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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of :
KNG Energy, Inc. for Approval of a : Case No. 07-424-GA-AEC
Natural Gas Transportation Service :
Agreement with Summit Ethanol, LLC. :

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MOTION OF KNG ENERGY, INC.
FOR
FOURTH EXTENSION OF PROTECTIVE ORDER
AND FOR
LEAVE TO FILE OUT OF TIME

Pursuant to Rule 4901-1-24, Ohio Administrative Code ("OAC"), KNG Energy, Inc. ("KNG") hereby moves for a third extension of the protective order originally issued by the Commission in its May 9, 2007 entry in this docket and subsequently extended by entries of October 27, 2008, October 16, 2012, and April 21, 2014. KNG recognizes that Rule 4901-1-24(F), OAC, provides that a party wishing to extend a protective order file its motion 45 days in advance of the expiration date and that, because the protective order in question is scheduled to expire on April 30, 2016, this motion is not timely under the rule. Accordingly, KNG also respectfully requests leave to file this motion out of time instant.

WHEREFORE, KNG respectfully requests that its motion be granted for those reasons set forth in the accompanying memorandum.

Respectfully submitted,



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In the Matter of the Application of	:	
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MEMORANDUM IN SUPPORT
OF
MOTION OF KNG ENERGY, INC.
FOR
FOURTH EXTENSION OF PROTECTIVE ORDER
AND FOR
LEAVE TO FILE OUT OF TIME

By its April 16, 2007 application in this case, KNG Energy, Inc. (“KNG”) sought Commission approval of a natural gas transportation service agreement (“Agreement”) between KNG and Summit Ethanol, LLC (now d/b/a as POET Biorefining – Leipsic) pursuant to Section 4905.31, Revised Code. In conjunction with its application, KNG filed a motion for a protective order with respect to certain competitively-sensitive price and price-related information contained in said Agreement. In accordance with Rule 4901-1-24, Ohio Administrative Code (“OAC”), KNG filed a redacted version of the Agreement in the public docket as Attachment A to the application and filed the complete, unredacted version of the Agreement under seal.

The Commission granted KNG’s application and motion for a protective order by its entry in this docket of May 9, 2007. In accordance with the then-effective version of Rule 4901-1-24, Ohio Administrative Code (“OAC”), the Commission’s entry provided that the protective order prohibiting disclosure of the information filed under seal would automatically expire 18

months from the date of said entry, and that any party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date setting forth the need for continued protection from disclosure.

Consistent with this directive, on September 22, 2008, KNG filed a motion for an extension of the protective order, which otherwise would have automatically expired on November 10, 2008. In support of its motion, KNG pointed out that the information covered by the protective order was no less competitively sensitive than it was at the time the application was filed and that it would remain competitively sensitive for so long as the Agreement remains in effect. Thus, as a part of its motion, KNG proposed that the Commission find that the information in question should be protected from disclosure until the August 31, 2017 expiration date of the primary term of the Agreement.¹ However, in event the Commission deemed it appropriate to limit the protection against disclosure to some shorter period, KNG requested that it be provided the opportunity to move for an extension of the protective order prior to the expiration date fixed by the Commission.

By entry of October 22, 2008, the attorney examiner found that the information redacted from the Agreement filed with the public version of that application continued to qualify for protection against disclosure under Section 149.43, Revised Code, and Rule 4901-1-24, OAC.² However, citing a provision of an exhibit to the Agreement stating that the purchasing party had the right of first refusal for firm capacity on KNG's pipeline for a period of five years, the attorney examiner found that it would be inappropriate to grant protection for the term of the Agreement because the confidential redacted information could change until the expiration of

¹ The Agreement was subsequently amended to extend the primary term until December 31, 2017. The Commission approved the amendment by its finding and order in this docket of February 27, 2013.

² See October 22, 2008 Entry, 3.

this right of first refusal.³ Thus, the attorney examiner found that the protective order should be extended until October 31, 2012, which was two months following the expiration of the right of first refusal, stating that, if KNG wished to extend the protection beyond that date, it should file an appropriate motion at least 45 days in advance of that date in accordance with Rule 4901-1-24(F), O.A.C.⁴

On September 11, 2012, KNG filed a motion for a second extension of the protective order, again maintaining that the information for which continued protection was sought remained competitively sensitive and should continue to be accorded confidential treatment. The attorney examiner granted this motion by entry of October 16, 2012, finding that the protective order should be extended until April 30, 2014.

On April 4, 2014, KNG filed a motion for a third extension of the protective order, again asserting that the subject information continued to be competitively sensitive and warranted confidential treatment. By entry of April 21, 2014, the attorney examiner granted the KNG's motion, finding that the protective order should be extended until April 30, 2016.⁵

By the foregoing motion, KNG seeks a fourth extension of the protective order issued in this docket on May 9, 2007 on the ground that the confidential information covered by the original protective order is no less competitively sensitive than it was at the time the application was filed and when the previous extensions of the protective order were granted.

Rule 4901-1-24(D), OAC, provides, in pertinent part, as follows:

³ See October 22, 2008 Entry, 3-4.

⁴ *Id.*

⁵ Pursuant to KNG's request for leave to file out of time, the attorney examiner waived the 45-day requirement of Rule 4901-1-24(F), OAC, in approving the extension of the protective order.

(D) Upon motion of any party or person filing a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, or the attorney examiner assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.

In its initial motion for a protective order, KNG argued that, consistent with the criteria set forth in the above rule, state law prohibited the release of the terms redacted from the public version of the Agreement submitted as Attachment A to the application, that non-disclosure of said information was not inconsistent with the purposes of Title 49 of the Revised Code, and that, because the information for which protection was sought was limited to the price and price-related terms of the agreement, the amount of information protected from public disclosure had been minimized.

The specific information for which continued protection is now being sought is, again, limited to the price and price-related terms of the Agreement. As noted in each of KNG's earlier motions for protection, such terms are routinely accorded protected status by the Commission based on a determination that competitively-sensitive information of this type constitutes a "trade secret, or other confidential research, development, *(or)* commercial information under Ohio law" as described in Rule 4901-1-24(A)(7), OAC. Indeed, the statutory definition of a "trade secret" includes "business information" that "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.”⁶

In granting KNG’s original motion for a protective order, the Commission recognized that price and price-related terms of a natural gas transportation agreement fall within the above statutory definition, stating that “we understand that negotiated price and quantity terms can be sensitive information in a competitive environment.”⁷ Similarly, in extending the protective order via the October 22, 2008 entry, the attorney examiner found as follows:

The attorney examiner has reviewed the information sought to be maintained as confidential, as well as the assertions set forth in its motion. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy, as well as the six factor test set forth by the Ohio Supreme Court, the attorney examiner finds that the exhibit at issue 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. Finally, the attorney examiner concludes that the information is reasonably redacted. Therefore, the examiner finds that the protective order should be extended.

The attorney examiner reached the same conclusion in granting the second and third extensions of the protective order requested by KNG,⁸ and the information for which the extension of confidential treatment is sought continues to meet the all the above criteria. Moreover, because the Commission and its staff have full access to the information for which continued protection is requested, the Commission’s ability to perform its statutory obligations

⁶ Section 1333.61(D), Revised Code.

⁷ May 9, 2007 Entry, 1.

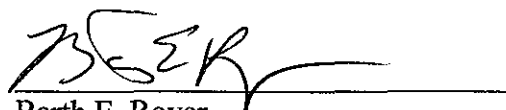
⁸ See October 16, 2012 Entry, 2; and April 21, 2014 Entry, 3.

will in no way be impaired by granting this motion. Thus, no legitimate public purpose would be served by disclosure of the designated information.

Rule 4901-1-24(F), OAC, provides that a party wishing to extend a protective order file its motion 45 days in advance of the expiration date, and the entry granting the third extension of the protective order specifically provided that confidential treatment which would be accorded the information in question until April 30, 2016. KNG and undersigned counsel take the requirements of the Commission's rules very seriously, but have just discovered that, due to a miscommunication, the deadline for filing the motion to extend the protective order was incorrectly entered on their calendars. Accordingly, KNG requests leave to file this motion out of time instant. KNG notes that, because the protection is not set to expire until April 30, 2016, the information is not yet in the public domain and that, therefor, no party will be adversely affected if KNG's request for a waiver of the 45-day requirement is granted.

WHEREFORE, KNG respectfully requests that the Commission grant its motion to extend the protection of the information filed under seal in connection with its April 16, 2007 application for a period of 24 months from the date of the entry granting the motion or for such other period as the Commission deems appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BER', followed by a horizontal line.

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