

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Direct)
Energy Source, LLC dba Vectren Source,) Case No. 02-1668-GA-CRS
for Certification as a Retail Natural Gas)
Supplier.)

ENTRY

The attorney examiner finds:

- (1) On June 12 2012, as amended July 3, 2012, Direct Energy Source, LLC, dba Vectren Source (Direct Energy or company), a previously certified competitive retail natural gas supplier pursuant to Section 4929.20 *et seq.*, Revised Code, filed its renewal application to retain its certified status. As part of that filing, Vectren Source requested a protective order under Rule 4901-1-24(D), O.A.C., for its financial arrangements and forecasted financial statements, exhibits C-4 and C-5, respectively.
- (2) Direct Energy submits that the information in exhibits C-4 and C-5 is competitively sensitive and highly proprietary. The company contends that public disclosure of this information would jeopardize its business position in negotiations with other parties and its ability to compete. Direct Energy states that this information is not generally known by the public and is held in confidence in the normal course of business.
- (3) No memorandum contra was filed regarding Direct Energy's motions for a protective order.
- (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: (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.
- (7) The attorney examiner has examined the information covered by the motions for a protective order filed by Direct 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-4 and C-5 of Direct Energy’s 2012 certification renewal application contains 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. 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 Direct Energy’s motion for protective order of exhibits C-4 and C-5 of its 2012 certification renewal application is reasonable and should be granted.

¹ 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 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 application and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment should be afforded to exhibits C-4 and C-5 of the company's 2012 application, for a period ending 24 months from the effective date of the most recent certificate issued to Direct Energy, or until July 13, 2014. Until that date, the docketing division should maintain, under seal, exhibits C-4 and C-5 of the company's 2012 application, filed on June 12, 2012, and July 3, 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 Direct 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 Direct Energy.
- (10) As a final matter, the attorney examiner notes that Direct Energy did not request an extension of the protective order granted by entry issued July 19, 2010, for exhibit C-4 of its 2002 application, filed on July 5, 2002; exhibits C-4 and C-5 of the company's 2004 application, filed on June 10, 2004; and exhibits C-3, C-4, and C-5 of the company's 2006, 2008, and 2010 applications, filed on May 4, 2006, June 10, 2008, and May 21, 2010, respectively. Therefore, the attorney examiner directs the Commission's docketing division to release these exhibits into the public record.

It is, therefore,

ORDERED, That the motion by Direct Energy for protective treatment of exhibits C-4 and C-5 of its 2012 application, filed on June 12, 2012, and amended on July 3, 2012, be granted for a period ending 24 months from the effective date of the most recent certificate issued to Direct Energy, or until July 13, 2014. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-4 and C-5, which was filed under seal in this docket on June 12, 2012, and July 3, 2012, for a period of 24 months, ending on July 13, 2014. It is, further,

ORDERED, That, on August 24, 2012, the docketing division should release into the public record exhibit C-4 of Direct Energy's 2002 application, filed on July 5, 2002; exhibits C-4 and C-5 of the company's 2004 application, filed on June 10, 2004; and exhibits C-3, C-4, and C-5 of the company's 2006, 2008, and 2010, applications, filed on May 4, 2006, June 10, 2008, and May 21, 2010, respectively. It is, further,

ORDERED, That a copy of this entry be served upon Direct Energy and all other parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Kerry S. Sheets

By: Kerry K. Sheets
Attorney Examiner

jrj/vrm

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/13/2012 2:40:50 PM

in

Case No(s). 02-1668-GA-CRS

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Direct Energy Source, LLC, dba Vectren Source be granted with regard to confidential exhibits C-4 and C-5 of the company's renewal application for certification as a competitive retail natural gas supplier. The protective order directs Docketing to keep exhibits C-4 and C-5 under seal for a period of 24 months. The entry also directs Docketing to release into the public record former confidential exhibits C-4 and C-5 that were filed, either as part of the company's renewal application or as part of its original certificate application, in 2002, 2004, 2006, 2008, and 2010. electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio