

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Renewal)	
Certification Application of)	
SouthStar Energy Services LLC as)	Case No. 07-0378-GA-CRS
a Competitive Retail Natural Gas)	
Supplier)	

**MOTION TO EXTEND PROTECTIVE ORDER OF
SOUTHSTAR ENERGY SERVICES LLC**

Pursuant to Rules 4901:1-27-08(D) and 4901-1-24(D) of the Ohio Administrative Code (“O.A.C.”), SouthStar Energy Services LLC d/b/a Ohio Natural Gas (“SouthStar”) moves for an extension of the protective order previously granted through approval of its renewal application in this proceeding on May 8, 2015, to keep two exhibits to its 2015 renewal certification application confidential and not part of the public record. The protective treatment for the 2015 exhibits will expire on December 31, 2021.

The reasons supporting this motion are detailed in the attached Memorandum in Support. Consistent with Rule 4901-1-24(D)(2), unredacted copies of the exhibits to SouthStar’s 2015 renewal certification application are already on file with the Commission.

Respectfully submitted,

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Filed: May 17, 2021

MEMORANDUM IN SUPPORT

SouthStar Energy Services LLC (“SouthStar”) requests that the protective order for the confidential information (Exhibits C-4 (Financial Arrangements) and C-5 (Forecasted Financial Statements)) to its 2015 renewal certification application be renewed for an additional 48 months. The existing protective order for the 2015 renewal application exhibits will expire on December 31, 2021.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Public Utilities Commission of Ohio or certain designated employees may issue an order that is necessary to protect the confidentiality of information contained in documents filed with the Commission’s Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

House Bill 9, which established the statutory requirement for gas providers to be certified by the Commission, recognized that some of the information that the Commission would have to review in order to determine whether a natural gas provider had the operational experience and financial wherewithal to conduct business would be proprietary in nature. Thus, Section 4929.23

of the Revised Code provides in part that “[t]he Commission shall take such measures as it considers necessary to protect the confidentiality of any such information.”

The criteria for what the Commission should keep confidential is well established, and the Commission also long ago recognized its statutory obligation to protect trade secrets:

The Commission is of the opinion that the “public records” statute must also be read *in pari materia* with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re General Telephone Co., Case No. 81-383-TP-AIR, Entry (Feb. 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. 4901-1-24(A)(7)).

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“Trade secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, patter, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, 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).

This definition clearly reflects the state policy favoring the protection of trade secrets such as the information that is the subject of this motion. Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them.

New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y.2d 213, 219-220 (1982). Indeed, for the

Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants, through the Uniform Trade Secrets Act. The Commission has previously carried out its obligations in this regard in this and numerous other proceedings.

In *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (8th Dist. 1983), the Cuyahoga County Court of Appeals, citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kan. 1980), delineated factors to be considered in recognizing a trade secret:

(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, *i.e.*, by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

The Supreme Court of Ohio adopted these factors in *State ex rel. The Plain Dealer v. Ohio Dept of Ins.*, 80 Ohio St.3d 513, 524-525 (1997).

Applying these factors to the exhibits to the 2015 Renewal Application it is clear that continued protective treatment for these exhibits should be granted. Exhibit C-4 of the 2015 Renewal Application sets forth SouthStar's financial agreement with its lender, which reflects, among other things, SouthStar's borrowing and repayment terms. Exhibit C-5 of the 2015 Renewal Application provides similar financial information on a forecasted basis. These are precisely the types of information for which companies go to great lengths to keep private, and SouthStar asserts that this information is still competitive. Knowledge by a competitor of such financial information would do great harm to SouthStar's competitive position in the marketplace. Additionally, public disclosure of this information is not likely to assist the

Commission in carrying out its duties under applicable rules. Thus, each of the Exhibits for which protective treatment is sought should be kept under seal.

Accordingly, for the reasons set forth above, SouthStar requests that the Commission grant its motion to extend the protective order previously granted in this proceeding to maintain Exhibits C-4 and C-5 of its 2015 Renewal Application under seal.

Respectfully submitted,

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Summary: Motion to extend protective order and memorandum in support of SouthStar Energy Services LLC electronically filed by Mr. Ronald J Romito on behalf of Emerson, Andrew C. Mr. and SouthStar Energy Services LLC