

FILE

WorldEnergy

7

December 9, 2010

Public Utilities Commission of Ohio
Docketing Division
13th Floor
180 East Broad Street
Columbus, OH 43215-3793

RECEIVED-DOCKETING DIV
2010 DEC 10 AM 11:58
PUCO

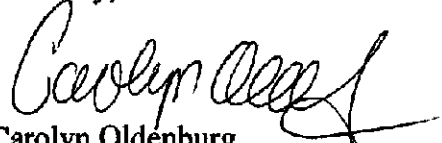
Re: Motion for Protective Order and Supporting Memorandum
Renewal Application (Case No. 06-1363-GA-AGG)

Dear Sir/Madam,

Enclosed herein is World Energy Solutions' Motion for Protective Order and Supporting Memorandum requesting confidentiality for Exhibit C-5 of its certification renewal application filed on October 18, 2010. Also enclosed, under seal, are three unredacted copies of the exhibit and the required redacted copy.

If you have any questions or need additional information, please do not hesitate to contact me at 508-459-8108.

Sincerely,


Carolyn Oldenburg
General Counsel

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 Date Processed DEC 10 2010

STATE OF OHIO
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF

WORLD ENERGY SOLUTIONS, INC.

Case No. 06-1363-GA-AGG

FOR CERTIFICATION RENEWAL AS A
COMPETITIVE RETAIL NATURAL GAS
MARKETER, AGGREGATOR AND BROKER

MOTION SEEKING PROTECTIVE ORDER
DESIGNATING EXHIBIT C-5 OF
THE CERTIFICATION RENEWAL APPLICATION OF
WORLD ENERGY SOLUTIONS, INC. AS CONFIDENTIAL

World Energy Solutions, Inc. ("World Energy"), a licensed competitive retail natural gas marketer in the State of Ohio, filed an application on October 14, 2010 for renewal of its certification as a competitive retail natural gas marketer, retail natural gas aggregator and retail natural gas broker for gas customers in Ohio. Pursuant to Rule 4901-1-24 and Rules 4901-1-12 of the Ohio Administrative Code and Section V of the Certification Filing Instruction for Competitive Retail Natural Gas Marketers, World Energy hereby applies for a protective order designating Exhibit C-5 (Forecasted Financial Statements) of its renewal application as confidential to be retained by the PUC under seal. Three unredacted copies of these exhibits are submitted under seal. With each page marked "Confidential". Also submitted herewith is the required memorandum to support the need for the protective order.

Respectfully submitted,

By: 

Carolyn M. Oldenburg
General Counsel
World Energy Solutions, Inc.
446 Main Street
Worcester, MA 01608
(508) 459-8108 (phone)
(508) 459-8101 (fax)

STATE OF OHIO
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF

WORLD ENERGY SOLUTIONS, INC.

Case No. 06-1363-GA-AGG

FOR CERTIFICATION RENEWAL AS A
COMPETITIVE RETAIL NATURAL GAS
MARKETER, AGGREGATOR AND BROKER

MEMORANDUM IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER DESIGNATING EXHIBIT C-5 OF
THE CERTIFICATION RENEWAL APPLICATION OF
WORLD ENERGY SOLUTIONS, INC. AS CONFIDENTIAL

Pursuant to Rule 4901-1-24 of the Ohio Administrative Code, World Energy Solutions, Inc. ("World Energy") hereby submits this memorandum in support of its motion seeking a protective order designating as confidential Exhibit C-5 (Forecasted Financial Statements) of its renewal application for certification as a competitive retail natural gas marketer, retail natural gas aggregator and retail natural gas broker.

World Energy is a certified retail natural gas marketer, aggregator and broker in the State of Ohio since December 17, 2006. On October 18, 2010, World Energy filed an application to renew its certification. The Company's filing stated its request for confidentiality protection for Exhibit C-5.

Attached hereto is a redacted Exhibit C-5, as required by Rule 4901-1-24(D) (1). Also submitted under seal are three unredacted copies of this exhibit, marked as "confidential", as required by Rule 4901-1-24 (D)(2).

The Commission's Certification Filing Instruction for Competitive Retail Natural Gas Marketers provide in Section V, Confidentiality:

"If any of applicant's answers require the applicant to disclose what the applicant believes to be privileged or confidential information not otherwise available to the public, the applicant should designate at each point in the application that the answer requires the applicant to disclose privileged and confidential information. Applicant must still provide that privileged and confidential information (separately filed and appropriately marked). Applicant must fully support any request to maintain the confidentiality of the information it believes to be confidential or proprietary in a motion for protective order, filed pursuant to Rule 4901:1-1-24 (sic) of the Ohio Administrative Code."

Rule 4901-1-24 provides that upon the motion of a party filing a document with the docketing division of the Commission:

"the commission, the legal director, the deputy director or the attorney examiner assigned to the case may issue any order which is necessary to protect the confidentiality of the information contained in the document, to the extent that state or federal prohibits release of the information, including where the information is deemed by the commission, the legal director, or the attorney examiner assigned to the case 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. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure."

World Energy is seeking a proprietary order to protect the confidentiality of Exhibit C-5, which contains forecasts of World Energy's projected revenue and expenses from its operations for 2010 and 2011.

World Energy is a publicly held corporation, and does not publicly release forecasted financial information. If the highly sensitive information contained in Exhibit C-5 is disclosed to the public, it would provide a competitive advantage to other marketers. World Energy's competitors and suppliers would be able to gain access to

sensitive data. World Energy asserts that the information filed under seal is not generally known by the public and is confidential.

As set forth herein, state law prohibits the release of the information that is the subject of this motion. Moreover, the non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information on Exhibit C-5 in order to fulfill their statutory obligations. No purpose of Title 49 would be served by the public disclosure of this information.

The need to protect the information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has long expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to 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).

Similarly, the Commission's rules protect trade secrets. Rule 4901-1-24 (A)(7).

The Ohio statutes provide a definition of "trade secret" which is derived from 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 that is the subject of this motion. See, Spring Industries, Inc. v. J.E. Nicolozakes, et al. 2000 LEXIS 5522; 58 U.S.P.Q. 2d (BNA) 1794 (Ct. App. Oh. 2000)

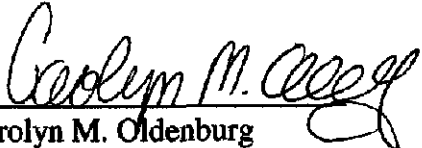
As shown above, the information that World Energy seeks to have designated as confidential is not readily ascertainable by other persons and would have substantial economic value if generally known to other gas marketers. Furthermore, when filing this information, World Energy requested that it be designated as confidential and not made available to the general public, and the relevant pages have been stamped "confidential".

Courts of other jurisdictions have held that, not only does a public utilities commission have the authority to protect trade secrets of a public utility, but the trade secret statute creates a duty to protect them. See, New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y.2d 213 (1982). If the Commission were to do otherwise, it would negate protections the Ohio General Assembly has granted all businesses through adoption of the Uniform Trade Secrets Act.

In the past, this commission has granted both protective orders and extensions of protective orders. See, In the Matter of the Application of Vectren Retail, LLC d/b/a Vectren Source for Certification as a Retail Natural Gas Supplier, Case No. 02-1668-GA-CRS.

WHEREFORE, World Energy respectfully requests that this Motion for Protective Order be granted for the reasons set forth herein.

Respectfully submitted,



Carolyn M. Oldenburg
General Counsel
World Energy Solutions, Inc.
446 Main Street
Worcester, MA 01608
(508) 459-8108 (phone)
(508) 459-8101 (fax)