

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
PALMER ENERGY COMPANY, INC. FOR  
CERTIFICATION AS A COMPETITIVE  
RETAIL ELECTRIC SERVICE PROVIDER IN  
OHIO.

CASE NO. 10-1081-EL-AGG

IN THE MATTER OF THE APPLICATION OF  
PALMER ENERGY COMPANY, INC. FOR  
CERTIFICATION AS A COMPETITIVE  
RETAIL NATURAL GAS PROVIDER IN  
OHIO.

CASE NO. 10-1082-GA-AGG

### ENTRY

Entered in the Journal on September 12, 2018

{¶ 1} On August 5, 2010, as amended on August 11, 2010, Palmer Energy Company, Inc. (Palmer) filed an application in Case No. 10-1081-EL-AGG (10-1081) for certification as a competitive retail electric service (CRES) provider. On the same day, Palmer filed an application in Case No. 10-1082-GA-AGG (10-1082) for certification as a competitive retail natural gas (CRNG) provider.

{¶ 2} Coincident with the filing of its certification applications, Palmer filed motions for protective orders seeking to keep Exhibits C-3 (financial statements) and C-5 (financial forecasts) of its applications confidential.

{¶ 3} In accordance with the Entry of October 22, 2010, in 10-1081, Palmer's motion for a protective order was granted for a period of 24 months ending October 22, 2012, regarding Exhibits C-3 and C-5 of its application to become a CRES provider.

{¶ 4} In accordance with the Entry of October 21, 2010, in 10-1082, Palmer's motion for a protective order was also granted for a period of 24 months ending October 21, 2012, regarding Exhibits C-3 and C-5 of its application to become a CRNG provider.

{¶ 5} On July 26, 2012, Palmer filed an application in 10-1081 for renewal of its certification as a CRES provider. On the same day, Palmer filed an application in 10-1082 for renewal of its certification as a CRNG provider.

{¶ 6} Coincident with the filing of its certification renewal applications, Palmer filed motions for protective orders seeking to keep Exhibits C-3 (financial statements) and C-5 (financial forecasts) of its applications confidential.

{¶ 7} In accordance with the Entry of October 25, 2012, in 10-1081, Palmer's motion for a protective order was granted for a period of 24 months, regarding Exhibits C-3 and C-5 of its application to become a CRES provider.

{¶ 8} In accordance with the Entry of October 25, 2012, in 10-1082, Palmer's motion for a protective order was also granted for a period of 24 months, regarding Exhibits C-3 and C-5 of its application to become a CRNG provider.

{¶ 9} Pursuant to its motion of November 2, 2012, Palmer sought to further extend the protective orders issued in 10-1081 on October 22, 2010, and in 10-1082 on October 21, 2010.

{¶ 10} In accordance with the attorney examiner Entry of January 28, 2013, the previously granted protective treatment was extended for a period of 24 months from the date of the scheduled expiration.

{¶ 11} Pursuant to its motion of July 2, 2014, Palmer sought to further extend protective treatment for Exhibits C-3 and C-5 to its 2010 initial applications for certification and its 2012 renewal applications in 10-1081 and 10-1082.

{¶ 12} On August 5, 2014, Palmer filed an application in 10-1081 for renewal of its certification as a CRES provider.

{¶ 13} On the same day, Palmer filed an application in 10-1082 for renewal of its certification as a CRNG provider.

{¶ 14} Coincident with the filing of its certification renewal applications, Palmer filed motions for protective orders seeking to keep Exhibits C-3 and C-5 of its applications confidential. On September 3, 2014, Palmer filed amended confidential exhibits.

{¶ 15} On July 6, 2016, Palmer filed a motion in 10-1081 and 10-1082 seeking to extend protective treatment for Exhibits C-3 and C-5 previously filed on August 5, 2010, July 26, 2012, and August 5, 2014, in these dockets. Specifically, Palmer sought a two-year extension of the protective treatment.

{¶ 16} In accordance with the attorney examiner Entry of August 16, 2016, the motions for an extension of protective treatment filed on July 2, 2014, and July 6, 2016, were both granted for a period of two years beginning on August 16, 2016.

{¶ 17} On July 20, 2018, Palmer filed an application in 10-1081 for renewal of its certification as a CRES provider.

{¶ 18} On the same day, Palmer filed an application in 10-1082 for renewal of its certification as a CRNG provider.

{¶ 19} Coincident with the filing of its certification renewal applications, Palmer filed motions for extension of the previously issued protective orders in these dockets pertaining to information filed on August 5, 2010, July 26, 2012, August 5, 2014, and September 3, 2014. In its motion, Palmer acknowledges that, consistent with Ohio Adm.Code 4901-1-24, motions for extension of protective orders are to be filed within 45 days of the termination of the protective treatment. In recognizing that the motions for extension of protective treatment were filed 44 days from the conclusion the existing protective treatment, Palmer states that its review could not be completed by the deadline due to the fact that a necessary person was unavailable for the review approval.

Therefore, Palmer requests that the 45-day deadline be waived or extended. In support of its request, Palmer states that no party is prejudiced by the one-day filing delay.

{¶ 20} Specific to the rationale for its requested extension for protective treatment, Palmer states that it is a privately-held broker/aggregator and that the financial statements and forecasts require continued protection inasmuch as the information remains confidential and that releasing it to the public could subject Palmer to competitive harm in the marketplace. For example, Palmer submits that its competitors could take information about its past financial condition and business to glean information relevant to its current financial condition and business. As further support for its request, Palmer notes that the financial information continues to not be known outside the business and is still only known to a few employees.

{¶ 21} The attorney examiner notes that the applications for certification renewals were automatically approved on August 20, 2018.

{¶ 22} In regard to Palmer's request that its motion for extension of protective treatment be considered as timely filed, the attorney examiner finds that the request is reasonable and should be granted.

{¶ 23} In regard to the requested extension of protective treatment for the information filed on August 5, 2010, July 26, 2012, August 5, 2014, and September 3, 2014, the attorney examiner notes that the Commission's general practice has been not to extend protective treatment for CRNGS certification information beyond the initial six-year period that is now granted when a certification application is filed. *See In re Comm. Review of its Rules for Competitive Retail Natural Gas Serv.*, Case No. 12-925-GA-ORD, Entry on Rehearing (Feb. 26, 2014) at 14. In other words, historical financial data has generally not been accorded protection. As noted in *In re Stand Energy Corporation for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 02-2549-GA-CRS, Entry (Jun. 14, 2017) at 4 (Stand Energy Order), on a going-forward basis, it remains the Commission's intention, as

a matter of general practice, not to extend protective treatment for information relating to CRNGS certification beyond the initial six-year period that is granted when a certification application is filed. The attorney examiner submits that the same principle is applicable to CRES information.

{¶ 24} As envisioned when Ohio Adm.Code 4901:1-24-08 and Ohio Adm.Code 4901:1-27-08 were revised, rather than require each CRES and CRNGS provider to reapply for continued protective treatment of confidential financial information every two years, which was necessary under the former rule, one six-year period of protection for confidential financial information is now granted, beyond which the protected financial information will qualify as historical data and no longer merit protective treatment. The attorney examiner points out that the information filed and protected in 2010 and 2012 has already surpassed this six-year period of protection.

{¶ 25} As noted in the Stand Energy Order, the Commission, however, will consider an applicant's circumstances on a case-by-case basis, when reviewing a request to extend protective treatment beyond the six-year period.

{¶ 26} Focusing on Palmer's representation that it is a privately-held company, the attorney examiner finds that Palmer's argument that it would suffer economic harm if its 2010, 2012, and 2014 financial exhibits were released into the public record, has merit. Considering Palmer's status as a privately-held company, the attorney examiner finds that the release of the 2010, 2012, and 2014 financial exhibits into the public record might place Palmer at a disadvantage in competition against other CRES and CRNGS suppliers that would be able to better estimate Palmer's growth rates, market share, and margins. Conceivably, Palmer's competitors could discern from the 2010, 2012, and 2014 financial exhibits information about Palmer and its business decisions that is not generally known to the public and that would, if disclosed, be harmful to Palmer's position in the competitive marketplace.

{¶ 27} The attorney examiner, therefore, has examined the designated information contained in the 2010, 2012, and 2014 financial exhibits, 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,<sup>1</sup> the attorney examiner finds that the information contained in the 2010, 2102, and 2014 financial exhibits continues to constitute trade secret information. Release of these documents, therefore, is prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code.

{¶ 28} The attorney examiner finds it appropriate to extend confidential treatment of Palmer's designated 2010, 2012, and 2014 financial exhibits, specifically Exhibits C-3 and C-5, of its 2010 initial application, and its 2012 and 2014 renewal applications, for an additional four-year period, or until August 16, 2022. Until that date, the docketing division should maintain, under seal, Exhibits C-3 and C-5 of its initial and renewal applications, which were filed under seal in this docket on August 5, 2010, July 26, 2012, August 5, 2014, and September 3, 2014, respectively. If Palmer seeks to extend this protective treatment beyond the additional four-year period, it will need to clearly and thoroughly demonstrate that the financial exhibits continue to retain independent economic value and otherwise meet the requirements of R.C. 1333.61(D).

{¶ 29} The attorney examiner also wishes to clarify that Palmer will need to be specific and thorough in justifying any future request for extended protective treatment, and explain, in detail, why financial information filed under seal with a past application for certification requires continued protective treatment beyond the initial six-year period. Absent compelling demonstration to the contrary, any such requests for continued

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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).

protective treatment should be limited to financial information, and should generally not cover other information that was filed as part of a supplier's application for certification. Moreover, the attorney examiner would further note that, as sealed financial information becomes more and more outdated, the Commission will increasingly question whether the information continues to retain independent economic value and should be subject to continued protection.

{¶ 30} It is, therefore,

{¶ 31} ORDERED, That the motions for an extension of protective orders be considered as timely filed. It is, further,

{¶ 32} ORDERED, That the motion for an extension of its protective orders be granted consistent with paragraphs 27, 28, and 29. It is, further,

{¶ 33} ORDERED, That the Commission's docketing division continue to maintain Exhibits C-3 and C-5 in 10-1081 and 10-1082, under seal until August 16, 2022. It is, further,

{¶ 34} ORDERED, That nothing contained in this Entry shall be deemed binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 35} ORDERED, That a copy of this Entry be served upon Palmer and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jay S. Agranoff

By: Jay S. Agranoff  
Attorney Examiner

JRJ/mef

**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). 10-1081-EL-AGG, 10-1082-GA-AGG**

Summary: Attorney Examiner Entry granting motions for extension of protective orders as to paragraphs 27, 28 and 29; and, ordering the Commission's docketing division to continue to maintain Exhibits C-3 and C-5 in both cases under seal until 8/16/22. electronically filed by Ms. Mary E Fischer on behalf of Jay S. Agranoff, Attorney Examiner, Public Utilities Commission of Ohio