

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Stand)
Energy Corporation for Certification as a) Case No. 02-2549-GA-CRS
Competitive Retail Natural Gas Supplier.)

ENTRY

The attorney examiner finds:

- (1) On October 16, 2012, Stand Energy Corporation (Stand Energy or company) filed an application for renewal of its certification as a competitive retail natural gas supplier. On that same day, Stand Energy also 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 and C-4 of its application be kept under seal. Subsequently, on October 26, 2012, Stand Energy submitted exhibit C-5 of its 2012 renewal application and a separate motion for a protective order requesting that exhibit C-5 be kept under seal. Stand Energy's financial statements (exhibit C-3), financial arrangements (exhibit C-4), and forecasted financial statements (exhibit C-5) are contained in these exhibits.
- (2) Pursuant to Rule 4901-1-24(F), O.A.C., Stand Energy also filed a motion to extend the protective orders for its previously submitted financial information (exhibits C-3 and C-4), filed under seal on November 10, 2010, as part of the company's 2010 renewal application for certification. Stand Energy asserts that the information protected in those C-3 and C-4 exhibits continues to be competitively sensitive and proprietary business financial information. Stand Energy seeks to continue the protective order issued on January 21, 2011, for an additional 24-month period.
- (3) No memorandum contra was filed regarding Stand Energy's current motions for a protective order or its motion to extend the protective order for its previously submitted 2010 financial information.
- (4) In support of its current motions for a protective order, Stand Energy explains that exhibits C-3, C-4, and C-5 of its 2012 renewal application contain competitively sensitive and highly

proprietary business financial information which is not generally known or available to the general public. Therefore, Stand Energy requests that the information found in exhibits C-3, C-4, and C-5 of its 2012 renewal application be treated as confidential.

- (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*, 89 Ohio St. 3d 396, 399, 732 N.E. 2d 373 (2000).
- (6) 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.”
- (7) 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.
- (8) The attorney examiner has examined the information covered by the motions for a protective order filed by Stand Energy, as well as the assertions set forth in the supportive memoranda. 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 Stand Energy's 2012 renewal 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. 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 Stand Energy's motions for a protective order are reasonable with regard to exhibits C-3, C-4, and C-5 of its 2012 renewal application and should be granted.

- (9) With regard to Stand Energy's motion to extend the protective order for its previously submitted financial statements, the attorney examiner notes that the competitive value of exhibits C-3 and C-4 of Stand Energy's 2010 renewal application, given their age, is diminished. However, the attorney examiner finds, at the present time, that exhibits C-3 and C-4 of Stand Energy's 2010 renewal application still constitute trade secret information. Therefore, the attorney examiner finds that Stand Energy's motion to extend the protective order with respect to exhibits C-3 and C-4 of its 2010 renewal application is reasonable and should be granted.
- (10) 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 of Stand Energy's 2012 renewal application, and extended for exhibits C-3 and C-4 of its 2010 renewal application, for a period ending 24 months from the effective date of the certificate issued to Stand Energy, or until December 12, 2014. Until that date, the docketing division should

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).

maintain, under seal, exhibits C-3, C-4, and C-5 of Stand Energy's 2012 renewal application, which were filed under seal in this docket on October 16, 2012, and October 26, 2012, and exhibits C-3 and C-4 of Stand Energy's 2010 renewal application, which were filed under seal in this docket on November 10, 2010.

- (11) 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 Stand 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 Stand Energy.
- (12) As a final matter, Stand Energy has filed motions for waiver for certain 2012 competitive retail natural gas supplier renewal exhibits, namely exhibits C-3, C-4, and C-5, from the 18-month period provided in Rule 4901-1-24(F), O.A.C. Stand Energy's motion is not well taken, as Rule 4901-1-24(F), O.A.C., is no longer the applicable rule for protective orders in this particular situation. Rule 4901-1-24(D)(4), O.A.C., which, as stated above, extends the effective date for protective orders relating to gas marketers' certification renewal applications to 24 months from the typical 18-month effective period, is the applicable rule here. Thus, the examiner finds that Stand Energy's motion for waiver should be denied. As previously noted, Stand Energy's motions for a protective order should be granted for a period of 24 months from the effective date of the certificate issued to Stand Energy, or until December 12, 2014. Until that date, the docketing division of the Commission should maintain exhibits C-3, C-4, and C-5 of Stand Energy's 2012 certification renewal application under seal.

It is, therefore,

ORDERED, That the motions for a protective order filed by Stand Energy be granted with regard to the information contained in exhibits C-3, C-4, and C-5 of Stand Energy's 2012 renewal application. It is, further,

ORDERED, That Stand Energy's motion to extend the protective order with respect to exhibits C-3 and C-4 of its 2010 renewal application be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3, C-4, and C-5 of Stand Energy's 2012 renewal application, which were filed under seal in this docket on October 16, 2012, and October 26, 2012, for a period of 24 months, ending on December 12, 2014. It is, further,

ORDERED, That the Commission's docketing division continue to maintain, under seal, the unredacted exhibits C-3 and C-4 of Stand Energy's 2010 renewal application, which were filed under seal in this docket on November 10, 2010, for a period of 24 months, ending on December 12, 2014. It is, further,

ORDERED, That Stand Energy's motion for waiver of Rule 4901-1-24(F), O.A.C., be denied. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Kerry K. Sheets

By: Kerry K. Sheets
Attorney Examiner

jrj/vrm

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Case No(s). 02-2549-GA-CRS

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Stand Energy Corporation be granted with regard to confidential exhibits C-3, C-4, and C-5 of the company's application for certification as a competitive retail natural gas and electric supplier. The protective order directs the Commission's docketing division to keep exhibits C-3, C-4, and C-5 under seal for a period of 24 months, electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio