

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Palmco)
Energy OH, LLC for Certification as a) Case No. 10-138-GA-CRS
Competitive Retail Natural Gas Marketer.)

In the Matter of the Application of Palmco)
Power OH, LLC for Certification as a) Case No. 10-139-EL-CRS
Competitive Retail Generation Provider)
and Power Marketer.)

ENTRY

The attorney examiner finds:

- (1) On January 13, 2012, Palmco Energy OH, LLC and Palmco Power OH, LLC (collectively, Palmco Companies or companies) filed renewal applications for certification as a competitive retail natural gas marketer (Case No. 10-138-GA-CRS [10-138]) and retail generation provider and power marketer (Case No. 10-139-EL-CRS [10-139]), respectively. On that same day, pursuant to Rules 4901-1-24(D) and (F), Ohio Administrative Code (O.A.C.), the Palmco Companies filed motions for protective orders covering financial statements (exhibit C-4), filed under seal on January 13, 2012, as part of their renewal applications, and for extension of prior protective orders covering previously submitted financial statements (former exhibit C-4), filed under seal on February 5, 2010, as part of the companies' original applications for certification as a competitive retail natural gas marketer in 10-138 and retail generation provider and power marketer in 10-139.
- (2) In their motions for protective orders and for extension of prior protective orders, the Palmco Companies request that, pursuant to Rule 4901-1-24(D), O.A.C., exhibit C-4 of their renewal applications, which was filed under seal in 10-138 and 10-139 on January 13, 2012, be granted confidential treatment. Because the Palmco Companies have not yet commenced doing business in Ohio, the companies submitted, in exhibit C-4, the consolidated financial statements of 12 affiliate corporations (Palmco Affiliates), guarantors of the Palmco Companies, to demonstrate the Palmco Affiliates' ability to act as guarantors of the Palmco Companies' obligations under sales agreements

with their retail customers. These financial statements are dated December 31, 2010. In support of this portion of their motions, the Palmco Companies explain that exhibit C-4 of their renewal applications, filed on January 13, 2012, contains competitively sensitive and highly proprietary business financial information, which is not generally known or available to the general public. Therefore, the Palmco Companies request that the information found in exhibit C-4 of their renewal applications be treated as confidential.

- (3) In addition, the Palmco Companies assert that the information protected in former exhibit C-4, which was filed under seal in 10-138 and 10-139 on February 5, 2010, continues to be competitively sensitive and proprietary business financial information. As was noted previously with respect to exhibit C-4, the Palmco Companies have not yet commenced doing business in Ohio. Therefore, the Palmco Companies submitted, in former exhibit C-4, the combined financial statements of Columbia Utilities, LLC and Columbia Utilities Power, LLC (Columbia Affiliates), guarantors of the Palmco Companies, to demonstrate the Columbia Affiliates' ability to act as guarantors of the Palmco Companies' obligations under sales agreements with their retail customers. These financial statements are dated December 31, 2007, and December 31, 2008. The Palmco Companies seek to continue the protective orders that were issued on March 17, 2010, for an additional 24-month period.
- (4) On January 13, 2012, motions for permission for Peter M. Metzger to appear *pro hac vice* and certificates of *pro hac vice* registration with the Supreme Court of Ohio were filed by the companies in these cases. The attorney examiner finds that the motions for permission to appear *pro hac vice* should be granted.
- (5) 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.

- (6) 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."
- (7) Ohio law defines a trade secret as "information . . . that satisfies both of the following: (a) 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. (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Section 1333.61(D), Revised Code.
- (8) The attorney examiner has examined the information covered by the motions for protective orders and for extension of prior protective orders that were filed by the Palmco Companies, as well as the assertions set forth in the supportive memoranda. Further, the examiner has applied 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
- (9) The attorney examiner notes initially that the competitive value of former exhibit C-4, given its age, is diminished. However, the examiner finds, at the present time, that former exhibit C-4 of Palmco Companies' 2010 application still constitutes trade secret information.
- (10) Because the documents in exhibit C-4 and former exhibit C-4 constitute trade secret information, release of those documents is prohibited under state law. The attorney examiner further finds that nondisclosure of this information is not inconsistent

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

with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that the Palmco Companies' motions for protective orders and for extension of prior protective orders are reasonable with regard to exhibit C-4 and former exhibit C-4 of their applications, filed under seal in 10-138 and 10-139 on January 13, 2012, and February 5, 2010, respectively; therefore, the motions should be granted.

- (11) 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 exhibit C-4 and former exhibit C-4 of the companies' applications for a period ending 24 months from the effective date of the certificates issued to the Palmco Companies, or until February 13, 2014, in 10-138, and March 8, 2014, in 10-139. Until those dates, the docketing division should maintain, under seal, exhibit C-4 and former exhibit C-4, which were filed under seal in 10-138 and 10-139 on January 13, 2012, and February 5, 2010.
- (12) 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 the Palmco Companies wish to extend this confidential treatment, they should file appropriate motions at least 45 days in advance of the expiration dates. If no such motions to extend confidential treatment are filed, the Commission may release this information without prior notice to the Palmco Companies.

It is, therefore,

ORDERED, That the motions for admission *pro hac vice* filed in this matter be granted in accordance with finding (4). It is, further,

ORDERED, That the Palmco Companies' motions for protective orders and for extension of prior protective orders be granted with regard to the information contained in exhibit C-4 and former exhibit C-4, which were filed under seal in these dockets on January 13, 2012, and February 5, 2010, respectively. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the un-redacted exhibit C-4 and former exhibit C-4, which were filed under seal in 10-138 and 10-139 on January 13, 2012, and February 5, 2010, for a period of 24 months, ending on February 13, 2014, in 10-138, and March 8, 2014, in 10-139. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

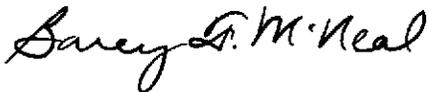


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Barcy F. McNeal
Secretary