BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

(1) On October 27, 2010, the attorney examiner issued an entry which, among other things, granted confidentiality to exhibit C-4, as amended on September 28, 2010, as well as exhibits C-3 and C-5, all of which were filed with the Spark Energy Gas, LP (Spark) application to renew certification as a competitive retail natural gas supplier (CRNGS).

(2) After issuance of the October 27, 2010, entry, Spark's counsel contacted the attorney examiner to indicate that Spark also had requested that the protective order include exhibit C-4, as initially filed with Spark's renewal application on July 13, 2010. Spark's amended motion for a protective order, filed on September 28, 2010, clearly makes this request.

(3) 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.

(4) 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 nondisclosure

of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

(5) 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.

(6) The attorney examiner has reviewed the information contained within exhibit C-4, as initially filed on July 13, 2010. 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 exhibit C-4, as initially filed on July 13, 2010, contains 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. Therefore, the attorney examiner finds that Spark's motion for protective order is reasonable and should be granted.

(7) 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 initially filed on July 13, 2010, 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 initially filed on July 13, 2010.

(8) 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

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

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.

It is, therefore,

ORDERED, That Spark's request for a protective order concerning exhibit C-4, as initially filed on July 13, 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 initially filed on July 13, 2010, for a period of 24 months, ending on August 14, 2012. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: James M. Lynn
Attorney Examiner

JRP/dah

Entered in the Journal

NOV 09 2010

Reneé J. Jenkins
Secretary