

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
BidURenergy, Inc. for Certification as a) Case No. 11-17-GA-AGG
Competitive Retail Natural Gas Broker.)

ENTRY

The attorney examiner finds:

- (1) On January 28, 2013, as amended February 15, 2013, BidURenergy, Inc. (BidURenergy or company) filed an application to renew its certification as a competitive retail natural gas broker. On those same days, BidURenergy filed motions for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits C-3 and C-5 of its renewal application be kept under seal. These exhibits contain the company's financial statements and forecasted financial statements.
- (2) In its motions for a protective order, BidURenergy also requests, pursuant to Rule 4901-1-24(F), Ohio Administrative Code (O.A.C.), that the protective order for its previously submitted financial information, exhibits C-3 and C-5, filed under seal on January 3, 2011, as part of the company's 2011 original application for certification, be extended. BidURenergy asserts that the information protected in those C-3 and C-5 exhibits continues to be competitively sensitive and proprietary business financial information. BidURenergy seeks to continue the protective order issued on March 1, 2011, for an additional 24-month period.
- (3) No memorandum contra was filed regarding BidURenergy's motions for a protective order with regard to its current financial information or its request to extend the protective order for its previously submitted 2011 financial information.
- (4) In support of its motions for a protective order, BidURenergy explains that exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. Therefore, BidURenergy requests that the information found in exhibits C-3 and C-5 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 BidURenergy, 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-3 and C-5 of BidURenergy’s application constitutes trade secret information. Release of these documents is, therefore, prohibited under state

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).

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. Accordingly, the attorney examiner finds that BidUReenergy's motions for a protective order are reasonable with regard to exhibits C-3 and C-5 filed on January 28 and February 15, 2013; therefore, the motions should be granted.

- (9) With regard to BidUReenergy's motion to extend the protective order for its previously submitted financial statements, the attorney examiner finds that exhibits C-3 and C-5 of BidUReenergy's 2011 original application for certification still constitute trade secret information. Therefore, the attorney examiner finds that BidUReenergy's motion to extend the protective order with respect to those C-3 and C-5 exhibits 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 and C-5 of BidUReenergy's 2013 renewal application, and extended for exhibits C-3 and C-5 of its 2011 original application, for a period ending 24 months from the effective date of the certificate issued to BidUReenergy, or until March 5, 2015. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5 of BidUReenergy's 2013 renewal application, which were filed under seal in this docket on January 28 and February 15, 2013, and exhibits C-3 and C-5 of BidUReenergy's 2011 original application, which were filed under seal in this docket on January 3, 2011.
- (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 BidUReenergy 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 BidURenergy.

It is, therefore,

ORDERED, That the motions for a protective order filed by BidURenergy be granted with regard to the information contained in exhibits C-3 and C-5 of BidURenergy's 2013 renewal application. It is, further,

ORDERED, That BidURenergy's motion to extend the protective order with respect to exhibits C-3 and C-5 of its 2011 original application be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3 and C-5, which were filed under seal in this docket on January 28 and February 15, 2013, for a period of 24 months, ending on March 5, 2015. It is, further,

ORDERED, That the Commission's docketing division continue to maintain, under seal, the unredacted exhibits C-3 and C-4 of BidURenergy's 2011 original application, which were filed under seal in this docket on January 3, 2011, for a period of 24 months, ending on March 5, 2015. 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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in

Case No(s). 11-0017-GA-AGG

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by BidURenergy be granted with regard to the information contained in exhibits C-3 and C-5 of BidURenergy's 2011 original and 2013 renewal applications; that the Commission's docketing division maintain under seal in this docket the un-redacted exhibits C-3 and C-5, which were filed under seal in this docket on January 3, 2011, and January 28 and February 15, 2013, for a period of 24 months, ending on March 5, 2015; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio