

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Spark)
Energy Gas, L.P. for Certification as a) Case No. 08-638-GA-CRS
Competitive Retail Natural Gas Supplier.)

ENTRY

The attorney examiner finds:

- (1) On August 15, 2008, the Commission issued a certificate to Spark Energy Gas, LP (Spark) authorizing it to operate as a competitive retail natural gas supplier (CRNGS) for a period of two years, from August 13, 2008, until August 13, 2010. As part of its initial application filed in 2008, Spark requested and was granted a protective order pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), for certain exhibits or portions of exhibits filed in support of its application.

In accordance with Section 4929.29 *et. seq.*, Revised Code, on July 13, 2010, Spark filed its first application for renewal of its certification, as well as a motion for a protective order, which was amended on September 28, 2010 and is under consideration in this entry. In the motion, Spark seeks confidentiality for exhibit C-4, as amended on September 28, 2010, as well as exhibits C-3 and C-5. These exhibits contain Spark's financial statements for 2008 and 2009, as well as information on Spark's financial arrangements and its forecasted financial statements for 2010, 2011, and 2012. In support for its motion for protective order, Spark explains that it is not a publicly traded company and its financial information is not publicly available. Spark asserts that the information contained in these exhibits is competitively sensitive trade secret information. Therefore, Spark argues that public disclosure of the information would impair its ability to respond to competitive opportunities and provide competitors with an unfair competitive advantage.

- (2) 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* (2000), 89 Ohio St.3d 396, 399.

- (3) Similarly, Rule 4901-1-24, 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."
- (4) 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.
- (5) The attorney examiner has reviewed the information included in Spark's motion for protective order, 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-4, as amended on September 28, 2010, as well as exhibits C-3 and C-5, contain 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. 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 Spark's motion for protective order is reasonable and should be granted.

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

- (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 a gas marketer's certification application 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 exhibit C-4, as amended on September 28, 2010, as well as exhibits C-3 and C-5, for a period ending 24 months from the effective date of the certificate issued to Spark, i.e. until August 14, 2012. Until that date, the docketing division should maintain, under seal, exhibit C-4, as amended on September 28, 2010, and exhibits C-3 and C-5, which were filed under seal in this docket on July 13, 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 Spark 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 to extend confidential treatment is filed, the Commission may release this information without prior notice to Spark.
- (8) The attorney examiner notes that the protective order covering exhibits C-1, C-3, C-4, C-5, C-6, and C-7 of Spark's initial application, filed on May 27, 2008, expired on August 31, 2010. Since Spark has not moved for extension of the confidential treatment afforded to these exhibits, the attorney examiner finds that, on November 30, 2010, the docketing division should release exhibits C-1, C-3, C-4, C-5, C-6, and C-7 of Spark's 2008 application, filed on May 27, 2008.

It is, therefore,

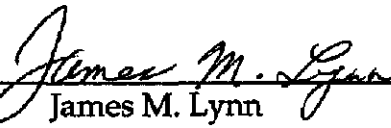
ORDERED, That the motion for a protective order, as amended on September 28, 2010, be granted in accordance with Finding (6). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, exhibit C-4, as amended on September 28, 2010, as well as exhibits C-3 and C-5, which were filed under seal in this docket, on July 13, 2010, and on September 28, 2010, for a period of 24 months, ending on August 14, 2012. It is, further,

ORDERED, That, on November 30, 2010, the docketing division release exhibits C-1, C-3, C-4, C-5, C-6, and C-7 of Spark's 2008 application, filed on May 27, 2008. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: 
James M. Lynn
Attorney Examiner

/dah ^{PSD}

Entered in the Journal

OCT 27 2010



Renee J. Jenkins
Secretary