

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NextEra)
Energy Services Ohio, LLC for Certification) Case No. 11-3521-GA-CRS
as a Competitive Retail Natural Gas)
Marketer.)

ENTRY

The attorney examiner finds:

- (1) On June 6, 2013, NextEra Energy Services Ohio, LLC (NextEra Energy or company) filed a renewal application for certification as a competitive retail natural gas marketer. On that same day, NextEra Energy filed a motion for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibit C-5 of its 2013 renewal application be kept under seal. This exhibit contains the company's forecasted financial statements. In addition, NextEra Energy requested that the protective order for its previously submitted financial information (exhibit C-5), filed under seal on June 10 and 21, 2011, as part of the company's 2011 original application for certification, be extended. NextEra Energy asserts that the information protected in that C-5 exhibit continues to be competitively sensitive and proprietary business financial information. NextEra Energy seeks to continue the protective order issued on July 25, 2011, for an additional 24-month period.
- (2) No memorandum contra was filed regarding NextEra Energy's request for a protective order for its 2013 financial information or its request to extend the protective order for its previously submitted 2011 financial information.
- (3) In support of its current motion for a protective order, NextEra Energy explains that exhibit C-5 of its 2013 renewal application contains competitively sensitive and highly proprietary business information which is not generally known or available to the general public. Therefore, NextEra Energy requests that the information found in exhibit C-5 of its 2013 renewal application be treated as confidential.

- (4) 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).
- (5) 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.”
- (6) 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.
- (7) The attorney examiner has examined the information covered by the motion for a protective order filed by NextEra 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 exhibit C-5 of NextEra Energy’s renewal application constitutes trade secret information. Release of this document 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. Accordingly, the attorney examiner finds that NextEra Energy's motion for a protective order is reasonable with regard to exhibit C-5 filed on June 6, 2013; therefore, the motion should be granted with regard to exhibit C-5.

- (8) With regard to NextEra Energy's request to extend the protective order for its previously submitted financial statements, the attorney examiner finds that exhibit C-5 of NextEra Energy's 2011 original application still constitutes trade secret information. Therefore, the attorney examiner finds that NextEra Energy's motion to extend the protective order with respect to exhibit C-5 of its 2011 original application is reasonable and should be granted.
- (9) 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 exhibit C-5 of NextEra Energy's 2013 renewal application, and extended for exhibit C-5 of the company's 2011 original application, for a period ending 24 months from the effective date of the certificate issued to NextEra Energy, or until July 12, 2015. Until that date, the docketing division should maintain, under seal, exhibit C-5 of NextEra Energy's 2013 renewal application, which was filed under seal in this docket on June 6, 2013, and exhibit C-5 of NextEra Energy's 2011 original application, which was filed under seal in this docket on June 10 and 21, 2011.
- (10) 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 NextEra 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 NextEra Energy.

It is, therefore,

ORDERED, That the motion for a protective order filed by NextEra Energy be granted with regard to the information contained in exhibit C-5 of NextEra Energy's 2013 renewal application. It is, further,

ORDERED, That NextEra Energy's request to extend the protective order with respect to exhibit C-5 of its 2011 original application be granted. It is, further,

ORDERED, That the docketing division maintain, under seal, the unredacted exhibit C-5 of NextEra Energy's 2013 renewal application, which was filed under seal in this docket on June 6, 2013, for a period of 24 months, ending on July 12, 2015. It is, further,

ORDERED, That the Commission's docketing division continue to maintain, under seal, the unredacted exhibit C-5 of NextEra Energy's 2011 original application, which was filed under seal in this docket on June 10 and 21, 2011, for a period of 24 months, ending on July 12, 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

sef/vrm

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 11-3521-GA-CRS

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by NextEra Energy Services Ohio, LLC (NextEra) be granted with regard to confidential exhibit C-5 of the NextEra's 2013 renewal application for certification as a competitive retail natural gas supplier. The entry directs Commission's docketing division to keep exhibit C-5 under seal for a period of 24 months. The entry also grants NextEra's request to extend the protective order with respect to exhibit C-5 of its 2011 original application. Further, the entry directs the Commission's docketing division to maintain that previous exhibit 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