

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION)
OF TERM POWER & GAS, LLC FOR)
COMPETITIVE RETAIL NATURAL GAS)
SUPPLIER CERTIFICATION)
)

Case No. 12- 1603 -GA-CRS


MOTION FOR PROTECTIVE ORDER OF
TERM POWER & GAS, LLC

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), TERM Power & Gas, LLC ("TERM") hereby moves for a protective order to preserve the confidentiality of certain competitively-sensitive information contained in Exhibits A-17, C-3, C-4, and C-5 to its Application For Competitive Retail Natural Gas Supplier Certification ("Application"), filed on this date in the above-captioned proceeding.

The basis for this motion is set forth in the accompanying memorandum in support. As required by Rule 4901-1-24(D)(2), O.A.C., TERM has filed under seal three copies of the confidential and unredacted Application.

WHEREFORE, TERM respectfully requests that its motion be granted.

Respectfully submitted,



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May 17, 2012

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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OF TERM POWER & GAS, LLC FOR)
COMPETITIVE RETAIL NATURAL GAS)
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Case No. 12- 1603 -GA-CRS

**MEMORANDUM IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER OF
TERM POWER & GAS, LLC**

TERM Power & Gas, LLC ("TERM"), by counsel and in accordance with Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), hereby files this memorandum in support of its Motion for Protective Order (the "Motion").

I. STATEMENT OF FACTS

Contemporaneous with its Motion, TERM has filed its Application For Competitive Retail Natural Gas Supplier Certification ("Application") with the Public Utilities Commission of Ohio (the "Commission"). Pursuant to the Application instructions, TERM has provided to the Commission Exhibits A-15, C-3, C-4, and C-5, which contain highly confidential information pertaining to TERM's operational and financial arrangements to provide competitive retail natural gas services. TERM is a privately held limited liability company, and the information contained in Exhibits A-17, C-3, C-4, and C-5 of its Application is not publically available.

II. ARGUMENT

Rule 4901-1-24(D), O.A.C. provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state

or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Ohio Revised Code (“O.R.C.”). The non-disclosure of the information provided in Exhibits A-15, C-3, C-4, and C-5 will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

State law recognizes the need to protect certain types of information which are the subject of this Motion. Rule 4901-1-24(D), O.A.C. explicitly allows confidential treatment of any information deemed to “constitute a trade secret under Ohio law” Rules 4901.12 and 4905.07, O.R.C. further facilitate the protection of trade secrets in the Commission’s possession and except such information from Ohio’s Open Records Act.

Under Ohio law, a “trade secret” includes “any business information or plans [or] financial information” that “derives independent economic value, actual or potential, from not being generally known to . . . other persons who can obtain economic value from its disclosure or use” and that “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Rule 1333.61(D), O.R.C. The Ohio Supreme Court has established a six-factor test for identifying trade secrets:

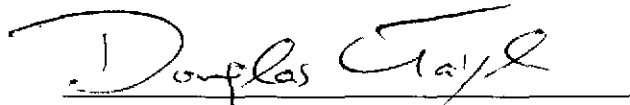
(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, *i.e.*, by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

State ex rel The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 3d 513, 524-525 (1997) (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Here, TERM seeks to protect exactly these kinds of business plans and financial information. Exhibit A-15 contains TERM's Operating Agreement and Exhibits C-3, C-4 and C-5 contain detailed financial and strategic documents, such as financial forecasts, certified financial statements, and financial plans. Such information is not known outside of TERM's business and is not available to every employee inside TERM's business. Such information if released to the public would harm TERM by providing its competitors proprietary information in what is designed by statute to now be a competitive service. Additionally, public disclosure of this financial information is not likely to assist the Commission in carrying out its duties pursuant to Title 49. Confidential treatment of the information contained in Exhibits A-15, C-3, C-4, and C-5 of the Application is therefore appropriate and required by Ohio law and the Commission's rules. *See* Rule 4901-1-24(D), O.A.C.; Rules 4905.07, 4901.12 and 149.43, O.R.C.

WHEREFORE, pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, TERM Power & Gas, LLC respectfully requests that the Commission grant its Motion for Protective Order and issue an order directing that Exhibits A-17, C-3, C-4, and C-5 of the Application be afforded confidential treatment.

Respectfully submitted,

A handwritten signature in black ink, reading "Douglas Taylor", is written over a horizontal line.

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