

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Palmco)
Energy OH, LLC for Certification as a) Case No. 10-138-GA-CRS
Competitive Retail Natural Gas Marketer.)

In the Matter of the Application of Palmco)
Power OH, LLC for Certification as a) Case No. 10-139-EL-CRS
Competitive Retail Generation Provider)
and Power Marketer.)

ENTRY

The attorney examiner finds:

- (1) On January 14 and 21, 2014, Palmco Energy OH, LLC and Palmco Power OH, LLC (collectively, Palmco Companies or companies) filed renewal applications for certification as a competitive retail natural gas marketer (Case No. 10-138-GA-CRS [10-138]) and a retail generation provider and power marketer (Case No. 10-139-EL-CRS [10-139]), respectively. On January 14 and 21, 2014, pursuant to Ohio Adm.Code 4901-1-24(D) and (F), the Palmco Companies filed motions for protective orders covering financial statements (exhibits C-3, C-4, and C-5), filed under seal on January 14, 2014, in 10-138, and January 21 and 27, 2014, in 10-139, as part of their renewal applications, and for extension of prior protective orders covering previously submitted financial statements (former exhibit C-4), filed under seal on January 13, 2012, as part of the companies' 2012 renewal applications for certification as a competitive retail natural gas marketer in 10-138 and retail generation provider and power marketer in 10-139.
- (2) In their motions for protective orders and for extension of prior protective orders, the Palmco Companies request that, pursuant to Ohio Adm.Code 4901-1-24(D) exhibits C-3, C-4, and C-5 of their renewal applications, which were filed under seal on January 14, 2014, in 10-138, and January 21 and 27, 2014, in 10-139, be granted confidential treatment. In support of this portion of their motions, the Palmco Companies explain that exhibits C-3, C-4, and C-5 of their renewal applications, filed on January 14, 21, and 27, 2014, contain competitively sensitive and highly proprietary business financial information, which is

not generally known or available to the general public. Therefore, the Palmco Companies request that the information found in exhibits C-3, C-4, and C-5 of their renewal applications be treated as confidential.

- (3) In addition, the Palmco Companies assert that the information protected in former exhibits C-4, which was filed under seal in 10-138 and 10-139 on January 13, 2012, continues to be competitively sensitive and proprietary business financial information. The Palmco Companies seek to continue the protective orders that were issued on April 20, 2012, for an additional 24-month period.
- (4) On January 6 and 16, 2014, motions for permission for Dina L. Vespia to appear pro hac vice and certificates of pro hac vice registration with the Supreme Court of Ohio were filed by the companies in these cases. The attorney examiner finds that the motions for permission to appear pro hac vice should be granted.
- (5) 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).
- (6) 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."
- (7) 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.” R.C. 1333.61(D).

- (8) The attorney examiner has examined the information covered by the motions for protective orders and for extension of prior protective orders that were filed by the Palmco Companies, as well as the assertions set forth in the supportive memoranda. Further, the examiner has applied 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
- (9) The attorney examiner notes initially that the competitive value of former exhibit C-4, given its age, is diminished. However, the examiner finds, at the present time, that former exhibit C-4 of Palmco Companies’ 2012 applications still constitutes trade secret information.
- (10) Because the documents in exhibits C-3, C-4, and C-5, and former exhibit C-4, constitute trade secret information, release of those documents is prohibited under state law. The attorney examiner further finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that the Palmco Companies’ motions for protective orders and for extension of prior protective orders are reasonable with regard to exhibits C-3, C-4, and C-5, which were under seal on January 14, 2014, in 10-138, and January 21 and 27, 2014, in 10-139, and former exhibits C-4, which were filed under seal in 10-138 and 10-139 on January 13, 2012; therefore, the motions should be granted.
- (11) Ohio Adm.Code 4901-1-24(D)(4) provides for protective orders relating to gas marketers’ certification renewal applications to expire after 24 months. The attorney examiner finds that the

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).

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 extension. Therefore, confidential treatment shall be afforded to exhibits C-3, C-4, and C-5 and former exhibit C-4 of the companies' applications for a period ending 24 months from the effective date of the certificates issued to the Palmco Companies, or until February 14, 2016, in 10-138, and March 8, 2016, in 10-139. Until those dates, the docketing division should maintain, under seal, exhibits C-3, C-4, and C-5, which were under seal on January 14, 2014, in 10-138 and January 21 and 27, 2014, in 10-139 and former exhibits C-4, which were filed under seal in 10-138 and 10-139 on January 13, 2012.

- (12) 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 the Palmco Companies wish to extend this confidential treatment, they should file appropriate motions at least 45 days in advance of the expiration dates. If no such motions to extend confidential treatment are filed, the Commission may release this information without prior notice to the Palmco Companies.
- (13) As a final matter, the attorney examiner recognizes that the Palmco Companies did not request an extension of the protective orders granted by entries issued March 17 and April 12, 2010, for exhibits C-4, which were filed under seal in these dockets on February 5, 2010. Therefore, the attorney examiner directs the Commission's docketing division to release these exhibits into the public record.

It is, therefore,

ORDERED, That the motions for admission pro hac vice filed in this matter be granted in accordance with finding (4). It is, further,

ORDERED, That the Palmco Companies' motions for protective orders and for extension of prior protective orders be granted with regard to the information contained in exhibits C-3, C-4, and C-5, which were under seal on January 14, 2014, in 10-138, and

January 21 and 27, 2014, in 10-139, and former exhibits C-4, which were filed under seal in 10-138 and 10-139 on January 13, 2012. 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 under seal on January 14, 2014, in 10-138, and January 21 and 27, 2014, in 10-139, and former exhibits C-4, which were filed under seal in 10-138 and 10-139 on January 13, 2012, for a period of 24 months, ending on February 14, 2016, in 10-138, and March 8, 2016, in 10-139. It is, further,

ORDERED, That the Commission's docketing division release into the public record exhibits C-4, which were filed under seal in these dockets on February 5, 2010. 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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in

Case No(s). 10-0138-GA-CRS, 10-0139-EL-CRS

Summary: Attorney Examiner Entry ordering that the motions for a protective order and for extension of prior protective orders filed by the Palmco Companies be granted with regard to confidential exhibits C-3, C-4, and C-5 of the companies' renewal applications for certification as a competitive retail natural gas and electric marketer. 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. The Entry also directs the Commission's docketing division to release exhibits covered by expired protective orders into the public record; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio