

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

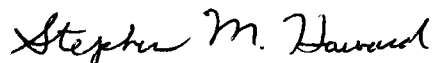
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| In the Matter of the Application of |) | |
| Constellation NewEnergy – Gas Division, |) | Case No. 09-459-GA-CRS |
| LLC for Certification as a Competitive |) | |
| Retail Natural Gas Supplier |) | |

MOTION TO EXTEND PROTECTIVE ORDER

Now comes Constellation NewEnergy – Gas Division, LLC (“Constellation NewEnergy”), seeking to extend the protective order to keep one financial exhibit (Exhibit C-4) to its 2011 renewal application for certification confidential and not part of the public record. Constellation NewEnergy acknowledges that it is filing this motion subsequent to the date that Rule 4901-1-24(D) of the Ohio Administrative Code prescribes for filing such a motion. However, Constellation NewEnergy submits that Exhibit C-4 (submitted on May 27, 2011) has not yet been released to the public and that good cause exists for extending protective treatment for this one exhibit. The reasons underlying this motion to extend are detailed in the attached Memorandum in Support.

WHEREFORE, Constellation NewEnergy – Gas Division, LLC respectfully moves that the Commission extend confidential treatment for Exhibit C-4 (submitted on May 27, 2011).

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF
MOTION TO EXTEND PROTECTIVE ORDER**

On May 27, 2011, Constellation NewEnergy filed a renewal application in Case No. 09-459-GA-CRS. Constellation NewEnergy filed a motion seeking protective treatment for Exhibits C-3, C-4 and C-5, all of which were submitted under seal. On July 7, 2011, the Attorney Examiner granted the motion for protective order indicating that Exhibits C-3, C-4 and C-5 constituted trade secret information and would be protected for twenty-four months.¹ The Attorney Examiner stated that if Constellation NewEnergy wished to extend this confidential treatment, it should file an appropriate motion at least forty-five days in advance of the expiration date. Constellation NewEnergy acknowledges that the date for filing such a motion would have been on May 20, 2013 and that Constellation NewEnergy did not file such a motion by that date. However, Constellation NewEnergy submits that there are two reasons constituting good cause why its motion to extend protective treatment should be granted.

First, in its July 7, 2011 Entry, the Attorney Examiner cited the six factor test the Ohio Supreme Court has used in determining whether information is a trade secret. See State Ex Rel The Plain Dealer v Ohio Dept. of Ins. (1997) 80 Ohio St. 3d 513, 524-525. Those six factors include:

- (a) The extent to which the information is known outside the business;
- (b) The extent to which it is known to those inside the business, i.e. by the employees;
- (c) The precautions taken by the holder of the trade secret to guard the secrecy of the information;
- (d) The savings affected and the value to the holder in having the information as against competitors;
- (e) The amount of effort or money expended in obtaining and developing the information;

¹ Constellation NewEnergy – Gas Division, LLC does not seek extension of the protection for Exhibits C-3 and C-5.

- (f) The amount of time and expense it would take for others to acquire and duplicate the information.

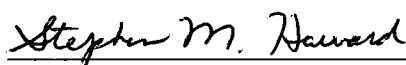
Despite the passage of two years, applying these factors today produces the same conclusion that Exhibit C-4 constitutes trade secret information. The financial information is still not known outside the business and is still only known to a few employees. Constellation NewEnergy still takes precautions to guard the secrecy of this information. If a competitor had this information, it would still be very valuable to it when it comes to competing against Constellation NewEnergy. It took time and effort to develop these financial arrangements. Without this information, it would still take time and expense for others to acquire and duplicate this information. Further, the financial arrangements submitted in 2011 are still in use today. Thus, even though almost twenty-four months have passed, this information should still be considered as a trade secret.

But there is another reason why the Commission or the Attorney Examiner should extend protective treatment for this exhibit. On November 7, 2012, the Staff proposed in Case No. 12-925-GA-ORD that a specific rule on protective orders allow protective treatment for financial exhibits for a period of six years from the date of the certificate for which the information is being provided. See the November 7, 2012 Entry in Case No. 12-925-GA-ORD, Attachment, page 10 of 87 and proposed Rule 4901:1-27-07 "Motions". Thus, the Staff has suggested that it might be appropriate to consider extending the current initial twenty-four month period that documents are kept under seal to a six year period of time. Constellation NewEnergy asks that the Commission at least extend confidential treatment to its Exhibit C-4 (submitted on May 27, 2011) for an additional two years until such time as the Commission amends its rules and considers lengthening the initial time period that documents are treated as confidential. This

additional two year extension was granted in the January 28, 2013 Entry in Case No. 10-1081-EL-AGG, et al. under a similar set of circumstances.

For the foregoing reasons, Constellation NewEnergy – Gas Division, LLC submits that good cause exists for extending the protective treatment for this one exhibit and respectfully requests that the Commission or an Attorney Examiner extend the protective order with respect to Exhibit C-4 that was submitted in May of 2011.

Respectfully submitted,



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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/24/2013 4:31:54 PM

in

Case No(s). 09-0459-GA-CRS

Summary: Motion Motion to Extend Protective Order electronically filed by Mr. Stephen M Howard on behalf of Constellation NewEnergy - Gas Division, LLC