

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of TERM )  
Power & Gas, LLC d/b/a ENCOA for ) Case No. 12-1603-GA-CRS  
Certification as a Competitive Retail )  
Natural Gas Marketer. )

ENTRY

The attorney examiner finds:

- (1) On May 18, 2012, as amended May 31, 2012, TERM Power & Gas, LLC d/b/a ENCOA (TERM P&G or company) filed an application for certification as a competitive retail natural gas marketer. Also on May 18, 2012, as amended on May 31, 2012, TERM P&G filed a motion for protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits A-17, C-3, C-4, and C-5 of its application be kept under seal. These exhibits contain the company's operational and financial information, including forecasted financial statements for 2012 and 2013.
- (2) In support of its motion for a protective order, TERM P&G explains that exhibits A-17, C-3, C-4, and C-5 contain competitively sensitive and highly proprietary business operational and financial information which is not generally known or available to the general public. Therefore, TERM P&G requests that the information found in exhibits A-17, C-3, C-4, and C-5 be treated as confidential.
- (3) On May 18, 2012, a motion for permission for James E. Guy to appear *pro hac vice* and a certificate of *pro hac vice* registration with the Supreme Court of Ohio were filed by the company in this case. The attorney examiner finds that the motion for permission to appear *pro hac vice* should be granted.
- (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 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*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

- (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: (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.
- (7) The attorney examiner has examined the information covered by the motion for protective order filed by TERM P&G, 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 the information contained in exhibits A-17, C-3, C-4, and C-5 of TERM P&G’s application constitutes trade secret information. Release of these documents 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. Accordingly, the attorney examiner finds that TERM P&G’s motion for protective order is reasonable with regard to exhibits A-17, C-3, C-4, and C-5 filed on May 18, 2012; therefore, the motion should be granted.

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<sup>1</sup> See *State ex-rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

- (8) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification 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 A-17, C-3, C-4, and C-5 for a period ending 24 months from the effective date of the certificate issued to TERM P&G, or until June 18, 2014. Until that date, the docketing division should maintain, under seal, exhibits A-17, C-3, C-4, and C-5, which were filed under seal in this docket on May 18, 2012.
- (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 TERM P&G 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 TERM P&G.

It is, therefore,

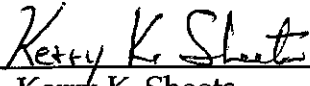
ORDERED, That the motion for admission *pro hac vice* filed in this matter be granted in accordance with finding (3). It is, further,

ORDERED, That the motion for protective order filed by TERM P&G be granted with regard to the information contained in exhibits A-17, C-3, C-4, and C-5 of TERM P&G's application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits A-17, C-3, C-4, and C-5, which were filed under seal in this docket on May 18, 2012, for a period of 24 months, ending on June 18, 2014. It is, further,

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

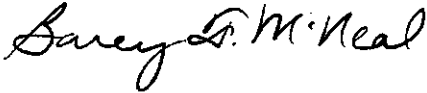
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Kerry K. Sheets  
Attorney Examiner

  
JEF/vrm

Entered in the Journal

JUN 22 2012

  
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Barcy F. McNeal  
Secretary