

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On October 4, 2002, Stand Energy Corporation (Stand) filed an application for certification as a competitive retail natural gas supplier, as well as a motion for a protective order covering exhibits C-3, C-4, C-5, C-6, and C-7. Stand's application was approved on November 6, 2002. Unfortunately, however, since the motion for protective order was filed under seal with the exhibits, it was not addressed at the time. Therefore, if Stand wishes to keep those exhibits that were filed on October 4, 2002, under seal, it must file a motion for protective order within 30 days of the date of this entry. If no such motion is filed, the Commission's docketing division will be directed to release the documents.
- (2) On November 3, 2004, Stand filed a motion for a protective order covering Exhibits C-3, C-4, C-5, C-6, and C-7. On November 24, 2004, the protective order was granted in part for a period of 18 months. For purposes of Exhibit C-4, which contained a basic financing agreement, Stand was ordered to redact names and addresses of entities, names of persons executing the agreement, specific dollar amounts, and interest rates from the exhibit, and file the exhibit as a public document. Portions of unredacted Exhibit C-4 were granted protective status for 18 months. Inasmuch as no motion for extension was ever filed, that protective order expired on May 24, 2006.
- (3) On November 6, 2006, Stand filed an application for renewal of its certificate, as well as a motion for a protective order covering Exhibits B-3, C-3, C-4, and C-7. Stand also requested a waiver for certain competitive retail natural gas supplier renewal exhibits as part of its submission. On January 8, 2007, Stand's motion for protective order was granted in part for a period of 24 months. For purposes of Exhibits B-3 and C-4, Stand was

required to file the redacted versions of the exhibits as public documents. Portions of unredacted Exhibits B-3 and C-4 were granted protective status for 24 months. Inasmuch as no motion for extension was ever filed, that protective order expired on January 8, 2009.

- (4) On November 17, 2008, Stand filed an application for renewal of its certificate, along with a motion for a protective order and waiver for certain 2008 competitive retail natural gas supplier renewal exhibits, namely Exhibits C-3, and C-4. The motion for protective order and waiver is under consideration here.
- (5) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, 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 (2000).
- (6) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), 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." Section 1333.61(D), Revised Code. The Ohio Supreme Court has adopted the

following six factors to be used in analyzing a claim that information is a trade secret under that section:

- (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 effected 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.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 3d 513, 524-525 (1997).

- (8) The Ohio Supreme Court has found that an *in camera* inspection is necessary to determine whether materials are entitled to protection from disclosure. *State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland*, 63 Ohio St.3d 772 (1992).
- (9) Rule 4901-1-24(D)(1), O.A.C., also provides that, where confidential material can be reasonably redacted from a document without rendering the remaining document incomprehensible or of little meaning, redaction should be ordered rather than wholesale removal of the document from public scrutiny.
- (10) Therefore, in order to determine whether to grant or to extend a protective order, it is necessary to review the materials in question; to assess whether the information constitutes a trade secret under Ohio law; to decide whether non-disclosure of the materials will be consistent with the purposes of Title 49,

Revised Code, and to evaluate whether the confidential material can reasonably be redacted.

- (11) The exhibits covered by Stand's November 17, 2008, motion consist of financial statements and financial arrangements. Stand submits that this information is highly proprietary business and financial information containing trade secrets. It asserts that public disclosure of this information would jeopardize Stand and would allow competitors to gain access to sensitive information that is not generally known by the public. The attorney examiner has reviewed the information sought to be maintained as confidential, as well as the assertions set forth in its motion. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy, as well as the six-factor test set forth by the Ohio Supreme Court, the attorney examiner finds that Exhibit C-3, and certain information contained in Exhibit C-4, constitutes 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 Title 49 of the Revised Code.
- (12) The attorney examiner concludes that Exhibit C-3 cannot be redacted to remove the confidential information contained therein. Exhibit C-4, however, which is a basic loan document, can be reasonably redacted by striking the names and addresses of entities, names of persons and parties executing the agreement, and specific dollar amounts from the document. Thus, the attorney examiner finds that there is good cause to grant Stand's motion for a protective order for Exhibit C-3 and certain information contained in Exhibit C-4. In accordance with this finding, Stand should file Exhibit C-4, redacted as provided above, as a public document within 30 days after the date of this entry.
- (13) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders under Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification renewal applications to expire after 24 months.

- (14) Stand has filed a motion for waiver for certain 2008 competitive retail natural gas supplier renewal exhibits, namely Exhibits C-3, and C-4, from the 18 month period provided in Rule 4901-1-24(F), O.A.C. Stand's motion is not well taken, as Rule 4901-1-24(F), O.A.C. is no longer the applicable rule for protective orders in this particular situation. Rule 4901-1-24(D)(4), O.A.C., which, as stated above, extends the effective date for protective orders relating to gas marketers' certification renewal applications to 24 months from the typical 18 month effective period, is the applicable rule here. Thus, the examiner finds that Stand's motion for waiver should be denied. Stand's motion for a protective order should be granted for a period of 24 months from the date of this entry. Until that date, the docketing division of the Commission should maintain Exhibits C-3 and C-4 of Stand's 2008 certification renewal application under seal.
- (15) Rule 4901-1-24(F), O.A.C., 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 Stand 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 is filed, the Commission may release this information to the public upon expiration of the protective order, without prior notification to Stand.

It is, therefore,

ORDERED, That a motion for protective treatment of exhibits C-3, C-4, C-5, C-6, and C-7, filed October 4, 2002, be filed by Stand within 30 days of this entry, if Stand wishes to have the Commission consider maintaining them under seal. It is, further,

ORDERED, That the motion by Stand for protective treatment of Exhibits C-3 and C-4, filed on November 17, 2008, be granted in part and denied in part such that Exhibit C-3 be granted protective status and portions of Exhibit C-4 be granted protective status as set forth in finding (12). It is, further,

ORDERED, That Stand file the redacted version of Exhibit C-4 as a public document within 30 days from the date of this entry; it is, further,

ORDERED, That Stand's motion for waiver of Rule 4901-1-24(F), O.A.C., be denied. It is, further,

ORDERED, That the Commission's docketing division shall maintain, under seal, Exhibits C-3 and C-4 of Stand's 2008 certification renewal application, as filed on November 17, 2008, for a period of 24 months from the date of this entry. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Rebecca L. Hussey

By: Rebecca L. Hussey
Attorney Examiner

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Entered in the Journal
JUL 27 2009

Renee J. Jenkins

Renee J. Jenkins
Secretary