

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The Attorney Examiner finds:

- (1) On June 15, 2011, the Commission issued a Finding and Order approving the application of KNG Energy, Inc., (KNG) for a natural gas transportation agreement with Ohio Gas Energy Services (OGES). The Finding and Order also granted KNG's motion for a protective order concerning Attachment A of the application, so that the confidential information filed on May 23, 2011, would be maintained under seal for 18 months, ending on December 15, 2012.
- (2) On October 23, 2012, KNG filed a motion for an extension of the protective order. KNG requested that the second extension continue for another 18 months. In KNG's opinion, the price and price-related information in the agreement continues to be competitively sensitive.
- (3) 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*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (4) Similarly, Rule 4901-1-24, Ohio Administrative Code, (O.A.C.), 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: (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.” Section 1333.61(D), Revised Code.
- (6) The attorney examiner 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,¹ the attorney examiner finds that the information contained in Attachment A contains trade secret information. Its release is, therefore, 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. Therefore, the attorney examiner finds that KNG’s motion for protective order is reasonable and should be granted.
- (7) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders under Rule 4901-1-24(D), O.A.C., expire after 18 months. The attorney examiner finds that confidential treatment should be afforded to Attachment A of the application, ending 18 months from December 15, 2012, specifically, until June 15, 2014. Until that date, the docketing division should maintain, under seal, Attachment A of the application, which was filed under seal in this docket on May 23, 2011.

¹ 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).

- (8) 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.

It is, therefore,

ORDERED, That the motion for a protective order filed by KNG on October 23, 2012, be granted for a period ending on June 15, 2014. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, Attachment A of KNG's application, which was filed under seal in this docket on May 23, 2011, for a period of 18 months, ending on June 15, 2014. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/James Lynn

By: James M. Lynn
Attorney Examiner

JRJ/sc

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11/15/2012 2:47:46 PM

in

Case No(s). 11-3152-GA-AEC

Summary: Attorney Examiner Entry granting KNG's motion for a protective order. -
electronically filed by Sandra Coffey on behalf of James Lynn, Attorney Examiner, Public
Utilities Commission of Ohio