

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Agent )  
Energy, Inc. for Certification as a ) Case No. 14-1138-GA-AGG  
Competitive Retail Natural Gas )  
Aggregator. )

ENTRY

The attorney examiner finds:

- (1) On June 23, 2014, Agent Energy, Inc. (Agent Energy) filed an application for certification as a competitive retail natural gas aggregator. On the same day Agent Energy 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 application, namely exhibits C-3 (financial statements) and C-5 (forecasted financial statements), be kept under seal.
- (2) In support of its motion for a protective order, Agent Energy explains that exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, Agent Energy requests that the information found in these two 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 Agent 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 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 and C-5 of Agent Energy’s 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. Accordingly, the attorney examiner finds that Agent Energy’s motion for a protective order is reasonable with regard to exhibits C-3 and 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

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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).

afforded to exhibits C-3 and C-5, for a period ending 24 months from the effective date of the certificate issued to Agent Energy, or until July 24, 2016. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, both 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 Agent Energy 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 Agent Energy.

It is, therefore,

ORDERED, That, in accordance with Finding (6), the motion for protective order filed by Agent Energy be granted, with regard to the information contained in exhibits C-3 and C-5, filed under seal as part of Agent Energy's June 23, 2014 certification application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3 and C-5, which were filed under seal on June 23, 2014, for a period of 24 months, ending July 24, 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 E. Fullin

By: Daniel E. Fullin  
Attorney Examiner

JRJ/dah

**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). 14-1138-GA-AGG**

Summary: Attorney Examiner Entry that grants protective treatment to certain exhibits filed as part of the applicant's 2014 gas certification renewal application; electronically filed by Debra Hight on behalf of Daniel E. Fullin, Attorney Examiner.