

RECEIVED-DOCKETING DIV

2007 APR -4 PM 4:39

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of
SouthStar Energy Services LLC for
Certification as a Competitive
Retail Natural Gas Supplier

)
)
)
)

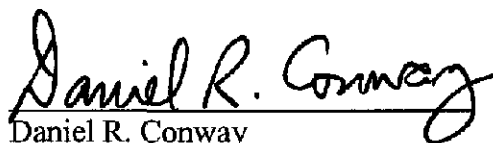
Case No.

07-38 PUCO
-GA-CRS

MOTION FOR PROTECTIVE ORDER

Now comes SouthStar Energy Services LLC ("SouthStar"), a natural gas marketer to both mercantile and non-mercantile customers, seeking certification as a competitive retail natural gas supplier and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C.") moves for a protective order to keep two (2) exhibits to its application for certification confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the rule cited above, three (3) unredacted copies of the exhibits are submitted under seal.

Respectfully submitted,



Daniel R. Conway
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
Tel: (614) 227-2270
Email: dconway@porterwright.com

Of Counsel:
Jody L. Spencer
Rogers & Hardin LLP
2700 International Tower
229 Peachtree St., NE
Atlanta, GA 30303
Tel: (404) 420-4611
Email: jspencer@rh-law.com

Attorneys for SouthStar
Energy Service LLC

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician JB Date Processed 4-5-07

**MEMORANDUM IN SUPPORT
OF MOTION FOR PROTECTIVE ORDER**

SouthStar requests that the information designated as confidential – Exhibits C-3 (Financial Statements) and C-4 (Financial Arrangements) – of its Application for Certification as a Competitive Retail Natural Gas Supplier be protected from public disclosure. The information for which protection is sought covers SouthStar's financial information and results of operations (C-3) and lending arrangements (C-4). Such information if released to the public would harm SouthStar and its competitive position by providing to its competitors material, confidential and proprietary information regarding what is designed by statute to now be a competitive service.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Public Utilities Commission of Ohio (the "Commission") or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

House Bill 9, which established the statutory requirement for gas providers to be certified by the Commission, recognized that some of the information that the Commission would have to review in order to determine whether a natural gas provider had the operational experience and financial where-with-all to conduct business would be proprietary in nature. Thus, Section 4929.23 provides in part that "[t]he Commission shall take such measures as it considers necessary to protect the confidentiality of any such information."

The criteria for what should be kept confidential by the Commission is well

established, and the Commission also long ago recognized its statutory obligation to protect trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982).

Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)). The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act: "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, 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).

This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion. Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed,

for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power, through the Uniform Trade Secrets Act. The Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965- TP-AEC (Finding and Order, September 21, 1989); OhioBell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 7, 1990).

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

- (1) The extent to which the information is known outside the business,
- (2) the extent to which it is known to those inside the business, i.e., by the employees,
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information,
- (4) the savings effected and the value to the holder in having the information as against competitors,
- (5) the amount of effort or money expended in obtaining and developing the information, and
- (6) the amount of time and expense it would take for others to acquire and duplicate the information.

Applying these factors to the two (2) exhibits SouthStar seeks to keep confidential, it is clear that a protective order should be granted. Exhibit C-3 sets forth SouthStar's financial statements, providing in detail SouthStar's confidential results of operations, balance sheet data and cash flows information. Exhibit C-4 sets forth SouthStar's financial agreement with its lender, which reflects, among other things, SouthStar's borrowing and repayment terms. These are precisely the types of information which companies go to great lengths to keep private. Knowledge by a competitor of such financial information would do great harm to SouthStar's competitive position in the marketplace. Additionally, public disclosure of this information is

not likely to assist the Commission in carrying out its duties under applicable rules. Thus, both Exhibits C-3 and C-4 should be kept under seal.

WHEREFORE, for the above reasons SouthStar requests the Commission to grant its motion to present Exhibits C-3 and C-4 of its Application for Certification as a Competitive Retail Natural Gas Supplier under seal.

Respectfully submitted,

A handwritten signature in black ink that reads "Daniel R. Conway". The signature is fluid and cursive, with the first name "Daniel" and last name "Conway" clearly legible.

Daniel R. Conway
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
Tel: (614) 227-2270
Email: dconway@porterwright.com

Of Counsel:
Jody L. Spencer
Rogers & Hardin LLP
2700 International Tower
229 Peachtree St., NE
Atlanta, GA 30303
Tel: (404) 420-4611
Email: jspencer@rh-law.com

Attorneys for SouthStar
Energy Service LLC