

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On June 7, 2011, the attorney examiner issued an entry that granted protective treatment, for a 24-month period, to three exhibits (namely, Exhibits C-3, C-4, and C-5), each of which was filed under seal, on May 27, 2011, by the applicant, Constellation New Energy – Gas Division, LLC, (CNEG), as part of CNEG's May 27, 2011, application for renewal of its certification as a competitive retail natural gas service provider.
- (2) On May 24, 2013, CNEG filed a motion seeking to extend, for an additional 24-month period, the protective treatment which was granted, by the June 27, 2011, attorney examiner's entry, to Exhibit C-4, filed on May 27, 2011, as part of CNEG's 2011 certification renewal application.

CNEG acknowledges that its May 20, 2013, request for extending the previously granted protective treatment has been filed three days beyond the deadline for filing such a pleading, established by Rule 4901-1-24(F), Ohio Administrative Code (O.A.C). Nevertheless, the applicant requests that its motion to extend the protective order be considered as if timely filed, both because the involved exhibit has not yet been publicly released and because CNEG believes it has, in its motion to extend protective treatment, shown that good cause exists for granting the requested extension.

- (3) Under the circumstances presented, the attorney examiner finds it appropriate to treat CNEG's motion to extend the existing protective treatment as if it had been timely filed. Nevertheless, the attorney examiner emphasizes that the timeliness of the filing of motions of this kind is important. Subsequent motions for extensions of protective orders

should be made in compliance with the governing rule and, in any situation where this cannot be accomplished, should specifically detail the reasons for any late filing.

- (4) In support of its May 24, 2013, motion to extend protective order, CNEG submits, among other things, that, despite the passage of two years, the same factors and legal analysis which justified the original June 27, 2011, grant of protective treatment to the involved exhibit (i.e., Exhibit C-4, filed on May 27, 2011) presently continues to exist and, as such, also justifies extending that same protective treatment of that specific exhibit for an additional 24-month period.
- (5) On June 3, 2013, CNEG filed an application for renewal of Certificate No. 09-153G(2). Renewal Certificate No. 09-153G(3), with an effective period running from July 4, 2013 through July 4, 2015, was issued to CNEG on July 3, 2013.
- (6) On June 3, 2013, CNEG also filed, pursuant to Rule 4901-1-24(D), O.A.C., a motion for protective order covering Exhibits C-3, C-4, and C-5 to its June 3, 2013, certification renewal application. All three of these exhibits were filed under seal on June 3, 2013. Exhibit C-3 contains the applicant's financial statements. Exhibit C-4 contains the applicant's financial arrangements. Exhibit C-5 contains the applicant's forecasted financial statements.
- (7) In support of both its May 24, 2013, motion to extend the existing protective order to Exhibit C-4, filed May 27, 2011, (originally granted by entry dated June 27, 2011), as well as its June 3, 2013, motion for protective order (covering the three exhibits to its 2013 certification renewal application), CNEG explains that the information sought to be protected is highly confidential, and is not generally known or available to the general public. CNEG contends that it falls within the scope of the definition of a trade secret under Ohio law.
- (8) 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).

- (9) 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.”
- (10) 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.
- (11) The attorney examiner has examined the information covered by both the applicant’s May 24, 2013, motion to extend the protective order and the applicant’s June 3, 2013, motion for protective order. The attorney examiner has also examined the assertions set forth in the memoranda in support of those two motions. Applying the requirements that the information must have independent economic value and be the subject of reasonable efforts to maintain secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,<sup>1</sup> the attorney examiner finds that the information which is the subject of the two motions constitutes trade secret information. Release of the information in question 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. Therefore, the attorney examiner finds that both CNEG’s May 24, 2013, motion to extend the protective order originally granted by entry dated June 27, 2011 (as regards Exhibit C-4, filed May 27, 2011), as well as

---

<sup>1</sup> See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 534-525, 687 N.E.2d 661 (1997).

CNEG's June 3, 2013, motion for protective order (covering the three exhibits to its 2013 certification renewal application) are reasonable and should be granted with regard to each of the four involved exhibits (namely, Exhibit C-4, filed on May 27, 2011, as well as Exhibits C-3, C-4, and C-5, filed under seal on June 3, 2013).

- (12) Rule 4901-1-24(D)(4), O.A.C., provides that protective orders relating to a competitive retail natural gas service provider's certification renewal applications should 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 a gas marketer's certification application with the expiration of its certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment should be afforded to each of the four involved exhibits (namely, Exhibit C-4, filed on May 27, 2011, as well as Exhibits C-3, C-4, and C-5, filed under seal on June 3, 2013), for a period ending 24 months from the effective date of the CNEG's Certificate No. 09-153G(3), or until July 4, 2015. Until that date, the Commission's docketing division should maintain these four involved exhibits under seal.
- (13) 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 CNEG wishes to extend the confidential treatment granted here, 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 CNEG.
- (14) As a final matter, the attorney examiner notes that, inasmuch as the applicant has not sought to extend the protective treatment previously granted with regard to CNEG's Exhibits C-3 and C-5, filed on May 27, 2011, those two exhibits should no longer be held under seal. Accordingly, the Commission's docketing division should, on July 26, 2013, release the May 27, 2011, filings of Exhibits C-3 and C-5, filed on May 27, 2011, as part of CNEG's 2011, certification renewal application.

It is, therefore,

ORDERED, That CNEG's May 24, 2013, motion to extend the protective order is granted. It is, further,

ORDERED, That the motion for protective order filed in this case by CNEG on June 3, 2013, be granted with regard to Exhibits C-3, C-4, and C-5, all filed under seal on June 13, 2013. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, for a period of 24 months, concluding on July 4, 2015, Exhibit C-4, filed on May 27, 2011, as well as Exhibits C-3, C-4, and C-5, filed under seal on June 3, 2013. It is, further,

ORDERED, That the Commission's docketing division should, on July 26, 2013, release Exhibits C-3 and C-5, filed on May 27, 2011, as part of CNEG's 2011, certification renewal application. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Daniel Fullin

---

By: Daniel E. Fullin  
Attorney Examiner

SEF/sc

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/17/2013 3:04:49 PM**

**in**

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

Summary: Attorney Examiner Entry grants a motion for a new protective order, grants a motion for extending an existing protective order, and directs the release of exhibits that were the subject of a protective order that has now expired. - electronically filed by Sandra Coffey on behalf of Daniel Fullin, Attorney Examiner, Public Utilities Commission of Ohio