

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Cincinnati Bell Energy LLC for Certification) Case No. 11-2410-GA-CRS
as a Competitive Retail Natural Gas)
Marketer.)

ENTRY

The attorney examiner finds:

- (1) On April 11, 2013, Cincinnati Bell Energy LLC (Cincinnati Bell Energy or company) filed an application for renewal of its certification as a competitive retail natural gas marketer. On that same day, as supplemented on April 22, 2013, Cincinnati Bell Energy 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, C-4, and C-5 of its application be kept under seal. These exhibits contain the company's financial statements (exhibit C-3), financial arrangements (exhibit C-4), and forecasted financial statements (exhibit C-5).
- (2) In support of its motion for a protective order, Cincinnati Bell Energy explains that exhibits C-3, C-4, and C-5 contain competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. Therefore, Cincinnati Bell Energy requests that the information found in exhibits C-3, C-4, and C-5 be treated as confidential.
- (3) 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).
- (4) 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.”

- (5) 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.
- (6) The attorney examiner has examined the information covered by the motion for a protective order filed by Cincinnati Bell 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-3, C-4, and C-5 of Cincinnati Bell Energy’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 Cincinnati Bell Energy’s motion for a protective order is reasonable with regard to exhibits C-3, C-4, and C-5, filed on April 11 and 22, 2013; therefore, the motion should be granted.
- (7) 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

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).

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 for a period ending 24 months from the effective date of the certificate issued to Cincinnati Bell Energy, or until May 14, 2015. Until that date, the docketing division should maintain, under seal, exhibits C-3, C-4, and C-5, which were filed under seal in this docket on April 11 and 22, 2013.

- (8) 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 Cincinnati Bell 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 Cincinnati Bell Energy.
- (9) As a final matter, the attorney examiner notes that the previous protective order granted to Cincinnati Bell Energy, by entry issued May 27, 2011, has expired. No motion to extend that protective order was filed. Therefore, the attorney examiner directs the Commission's docketing division to release exhibits C-3, C-4, and C-5, filed under seal in this docket on April 12, 2011, into the public record on June 27, 2013.

It is, therefore,

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

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3, C-4, and C-5, which were filed under seal in this docket on April 11 and 22, 2013, for a period of 24 months, ending on May 14, 2015. It is, further,

ORDERED, That the Commission's docketing division release into the public record, on June 27, 2013, exhibits C-3, C-4, and C-5, filed under seal in this docket on April 12, 2011. 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). 11-2410-GA-CRS

Summary: Attorney Examiner Entry granting the motion for a protective order filed by Cincinnati Bell Energy with regard to the information contained in exhibits C-3, C-4, and C-5, of Cincinnati Bell Energy's renewal application. The entry directs the Commission's docketing division to maintain, under seal, the un-redacted exhibits C-3, C-4, and C-5, which were filed under seal in this docket on April 11 and 22, 2013, for a period of 24 months, ending on May 14, 2015. Further, the entry directs the Commission's docketing division to release into the public record, on June 27, 2013, exhibits C-3, C-4, and C-5, which were filed under seal in this docket on April 12, 2011; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio