

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Gateway Energy Services Corporation ) Case No. 02-1908-GA-CRS  
for Certification as a Competitive Retail )  
Natural Gas Supplier. )

ENTRY

The attorney examiner finds:

- (1) On October 8, 2010, Gateway Energy Services Corporation (Gateway) filed an application to renew its certification as a competitive retail natural gas supplier. On November 2, 2010, as supplemented on March 17, 2011, Gateway filed, pursuant to Rule 4901-1-24, Ohio Administrative Code (O.A.C.), a motion for protective order by which it seeks to protect the confidentiality of the information, filed under seal, which is contained in Exhibits C-3, C-4, and C-5 of its October 8, 2010, certification renewal application. Exhibit C-3, was filed under seal on October 8, 2010, and contains Gateway's audited financial statements. Exhibit C-4, which contains information concerning Gateway's financial arrangements, was filed under seal on October 8, 2010, and later supplemented to include additional information filed under seal on November 2, 2010. Exhibit C-5, which contains Gateway's forecasted financial statements, was filed under seal on October 8, 2010, and later supplemented to include additional information filed under seal on October 29, 2010.
- (2) In support of its motion for protective order, Gateway explains that the information sought to be protected is highly confidential, and is not generally known or available to the general public. Gateway contends that it falls within the scope of the definition of a trade secret under Ohio law.
- (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, 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."
- (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 examined the information covered by the motion for protective order filed in this case by Gateway on March 17, 2011, as well as the assertions set forth in the memorandum in support of that motion. Applying the requirements that the information must have independent economic value and be the subject of reasonable efforts to maintain 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 the information which is the subject of the motion for protective order constitutes trade secret information. Release of the information in question is, therefore, prohibited under state law. The attorney examiner also finds that non-disclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that Gateway's motion for protective order is reasonable and should be granted with regard to Exhibits C-3, C-4, and C-5 of Gateway's October 8, 2010, certification renewal application.

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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, 534-525.

- (7) Rule 4901-1-24(D), O.A.C., provides that protective orders relating to gas marketers' certification renewal applications should expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(C)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketers' certification applications with the expiration of their certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment should be afforded for a period ending 24 months from the effective date of the certificate issued to Gateway or until November 17, 2012, to Exhibit C-3 filed under seal on October 8, 2010, Exhibit C-4 filed under seal on October 8, 2010, and later supplemented to include additional information filed under seal on November 2, 2010, and Exhibit C-5 filed under seal on October 8, 2010 and later supplemented to include additional information filed under seal on October 29, 2010. Until that date, the Commission's docketing division should maintain these exhibits under seal.
- (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 advance of the expiration date. If Gateway wishes to extend the confidential treatment granted here, 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 Gateway.
- (9) When renewing its certification in past years, Gateway has both sought, and been granted, protective treatment for certain information included in those prior certification renewal applications. However, Gateway has not filed a motion to extend confidential treatment of any of the information that, in years past, was included in its prior certification renewal applications. Therefore, the Commission's docketing division should release, 14 days from the date of this entry, any and all information that was previously filed under seal in this docket, with the exception of Exhibit C-3 filed under seal on October 8, 2010, Exhibit C-4 filed under seal on October 8, 2010 and later supplemented to include additional information filed under seal on November 2, 2010, and Exhibit C-5 filed under seal on October 8, 2010, and later supplemented to include additional information filed under seal on October 29, 2010.

It is, therefore,

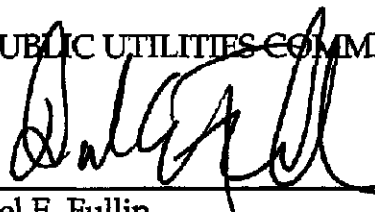
ORDERED, That the motion for protective order filed in this case by Gateway on March 17, 2011, be granted with regard to Exhibit C-3 filed under seal on October 8, 2010, Exhibit C-4 filed under seal on October 8, 2010 and later supplemented to include additional information filed under seal on November 2, 2010, and Exhibit C-5 filed under seal on October 8, 2010 and later supplemented to include additional information filed under seal on October 29, 2010. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, for a period of 24 months, concluding on November 17, 2012, Exhibit C-3 filed under seal on October 8, 2010, Exhibit C-4 filed under seal on October 8, 2010 and later supplemented to include additional information filed under seal on November 2, 2010, and Exhibit C-5 filed under seal on October 8, 2010, and later supplemented to include additional information filed under seal on October 29, 2010. It is, further,

ORDERED, That the Commission's docketing division release, 14 days from the date of this entry, any and all information that was previously filed under seal in this docket, with the exception of Exhibit C-3 filed under seal on October 8, 2010, Exhibit C-4 filed under seal on October 8, 2010 and later supplemented to include additional information filed under seal on November 2, 2010, and Exhibit C-5 filed under seal on October 8, 2010, and later supplemented to include additional information filed under seal on October 29, 2010. It is, further

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

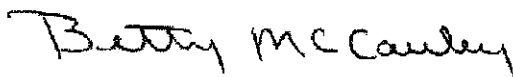


By: Daniel E. Fullin  
Attorney Examiner

/dah <sup>FSD</sup>

Entered in the Journal

**APR 04 2011**



Betty McCauley  
Secretary