

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Retail Sales, LLC for Certification as) Case No. 10-880-GA-CRS
a Competitive Retail Natural Gas Supplier.)

ENTRY

The attorney examiner finds:

- (1) On June 25, 2014, Duke Energy Retail Sales, LLC (Duke Energy or Company) filed an application for renewal of its certification as a competitive retail natural gas supplier. On that same day, Duke Energy filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that exhibit C-5 of its application be kept under seal. This exhibit contains the Company's forecasted financial information.
- (2) In support of its motion for a protective order, Duke Energy explains that exhibit C-5 contains competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. Therefore, Duke Energy requests that the information found in exhibit C-5 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: (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 Duke Energy, 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-5 of Duke 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 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 Duke Energy’s motion for a protective order is reasonable with regard to exhibit C-5 of its application and should be granted.
- (7) Ohio Adm.Code 4901-1-24(F) provides for protective orders relating to gas marketers’ certification renewal applications to expire after 24 months. Therefore, confidential treatment shall be afforded to exhibit C-5 for a period ending 24 months from the effective date of the certificate issued to Duke Energy, or until July 27, 2016. Until that date, the docketing division should maintain, under seal, exhibit C-5, which was filed under seal in this docket on June 25, 2014.
- (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 Duke Energy wishes to extend this confidential treatment, it should file an

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).

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 Duke Energy.

- (9) As a final matter, the attorney examiner notes that Duke Energy did not request an extension of the protective order granted by Entry issued August 13, 2012, for exhibit C-5, which was filed under seal in this docket on July 18, 2012. Therefore, the attorney examiner directs the Commission's docketing division to release this exhibit into the public record.

It is, therefore,

ORDERED, That the motion for a protective order filed by Duke Energy be granted with regard to the information contained in exhibit C-5 of Duke Energy's 2014 renewal application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibit C-5, which was filed under seal in this docket on June 25, 2014, for a period of 24 months, ending on July 27, 2016. It is, further,

ORDERED, That, on September 12, 2014, the docketing division shall release exhibit C-5, which was filed as part of Duke Energy's 2012 renewal application on July 18, 2012. 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). 10-0880-GA-CRS

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Duke Energy be granted with regard to exhibit C-5 of Duke Energy's 2014 renewal application. Further, the Commission's docketing division is directed to release into the public record, on September 12, 2014, exhibit C-5, filed under seal in this docket on July 18, 2012; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio