

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of North )  
American Power and Gas, LLC for ) Case No. 12-1134-GA-CRS  
Certification as a Competitive Retail )  
Natural Gas Marketer. )

ENTRY

The attorney examiner finds:

- (1) On April 3, 2014, North American Power & Gas, LLC (NAPG) filed an application for renewal of its certification as a competitive retail natural gas marketer. On that same day, NAPG filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that certain exhibits, filed under seal as part of its certification renewal application, namely exhibits C-3 (financial statements), C-4 (financial arrangements), and C-5 (forecasted financial statements), be kept under seal. On April 17, 2014, NAPG filed, under seal, supplemental Exhibit C-4 and supplemental Exhibit C-5. NAPG also seeks protective treatment for both of these supplemental exhibits, under the motion for protective order it filed on April 3, 2014.
- (2) In support of its motion for a protective order, NAPG explains that exhibits C-3, C-4, supplemental C-4, C-5, and supplemental C-5 contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, NAPG requests that the information found in these five exhibits 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 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.” R.C. 1333.61(D).
- (6) The attorney examiner has examined the information covered by the motion for a protective order filed by NAPG, 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 R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,<sup>1</sup> the attorney examiner finds that the information contained in exhibits C-3, C-4, supplemental C-4, C-5, and supplemental C-5 of NAPG’s certification renewal application 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 R.C. Title 49. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein.

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<sup>1</sup> 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).

Accordingly, the attorney examiner finds that NAPG's motion for a protective order is reasonable with regard to exhibits C-3, C-4, supplemental C-4, C-5, and supplemental C-5, which were filed under seal; therefore, the motions should be granted.

- (7) Ohio Adm.Code 4901-1-24(F) provides for protective orders to expire after 24 months. The attorney examiner finds that the 24-month provision in Ohio Adm.Code 4901-1-24(F) 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, supplemental C-4, C-5, and supplemental C-5 for a period ending 24 months from the effective date of the renewed certificate issued to NAPG, or until May 4, 2016. Until that date, the docketing division should maintain, under seal, exhibits C-3, C-4, supplemental C-4, C-5, and supplemental C-5 all filed under seal in this case.
- (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 NAPG 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 NAPG.

It is, therefore,

ORDERED, That, in accordance with Finding (6), the motion for protective order filed by NAPG be granted, with regard to the information contained in exhibits C-3, C-4, supplemental C-4, C-5, and supplemental C-5 of NAPG's April 3, 2014 certification renewal application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3, C-4, supplemental C-4, C-5, and supplemental C-5, which were all filed under seal, for a period of 24 months, ending May 4, 2016. It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Daniel Fullin

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By: Daniel E. Fullin  
Attorney Examiner

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 12-1134-GA-CRS**

Summary: Attorney Examiner Entry granting protective order. - electronically filed by Sandra Coffey on behalf of Daniel Fullin, Attorney Examiner, Public Utilities Commission of Ohio