

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of KNG Energy, )  
Inc. for Approval of a Natural Gas Transportation ) Case No. 11-3152-GA-AEC  
Agreement with Ohio Gas Energy Services. )

FINDING AND ORDER

The Commission finds:

- (1) KNG Energy, Inc. (KNG or Company) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On April 5, 2011, the Commission issued a Finding and Order in Case No. 11-1115-GA-ATR, in which the Commission granted a joint application (joint application) by KNG and Ohio Gas Company (Ohio Gas) for approval of an interconnection agreement between the parties. According to the joint application, KNG owns and operates an 8-inch, 12-mile natural gas pipeline extending from an interconnection with the Crossroads interstate pipeline (Crossroads) north of the village of Deshler, Ohio, south to the village of Leipsic, Ohio (KNG Pipeline). In the Finding and Order, the Commission approved an agreement for the parties to interconnect the KNG Pipeline with a pipeline Ohio Gas is acquiring from the villages of Hamler, Holgate, and Malinta, Ohio (Ohio Gas Pipeline). According to the joint application, this interconnection would permit KNG to transport gas from the Crossroads interconnection over the KNG Pipeline to the Ohio Gas Pipeline.
- (3) On May 23, 2011, KNG filed an application for approval of a natural gas transportation agreement with Ohio Gas Energy Services (OGES). OGES is not regulated by the Commission and is an affiliate of Ohio Gas. OGES provides natural gas commodity services to the customers of Ohio Gas. According to the application, this agreement contains the rates, terms, and conditions pursuant to which KNG will provide transportation service to OGES. This transportation agreement would effectuate the previously approved interconnection agreement and allow gas to be transported from the KNG Pipeline to the Ohio Gas Pipeline for receipt by OGES, for the purpose of

providing commodity service to end-use customers within the Ohio Gas service area.

- (4) The Commission has reviewed the application filed in this case and finds it to be reasonable and in the public interest. Therefore, the application should be approved.
- (5) Along with its May 23, 2011, application, KNG also filed a motion for protective order requesting confidentiality of the duration of the agreement and the pricing term of the agreement. KNG states that this is competitively sensitive information that comports with the statutory definition of a "trade secret" and, as such, should be accorded confidential treatment.
- (6) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, 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* (2000), 89 Ohio St.3d 396, 399.
- (7) Similarly, Rule 4901-1-24, O.A.C., allows the Commission 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."
- (8) 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." Section 1333.61(D), Revised Code.

- (9) The Commission has reviewed the information included in KNG's motion for protective order, 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 Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,<sup>1</sup> the Commission finds that the information contained in KNG's application contains trade secret information. Its release is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the Commission finds that KNG's motion for protective order is reasonable, with regard to the information filed under seal in this docket on May 23, 2011, and should be granted.
- (10) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until December 15, 2012. Until that date, the docketing division should maintain, under seal, the information filed under seal in this docket on May 23, 2011.
- (11) Rule 4901-1-24(F), O.A.C., 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 KNG 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 KNG.

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<sup>1</sup> See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

It is, therefore,

ORDERED, That the application of KNG for approval of a natural gas transportation agreement with OGES be granted. It is, further,

ORDERED, That the motion for a protective order be granted in accordance with this Finding and Order. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the information, which was filed under seal in this docket on May 23, 2011, for a period of 18 months, ending on December 15, 2012. It is, further,

ORDERED, That nothing in this Finding and Order shall be 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,


ORDERED, That a copy of this Finding and Order be served upon each party of record.

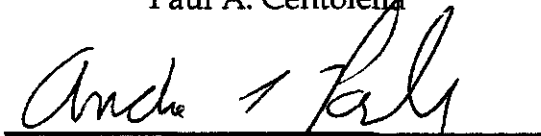
THE PUBLIC UTILITIES COMMISSION OF OHIO

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Todd A. Snitchler, Chairman

  
Paul A. Centolella

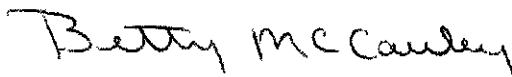
  
Steven D. Lesser

  
Andre T. Porter

  
Cheryl L. Roberto

SP:js

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Betty McCauley  
Secretary