

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Viridian Energy PA, LLC for Certification) Case No. 13-1836-EL-CRS
as a Competitive Retail Electric Marketer.)

In the Matter of the Application of)
Viridian Energy PA, LLC for Certification) Case No. 13-1838-GA-CRS
as a Retail Natural Gas Marketer.)

ENTRY

The attorney examiner finds:

- (1) On August 23, 2013, Viridian Energy PA, LLC (Viridian Energy or company) filed applications for certification as a competitive retail electric marketer and as a competitive retail natural gas marketer (Case No. 13-1836-EL-CRS [13-1836] and Case No. 13-1838-GA-CRS [13-1838], respectively). On that same day, Viridian Energy filed motions for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibits C-3 (financial statements), C-4 (financial arrangements), and C-5 (forecasted financial statements) of its applications, which were filed under seal in 13-1836 and 13-1838 on August 23, 2013, be kept under seal.
- (2) In support of its motions for a protective order, Viridian Energy explains that exhibits C-3, 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, Viridian 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 motions for a protective order filed by Viridian 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-3, C-4, and C-5 of Viridian Energy’s applications constitute 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 Viridian Energy’s motions for a protective order are reasonable with regard to exhibits C-3, C-4, and C-5, which were filed under seal in 13-1836 and 13-1838 on August 23, 2013; therefore, the motions should be granted.
- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to electric and gas marketers’ certification renewal

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).

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 electric and 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 exhibits C-3, C-4, and C-5 for a period ending 24 months from the effective date of the certificates issued to Viridian Energy, or until September 23, 2015. Until that date, the docketing division should maintain, under seal, exhibits C-3, C-4, and C-5, which were filed in 13-1836 and 13-1838 under seal on August 23, 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 Viridian Energy wishes to extend this confidential treatment, it should file appropriate motions at least 45 days in advance of the expiration date. If no such motions to extend confidential treatment are filed, the Commission may release this information without prior notice to Viridian Energy.

It is, therefore,

ORDERED, That the motions for a protective order filed by Viridian Energy be granted with regard to the information contained in exhibits C-3, C-4, and C-5 of Viridian Energy's electric and gas marketer applications. 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 13-1836 and 13-1838 on August 23, 2013, for a period of 24 months, ending on September 23, 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

jrj/vrm

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 13-1836-EL-CRS, 13-1838-GA-CRS

Summary: Attorney Examiner Entry ordering that the motions for a protective order filed by Viridian Energy PA, LLC be granted with regard to confidential exhibits C-3, C-4, and C-5 of the company's applications for certification as a competitive retail electric and natural gas supplier. The entry directs the Commission's docketing division to keep exhibits C-3, 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