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May 26, 2005

Via Hand Delivery


Ms. Renee Jenkins  
Docketing Division  
Public Utilities Commission of Ohio  
13<sup>th</sup> Floor  
180 East Broad Street  
Columbus, OH 43215-3793

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2005 MAY 26 PM 5:17  
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Re: *In the Matter of the Application of Shell Energy Services Co., L.L.C., for Certification as a Retail Natural Gas Supplier in the State of Ohio; Case No. 02-1680-GA-CRS*

Dear Ms. Jenkins:

Please find enclosed the original and ten (10) copies of Shell Energy Services Company's Motion for Extension of Commission's Protective Order. Please file the original and eight (8) copies of the Motion in the above captioned case, and date stamp and return the additional two copies.

Very truly yours,  
BAILEY CAVALIERI LLC  
  
Dane Stinson

Enclosures

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FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Shell Energy )  
Services Co., L.L.C., for Certification as a Retail )  
Natural Gas Supplier in the State of Ohio. )

Case No. 02-1680-GA-GRS

RECEIVED-SHELL ENERGY  
2005 MAY 26 PM 5:17  
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**SHELL ENERGY SERVICES COMPANY'S  
MOTION FOR EXTENSION OF COMMISSION'S PROTECTIVE ORDER**

Shell Energy Services Company, L.L.C. ("Shell Energy"), by its attorneys and pursuant to Section 4901-1-24(F), Ohio Administrative Code, moves the Public Utilities Commission of Ohio to extend through February 11, 2006, the protective order granted in this proceeding by entries issued July 14, 2003, and January 22, 2004, as to Shell Energy's Exhibit C-4: Financial Arrangements. Shell Energy's earlier motions for protective order were filed, along with the redacted confidential information, on July 5, 2002, and November 12, 2003, and are incorporated by reference herein. This motion is being filed at least 45 days in advance of the expiration of the existing protective order. The reasons underlying this motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,



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Attorneys for Shell Energy Services Company LLC

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**MEMORANDUM IN SUPPORT OF  
SHELL ENERGY SERVICES COMPANY'S  
MOTION FOR EXTENSION OF COMMISSION'S PROTECTIVE ORDER**

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Shell Energy Services Company, L.L.C. ("Shell Energy") is a wholly owned subsidiary of Shell Oil Company, is not publicly traded, and its financial information is not publicly available. The Public Utilities Commission of Ohio ("Commission") has issued orders protecting Shell Energy's financial information from public disclosure by entries of July 14, 2003, and January 22, 2004, in the initial certification proceeding in this docket, and by entry of August 11, 2004, in its renewal certification proceeding in this docket.

In the initial certification proceeding, Shell Energy's Exhibit C-4: Financial Arrangements ("Exhibit C-4") was protected from public disclosure for a period of six months. See entry of July 14, 2003. By entry of January 22, 2004, this protection was extended through July 14, 2005. Information in Exhibit C-4 relates to Shell Energy's financial arrangements with lenders and to the amount of its capitalization.

When Shell Energy filed its renewal certification application, it submitted substantially similar information as to financial arrangements and the amount of its capitalization in its Exhibit C-4. This information also was granted protection from disclosure by entry issued August 11, 2004, which expires February 11, 2006.

By this motion, Shell Energy seeks to extend the protection granted Exhibit C-4 in the initial certification proceeding by the entries of July 14, 2003, and January 22, 2004, which is due to expire on July 14, 2005. Shell Energy seeks to extend the protective order through February 11, 2006, which is the date that the protection granted substantially similar information expires pursuant to the Entry issued August 11, 2004, in the certification renewal application. By

extending the protection through February 11, 2006, the Commission will permit Shell Energy to consolidate any future requests to extend protection for the confidential information filed in the initial and renewal certification proceedings into a single motion. Shell Energy maintains that this information continues to be relevant and deserving of protective treatment as the Commission initially recognized.

State law, and specifically Section 4929.23(A), Ohio Revised Code, permits the Commission to protect the confidentiality of competitive information submitted as a part of the certification process for competitive retail natural gas suppliers. Rule 4901-1-24(F), Ohio Administrative Code, permits the Commission to extend protection from disclosure of confidential competitive information filed under seal. Sections 4901.12 and 4905.07, Ohio Revised Code, facilitate the protection of trade secrets in the Commission's possession. These statutes incorporate by reference the provisions of Section 149.43, Ohio Revised Code, which exempts from the public record information and records for which disclosure is prohibited by law. State law prohibits the release of information meeting the definition of a trade secret. Section 1333.61(D), Ohio Revised Code. Sections 4901.12 and 4905.07, Ohio Revised Code, also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 and non-disclosure of the information will not impair the purposes of Title 49, because the Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission

has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read *in pari materia* with [former] Section 1333.51, 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, February 17, 1982).

The documents and information contained in Exhibit C-4 contain competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret as defined by Section 1333.61(D), Ohio Revised Code:

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, 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.

This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which 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 a public utility, the trade secret statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (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, through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. *See, e.g., Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

In *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980), has 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.

Shell Energy considers, has treated, and continues to treat the documents and information contained in Exhibit C-4 as trade secret. Information as to Shell Energy's financial arrangements with lenders and the amount of its capitalization is, in the ordinary course of business, deemed confidential, treated as proprietary and confidential by Shell Energy employees and not disclosed to anyone unless required pursuant to a legal proceeding.

Shell Energy currently is certified to operate in this state as a Retail Natural Gas Supplier in Ohio. Considering the competitive environment in which Shell Energy operates, the financial information contained in Exhibit C-4 is highly proprietary, confidential and commercially sensitive. Therefore, it is imperative that the Commission extend protective treatment of this confidential competitive information, thus precluding potential competitors from gaining access

to this commercially sensitive information. Public disclosure of the information, which is substantially similar to that maintained under seal in the subsequent certification renewal proceeding, would jeopardize Shell Energy's ability to negotiate and compete in the market and would have an adverse impact on Shell Energy's ability to do business. Additionally, non-disclosure of the information will not impair the purposes of Title 49, because the Commission and its Staff have full access to the information in order to fulfill its statutory obligations.

For the foregoing reasons, Shell Energy requests, pursuant to Section 4901-1-24(F), Ohio Administrative Code, that the designated information continue to be protected from public disclosure through February 11, 2006, and reserves the right to seek further protection under the applicable rules.

Respectfully submitted,



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