

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of RD Energy, Inc. for)
Certification as a Competitive Retail) Case No. 10-73-GA-AGG
Natural Gas Broker/Aggregator.)

ENTRY

The attorney examiner finds:

- (1) On January 20, 2010, RD Energy, Inc. (RD Energy) filed an application for certification as a competitive retail natural gas broker/aggregator. On March 16, 2010, RD Energy filed a motion for a protective order, requesting that exhibits C-3, C-5, C-6, and C-7 of its application be kept under seal. These exhibits contain current and forecasted financial statements as well as credit rating and credit report information. No memorandum contra was filed regarding the motion for protective order.
- (2) In support of its motion for protective order, RD Energy explains that exhibits C-3, C-5, C-6, and C-7 contain extremely sensitive financial information and that disclosure of such information to the general public or competitors would be extremely detrimental. Therefore, RD Energy requests that the information found in exhibits C-3, C-5, C-6, and C-7 should be treated as confidential.
- (3) Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), permits the issuance of an order protecting the confidentiality of information contained in a document filed with the Commission's docketing division, to the extent that state or federal law prohibits release of the information, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.
- (4) The attorney examiner has examined the information covered by the motion for protective order filed by RD 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 Section 1333.61(D), Revised Code, 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-5, and C-6 of RD Energy's application constitutes 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 Title 49 of the Revised Code. 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 RD Energy's motion for protective order is reasonable with regard to exhibits C-3, C-5, and C-6 of its application and should be granted.

- (5) The applicant is required to provide a credit report as exhibit C-7. However, exhibit C-7 of RD Energy's application consists simply of the statement that no credit report is available. Therefore, the exhibit does not contain any information that can be considered a trade secret, and the attorney examiner finds that RD Energy's motion for a protective order with respect to exhibit C-7 should be denied.
- (6) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketer's renewal applications to expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketer's certification applications with the expiration of its certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment shall be afforded to exhibits C-3, C-5, and C-6 for a period ending 24 months from the effective date of the certificate issued to RD Energy, or until February 20, 2012. Until that date, the docketing division should maintain, under seal, exhibits C-3, C-5, and C-6, which were filed under seal in this docket on January 20, 2010.
- (7) 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 RD Energy wishes to extend this confidential treatment, it should file an appropriate motion

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

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 RD Energy.

It is, therefore,


ORDERED, That the motion for protective order filed by RD Energy be granted in part and denied in part in accordance with Findings (4) and (5). It is, further,


ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3, C-5, and C-6, which were filed under seal in this docket on January 20, 2010, for a period of 24 months, ending on February 20, 2012. It is, further,

ORDERED, That exhibit C-7 shall be released to the public record ten days 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


By: Henry H. Phillips-Gary
Attorney Examiner

/sc

Entered in the Journal

APR 06 2010



Renee J. Jenkins
Secretary