

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Hess)
Energy Marketing, LLC for Certification as) Case No. 13-835-GA-CRS
a Competitive Retail Natural Gas Marketer.)

ENTRY

The attorney examiner finds:

- (1) On April 5, 2013, as amended April 24, 2013, Hess Energy Marketing, LLC (Hess Energy or company) filed an application for certification as a competitive retail natural gas supplier. On those same days, Hess Energy filed motions for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits C-4 (financial arrangements), and C-5 (forecasted financial statements) of its application, which were filed under seal on April 5, 2013, and amended on April 24, 2013, be kept under seal.
- (2) In support of its motions for a protective order, Hess Energy explains that exhibits C-4, and C-5 contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, Hess Energy requests that the information found in exhibits 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 motions for protective orders filed by Hess 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 exhibits C-4 and C-5 of Hess 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 Hess Energy’s motions for a protective order are reasonable with regard to exhibits C-4 and C-5, which were filed under seal on April 5, 2013, and amended on April 24, 2013; therefore, the motions should be granted.
- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas supplier’s 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.

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).

Therefore, confidential treatment shall be afforded to exhibits C-4 and C-5 for a period ending 24 months from the effective date of the certificates issued to Hess Energy, or until May 6, 2015. Until that date, the docketing division should maintain, under seal, exhibits C-4 and C-5, which were filed under seal on April 5, 2013, and amended on April 24, 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 Hess 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 Alpha.

It is, therefore,

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

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-4 and C-5, which were filed under seal on April 5, 2013, and amended on April 24, 2013, for a period of 24 months, ending on May 6, 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

Commission of Ohio Docketing Information System on

7/19/2013 2:27:48 PM

in

Case No(s). 13-0835-GA-CRS

Summary: Attorney Examiner Entry ordering that the motions for a protective order filed by Hess Energy Marketing, LLC (Hess) be granted with regard to the information contained in exhibits C-4 and C-5 of Hess' application for certification as a competitive retail natural gas supplier. The entry directs the Commission's docketing division to maintain exhibits C-4 and 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