

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Viridian)
Energy NG, LLC for Certification as a) Case No. 11-5020-GA-CRS
Competitive Retail Natural Gas)
Broker/Marketer.)

ENTRY

The attorney examiner finds:

- (1) On September 9, 2011, Viridian Energy NG, LLC (Viridian Energy or company) filed an application for certification as a competitive retail natural gas broker/marketer. On October 5, 2011, Viridian Energy filed a motion for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits C-3, C-4, C-5, and C-7 of its application be kept under seal. These exhibits contain the company's financial information. Exhibit C-3 consists of financial statements for 2010. Exhibit C-4 is a statement of the company's financial arrangements, while exhibit C-5 includes forecasted financial statements for 2011 through 2014. Exhibit C-7 consists of a copy of a Dunn and Bradstreet credit report.
- (2) In support of its motion for a protective order, Viridian Energy explains that exhibits C-3, C-4, C-5, and C-7 contain competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. Therefore, Viridian Energy requests that the information found in exhibits C-3, C-4, C-5, and C-7 be treated as confidential.
- (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 by Viridian Energy, 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-3, C-4, and C-5 of Viridian Energy's application constitutes trade secret information. Release of these documents are, 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. Accordingly, the attorney examiner finds that Viridian Energy's motion for protective order is reasonable with regard to exhibits C-3, C-4, and C-5 filed on October 3, 2011; therefore, the motion should be granted with regard to exhibits C-3, C-4, and C-5.
- (7) The attorney examiner finds that the Viridian Energy's financial information filed in exhibit C-7 does not constitute trade secret information. This information, contained in a

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

Dunn and Bradstreet credit report, is available to any subscriber of that service and, therefore, is public information. Since the information is already available to the public, it cannot qualify as trade secret information, and, thus, does not need to remain under seal. Accordingly, the attorney examiner finds that Viridian Energy's motion for protective order should be denied with regard to the information filed in exhibit C-7. Therefore, on December 1, 2011, the docketing division should release exhibit C-7, which was filed under seal in this docket on October 3, 2011.

- (8) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification 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 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 shall be afforded to exhibits C-3, C-4, and C-5 for a period ending 24 months from the effective date of the certificate issued to Viridian Energy, or until October 10, 2013. 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 October 3, 2011.
- (9) 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 Viridian Energy 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 Viridian Energy.

It is, therefore,

ORDERED, That the motion for a protective order filed by Viridian Energy be granted with regard to the information contained in exhibits C-3, C-4, and C-5 of Viridian Energy's application. It is, further,

ORDERED, That Viridian Energy's motion for a protective order be denied with regard to the information contained in exhibit C-7 of the company's application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the un-redacted exhibits C-3, C-4, and C-5, which were filed under seal in this docket on October 3, 2011, for a period of 24 months, ending on October 10, 2013. It is, further,

ORDERED, That the docketing division release exhibit C-7 of Viridian Energy's application, which was filed under seal in this docket on October 3, 2011, into the public record on December 1, 2011. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Kerry K. Sheets

By: Kerry/K. Sheets
Attorney Examiner

GRJ
/vrm

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Betty McCauley
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Secretary