

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Progressive Energy Consultants, LLC for) Case No. 13-1960-GA-AGG
Certification as a Competitive Retail)
Natural Gas Broker.)

ENTRY

The attorney examiner finds:

- (1) On September 19, 2013, as amended October 15 and 17, 2013, Progressive Energy Consultants, LLC (Progressive or company) filed an application for certification as a competitive retail natural gas broker. On March 12, 2014, Progressive also filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that exhibit C-3 (financial statements) of its application be kept under seal.
- (2) In support of its motion for a protective order, Progressive explains that exhibit C-3 contains competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. Therefore, Progressive requests that the information found in exhibit C-3 be treated as confidential.
- (3) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43 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, Ohio Adm.Code 4901-1-24 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 R.C. Title 49.”

- (5) 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.” R.C. 1333.61(D).
- (6) The attorney examiner has examined the information covered by the motion for a protective order filed by Progressive, 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 R.C. 1333.61(D), 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-3 of Progressive’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 R.C. Title 49. Finally, the attorney examiner concludes that this document could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Progressive’s motion for a protective order is reasonable with regard to exhibit C-3 filed on September 19, 2013, and, therefore, the motion should be granted.
- (7) Ohio Adm.Code 4901-1-24(D)(4) provides for protective orders relating to gas marketers’ certification applications to expire after 24 months. The attorney examiner finds that the 24-month provision in Ohio Adm.Code 4901-1-24(D)(4) 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

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).

extension. Therefore, confidential treatment shall be afforded to exhibit C-3 for a period ending 24 months from the effective date of the certificate issued to Progressive, or until October 20, 2015. Until that date, the docketing division should maintain, under seal, exhibit C-3, which was filed under seal in this docket on September 19, 2013.

- (8) Ohio Adm.Code 4901-1-24(F) 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 Progressive 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 Progressive.

It is, therefore,

ORDERED, That the motion for a protective order filed by Progressive be granted with regard to the information contained in exhibit C-3 of the company's application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibit C-3, which was filed under seal in this docket on September 19, 2013, for a period of 24 months from the effective date of the certificate issued to Progressive, or until October 20, 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

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3/24/2014 12:45:25 PM

in

Case No(s). 13-1960-GA-AGG

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Progressive be granted with regard to the information contained in exhibit C-3 of the company's application. Further, the Commission's docketing division is directed to maintain, under seal, the un-redacted exhibit C-3, which was filed under seal in this docket on September 19, 2013, for a period of 24 months from the effective date of the certificate issued to Progressive, or until October 20, 2015; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio