (the “Entry”) denying protective treatment of information filed under seal in Stand Energy’s 2010 application for renewal as a certified natural gas supplier. Specifically, the Entry denied extension of protective treatment of Exhibits C-3 Financial Statements, C-4 Financial Arrangements, and C-5 Forecasted Financial Statements (collectively “Confidential Documents”) contained in Stand Energy’s 2010 application for renewal.

The Commission’s rules allow for protective treatment of certain confidential information filed at the Commission in order to prevent disclosure of such information. OAC Rule 4901-1-24(D). Additionally, Ohio law recognizes the need to provide protective treatment of information such as the Confidential Documents. Ohio Revised Code 4929.23(A).

However, the Entry stated that “because the information in these exhibits is outdated, it can no longer be considered sensitive.” Entry at ¶ 5 (the Entry is attached hereto as Exhibit A). Further, the Entry notes, in reliance on *In re Comm. Review of its Rules for Competitive Retail Natural Gas Serv.*, Case No. 12-925-GA-ORD, Entry on Rehearing (Feb. 26, 2014) at 14, that “Commission practice has been not to extend protective treatment for CRNGS certification

beyond the initial six-year period that is granted when a certification application is filed.” As discussed further in the attached memorandum in support, the Entry is unlawful, unjust and unreasonable.

While the Attorney Examiner cites to the review of rules for competitive natural gas service to support its conclusion that the Commission practice is not to grant protective treatment beyond the initial six-year period, a review of similar recent proceedings which have sought protection beyond six years shows a clear conflict in this statement and actual Commission practice. Of the motions for extending protective treatment filed since the issuance of the updated administrative rules, it appears that Stand Energy’s is the only one that has been denied. If fact, there were three other similar situated motions filed prior to Stand Energy’s and none have yet been ruled upon.¹ Stand Energy filed its Motion to Extend Protective Treatment on October 24, 2016 and the Attorney Examiner issued its Entry denying Stand Energy’s Motion on November 22, 2016. Stand’s Motion was denied 29 days after it was filed.

Moreover, Stand Energy’s Confidential Financial Documents are not outdated and without value to Stand Energy’s competitors. The release of the Confidential Documents will provide an advantage to Stand Energy’s competitors and business associates. As a small privately-held company, the release of this information will particularly disadvantage Stand Energy. Additionally, there is no public benefit for the disclosure of the private financial data of Stand Energy. The Commission only needs to confirm Stand Energy’s solvency by review of the financials. Therefore, the Entry is unjust and unreasonable and the Commission should issue an

¹ See In the Matter of the Applications of the Following Entities for a Certificate to Provide Competitive Retail Natural Gas Service in Ohio: Interstate Gas Supply, Inc., Case No. 02-1683-GA-CRS, “Motion for Protective Order, Motion to Extend Protective Order and Memorandum in Support of IGS Energy” filed June 10, 2016, U.S. Gas & Electric, Inc., Case No. 08-601-GA-CRS, “Motion for Extension of Renewal Protective Order for Exhibits C-3, C-4, and C-5 to Original Application and Previous Renewal Applications and Motion for Protection Order for Exhibits C-3, C-4, C-5, C-6 and C-10 to Current Renewal Application filed September 16, 2016 and Future Now Energy LTD, Case No. 06-791-GA-CRS, “Motion to Extend Protective Order” filed October 4, 2016.

order reversing the November 22nd Entry and protecting from disclosure the Confidential Documents contained in Stand Energy's 2010 renewal application.

Further, R.C. 4903.10(B) provides that when an appeal "has been filed before the effective date of the order as to which a rehearing is sought, the effective date of such order, unless otherwise ordered by the commission, shall be postponed or stayed pending disposition of the matter by the commission or by operation of law." Accordingly, Stand Energy respectfully requests the Commission stay the release of the Confidential Documents contained in Stand Energy's 2010 renewal application pending resolution of this appeal.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Stand Energy respectfully requests that the Commission reverse the Attorney Examiner's November 22nd Entry denying extended protective treatment for the Confidential Documents contained in Stand Energy's 2010 renewal application. The Entry determined that "because the information in these exhibits is outdated, it can no longer be considered sensitive." Entry at ¶ 5. The Entry erred.

The Confidential Documents consist of financial statements, financial arrangements and forecasted financial statements that are proprietary, confidential and that constitute trade secrets. Stand Energy has performed an evaluation of the Confidential Documents and has determined the information requires continued protection and submits that Exhibits C-3, C-4 and C-5 to its 2010 renewal application (which have not yet been released to the public), still require protection and that good cause exists to extend protective treatment of these exhibits. By examining the Confidential Documents, competitors could reasonably estimate Stand Energy's growth rates, market share and margins. Disclosure of the Confidential Documents would allow Stand Energy's competitors to compare Stand Energy's financial results from year to year and determine the areas in which Stand Energy's business is expanding and contracting. Competitors could use the Confidential Documents to make strategic decisions whether to enter or exit the

markets in the geographic regions in which Stand Energy operates. Public disclosure of this information would jeopardize Stand Energy's business position in negotiations with other parties and its ability to compete. Despite the passage of several years, applying the requirement 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 Court² produces the same conclusion that the Confidential Documents continue to constitute trade secret information. The financial information is still not known outside the private business and is still only known to a few select employees. Stand Energy still takes precautions to guard the secrecy of this information. If a competitor had this information, it would be very valuable to it when it comes to competing against Stand Energy. It took time and effort to develop these financial statements and financial forecasts. Without this information, it would still take time and expense for others to acquire and duplicate this information. Thus, even though a range of years has passed, this information should still be considered trade secret information.

Additionally, the Confidential Documents that were previously granted protective treatment remain competitively sensitive and proprietary. Stand Energy's business model, including margins, pricing and relationships with creditors has not changed significantly since 2010. Therefore, the Confidential Documents derive independent economic value from not being generally known to and not being readily ascertainable by other legal means. Public disclosure of the Confidential Documents will cause substantial harm to Stand Energy's business and competitive interests.

Stand Energy is a small privately-held company, and therefore, would be especially vulnerable if protective treatment were not granted. Indeed, the Commission has previously

² 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).

found the need for protective treatment to be especially “persuasive for the privately held companies.”³ Privately held companies are not similarly situated to many of the publicly traded companies that do business in Ohio. Stand Energy does not disclose its financial statements – historical or projected – or financial arrangements to any party unless required by law and only under seal. Thus, the information contained in the Confidential Documents is not generally known by the public and is held in confidence in the normal course of business. Conversely, publicly held companies often disclose their forward projections of earnings, historical financial statements and financial arrangements because they must comply with federal and state securities regulations; non-public companies such as Stand Energy do not have these requirements.

Additionally, Stand Energy is a small privately-held company with few shareholders. Thus, unlike a publicly held company – with thousands of dispersed and anonymous shareholders – the financial information of Stand Energy has the potential to disclose personal financial data of individuals and not just company data. As a matter of public policy, financial data of individuals should receive heightened protection.

Moreover, there is no clear benefit or public policy reason to disclosing the Confidential Documents. Thus, the potential harm to Stand Energy of disclosing the Confidential Documents outweighs the benefit. Stand Energy has filed a public version of its application that contains a great deal of public, non-proprietary information about Stand Energy. Commission Staff have

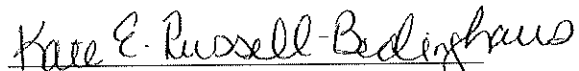
³ See In the Matter of the Applications of the Following Entities for a Certificate to Provide Competitive Retail Natural Gas Service in Ohio: NICOR Energy L.L.C, Case No. 02-1654-GA-CRS, Vetren Retail LLC, d.b.a. Vectren Source, Case No. 02-1668-GA-CRS, Shell Energy Services Co., LLC, Case No. 02-1680-GA-CRS, Volunteer Energy Services Inc., Case No. 02-1786-GA-CRS, ACN Energy Inc., Case No. 02-1828-GA-CRS, Energy America LLC, Case No. 02-1829-GA-CRS, Firstenergy Solutions Corp., Case No. 02-1864-GA-CRS, AEP Ohio Retail Energy, LLC, Case No. 02-1889-GA-CRS, Energy Cooperative of Ohio, Case No. 02-1891-GA-CRS, MidAmerican Energy Company, Case No. 02-1893-GA-CRS, ProLiance Energy LLC, Case No. 02-1909-GA-CRS, Metromedia Energy Inc. Case No. 02-1926-GA-CRS and UGI Energy Services Inc., d.b.a GASMARK, Case No. 02-1968-GA-CRS, Entry (Jul 14, 2003) at paragraph 3, pg. 2.

access to the Confidential Documents. Thus, continuing protective treatment of these documents will not obstruct the Commission's regulatory oversight function.

Finally, as discussed above, Stand Energy requests that the Commission stay any contemplated effective date of release of the Confidential Documents. Failure to stay the release of the Confidential Documents contained in Stand Energy's 2010 renewal application pending the resolution of this appeal would, as a practical matter, undermine any successful appeal and cause detrimental harm to Stand Energy's business interests.

For the foregoing reasons, Stand Energy respectfully requests that the Commission reverse the November 22nd Entry and extend protective treatment of the Confidential Documents contained in Stand Energy's 2010 renewal application.

Respectfully submitted,



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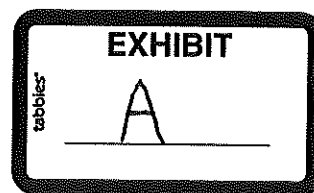
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THE PUBLIC UTILITIES COMMISSION OF OHIO



IN THE MATTER OF THE APPLICATION OF
STAND ENERGY CORPORATION FOR
CERTIFICATION AS A COMPETITIVE
RETAIL NATURAL GAS SUPPLIER.

CASE NO. 02-2549-GA-CRS

ENTRY

Entered in the Journal on November 22, 2016

{¶ 1} On October 24, 2016, Stand Energy Corporation (Stand) filed a motion to extend the protective order covering 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) (collectively, 2010 Financial Exhibits), which were part of Stand's supplemental confidential documents to the 2010 renewal of its competitive retail natural gas service (CRNGS) supplier certification.

{¶ 2} Under Ohio Adm.Code 4901:1-27-08, which became effective December 1, 2014, financial statements, financial arrangements, and forecasted financial statements filed under seal are automatically afforded protective treatment for a period of six years from the date of the certificate issuance. In Stand's case, its current protective order covering the 2010 Financial Exhibits is due to expire on December 31, 2016. *See In re Comm. Review of its Rules for Competitive Retail Natural Gas Serv.*, Case No. 12-925-GA-ORD, et al., Entry (Oct. 15, 2014). Stand now seeks to extend the six-year period of protective treatment for the 2010 Financial Exhibits beyond that date.

{¶ 3} In support of its motion for an extension of protective treatment, Stand asserts that the information in the confidential documents for which protective treatment is sought is competitively sensitive and proprietary business and financial information comprising trade secrets. Furthermore, Stand argues that granting protective treatment to these documents is not inconsistent with the purposes of R.C. Title 49. Stand explains that public disclosure of these documents would jeopardize Stand's business position in

negotiations with other parties and its ability to compete. Stand states that competitors could use the confidential documents to estimate Stand's gross profit margin, return on investment, and return on owner's equity and that these financial ratios provide information about Stand's liquidity, profitability, debt, operating performance, cash flow, and investment valuation. Further, Stand states that this information might allow competitors to make strategic decisions, including whether to enter or exit the markets in the geographic regions in which Stand operates. Stand claims that the confidential documents derive independent economic value from not being generally known to, and not being readily ascertainable by proper means, to other persons. Stand also notes that it is a privately held company and, thus, would be especially vulnerable if protective treatment were not granted.

{¶ 4} The attorney examiner has examined the information covered by Stand's motion for extension of the protective order covering the 2010 Financial Exhibits, 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 the 2010 Financial Exhibits no longer constitutes trade secret information.

{¶ 5} The information detailed in the 2010 Financial Exhibits relates to Stand's financial performance in 2007-2009 (Exhibit C-3) and its financial condition in 2010 (Exhibit C-4), along with forecasts of expected results in 2010 and 2011 (Exhibit C-5). The attorney examiner concludes that, because the information in these exhibits is outdated, it can no longer be considered sensitive. Consequently, the attorney examiner finds that Stand's motion for extended protective treatment of the 2010 Financial Exhibits should be denied.

{¶ 6} The attorney examiner notes that, previously, on September 4, 2009, Stand requested extended protective treatment for confidential financial documents filed 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).

connection with Stand's original application for certification in 2002. Further, that request for extended protective treatment was denied by Entry dated October 2, 2009, as the financial documents relating to Stand's 2002 application for certification were outdated and could no longer be considered trade secret information. Here, in Stand's present request for extended protective treatment of past confidential exhibits, the same rationale for denying Stand's motion for extended protective treatment applies. The information contained in the 2010 Financial Exhibits cannot be considered a trade secret because of its age, and thus, in line with Commission policy not to protect historical information, it cannot be accorded continued protective treatment.

{¶ 7} The attorney examiner also notes that Commission practice has been not to extend protective treatment for CRNGS certification information beyond the initial six-year period that is granted when a certification application is filed. *See In re Comm. Review of its Rules for Competitive Retail Natural Gas Serv.*, Case No. 12-925-GA-ORD, Entry on Rehearing (Feb. 26, 2014) at 14.

It is, therefore,

{¶ 8} ORDERED, That Stand's October 24, 2016 motion to extend the protective order covering its 2010 Financial Exhibits be denied. It is, further,

{¶ 9} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Kerry K. Sheets

By: Kerry K. Sheets
Attorney Examiner

jrj/vrm

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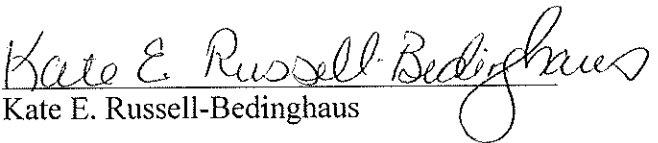
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in

Case No(s). 02-2549-GA-CRS

Summary: Attorney Examiner Entry denying Stand's October 24, 2016 motion to extend the protective order covering its 2010 Financial Exhibits; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio

I hereby certify that a copy of the foregoing Interlocutory Appeal and Memorandum in Support of Stand Energy Corporation was served upon the following parties of record this 23rd day of November 2016 via electronic transmission or first class mail, U.S. postage prepaid.


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Case No(s). 02-2549-GA-CRS

Summary: Notice of Interlocutory Appeal electronically filed by Mrs. Kate E Russell-Bedinghaus on behalf of Stand Energy Corporation