

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Santanna Natural Gas Corporation d/b/a )  
Santanna Energy Services for Certification ) Case No. 10-1283-GA-CRS  
as a Competitive Retail Natural Gas )  
Supplier. )

ENTRY

The attorney examiner finds:

- (1) On September 2, 2010, Santanna Natural Gas Corporation d/b/a Santanna Energy Services (Santanna) filed an application for certification as a competitive retail natural gas supplier and a motion for protective treatment of exhibits C-3 (financial statements), C-4 (financial arrangements), C-5 (forecasted financial statements), C-6 (credit rating), and C-7 (credit report) of the application. The motion for protective treatment was filed by Santanna's vice president of operations. Subsequently, on January 18, 2011, Santanna's attorney filed a second motion for protective treatment of the same five exhibits.
- (2) Pursuant to Rule 4901-1-08(A), Ohio Administrative Code (O.A.C.), corporations must be represented by an attorney-at-law. Accordingly, the attorney examiner will consider the second motion for protective treatment, as filed by Santanna's attorney.
- (3) In support of its motion for protective order, Santanna explains that exhibits C-3, C-4, C-5, C-6, and C-7 contain confidential financial information that should be considered trade secrets. Santanna claims that, if this information were released to the public, it would harm Santanna and its competitive position by providing its competitors confidential and proprietary information regarding a competitive service. Santanna maintains that, as a privately held corporation, it does not disclose this information to anyone outside its corporate affiliates and representatives, and that knowledge by a competitor of the information would cause great harm to Santanna's competitive position in the marketplace. Additionally, Santanna asserts that public disclosure of the

information is not likely to assist the Commission in carrying out its duties under applicable rules. Therefore, Santanna requests that the information found in exhibits C-3, C-4, C-5, C-6, and C-7 be treated as confidential.

- (4) 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 that, 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.
- (5) 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."
- (6) 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.
- (7) The attorney examiner has reviewed the information included in Santanna'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,<sup>1</sup> the attorney examiner finds that exhibits C-3, C-4, 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. Therefore, the attorney examiner finds that Santanna's motion for a protective order is reasonable and should be granted with regard to exhibits C-3, C-4, and C-5.

- (8) Exhibits C-6 and C-7 consist of Dun & Bradstreet reports that would be available to any subscriber to that service. The attorney examiner finds that this information is not maintained as confidential by Santanna and, therefore, is not a trade secret. Accordingly, the motion for a protective order for exhibits C-6 and C-7 should be denied. The docketing division should move exhibits C-6 and C-7 to the public file, no sooner than 14 days after the date of this entry, or April 13, 2011.
- (9) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to a gas marketer's renewal application 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 exhibits C-3, C-4, and C-5 for a period ending 24 months from the effective date of the renewal certificate issued to Santanna, or until October 3, 2012. Until that date, the docketing division should maintain, under seal, exhibits C-3, C-4, and C-5, which were filed under seal in this docket on September 2, 2010.
- (10) 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 Santanna 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 Santanna.

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

It is, therefore,

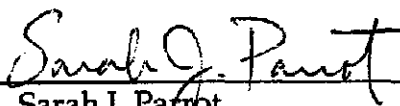
ORDERED, That the motion by Santanna for protective treatment of exhibits C-3, C-4, C-5, C-6, and C-7, filed on January 18, 2011, be granted, in part, and denied, in part, such that exhibits C-3, C-4, and C-5 be granted protective status. However, the motion is denied as to exhibits C-6 and C-7. It is, further,


ORDERED, That, no sooner than 14 days after the date of this entry, or April 13, 2011, the Commission's docketing division shall remove exhibits C-6 and C-7 from the sealed record in this case and place them in the public file. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, exhibits C-3, C-4, and C-5, which were filed under seal in this docket on September 2, 2010, for a period of 24 months, ending on October 3, 2012. It is, further,

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

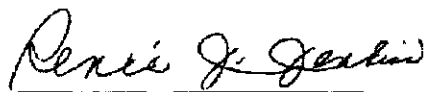
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Sarah J. Parrot  
Attorney Examiner

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Entered in the Journal

MAR 30 2011



Renee J. Jenkins  
Secretary