

# **THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE APPLICATION  
OF KNG ENERGY, INC. FOR  
APPROVAL OF A NATURAL GAS  
TRANSPORTATION AGREEMENT WITH  
POET BIOREFINING – LEIPSIC, LLC.**

**CASE NO. 17-1757-GA-AEC**

## **FINDING AND ORDER**

Entered in the Journal on September 6, 2017

### **I. SUMMARY**

{¶ 1} The Commission approves the application of KNG Energy, Inc. for a reasonable arrangement for the transportation of natural gas to POET Biorefining – Leipsic, LLC.

### **II. DISCUSSION**

{¶ 2} KNG Energy, Inc. (KNG) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4905.31 authorizes the Commission to approve schedules or reasonable arrangements between a public utility and one or more of its customers. The statute provides that every such schedule or reasonable arrangement shall be under the supervision and regulation of the Commission, and is subject to change, alteration, or modification by the Commission.

{¶ 4} On August 8, 2017, KNG filed an application, pursuant to R.C. 4905.31, seeking approval of a reasonable arrangement under which KNG would provide natural gas transportation service within the state of Ohio to POET Biorefining – Leipsic, LLC (POET).

{¶ 5} On August 11, 2017, Staff filed its review and recommendations in response to the application filed by KNG.

**A. Procedural Issue**

{¶ 6} On August 8, 2017, KNG filed a motion for protective order, seeking to protect certain price-related terms contained in Exhibit A to the natural gas transportation service agreement filed for the Commission's approval in this case. Specifically, KNG asserts that the price-related terms found in Exhibit A constitute confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61(D), and as recognized by Ohio Adm.Code 4901-1-24. No memoranda contra the motion for protective order were filed.

{¶ 7} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information that, 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).

{¶ 8} Similarly, Ohio Adm.Code 4901-1-24 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

{¶ 9} 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." R.C. 1333.61(D).

{¶ 10} The Commission has reviewed the information that is the subject of 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 R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,<sup>1</sup> the Commission finds that the price-related information contained in Exhibit A to the natural gas transportation service agreement constitutes 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 with respect to the confidential terms contained in Exhibit A to the natural gas transportation service agreement is reasonable and should be granted.

{¶ 11} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Finding and Order. Until that date, the Commission's docketing division should maintain, under seal, the information filed confidentially by KNG on August 8, 2017.

{¶ 12} Ohio Adm.Code 4901-1-24(F) 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.

**B. Consideration of the Application**

{¶ 13} As noted above, KNG requests approval of a reasonable arrangement for natural gas transportation service to an ethanol plant owned and operated by POET in

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<sup>1</sup> 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).

Leipsic, Ohio. In the application, KNG states that it currently provides natural gas transportation service to POET pursuant to a transportation agreement approved by the Commission in Case No. 07-424-GA-AEC. KNG further states that it has entered into a new transportation agreement with POET to take effect following the expiration of the current agreement on December 31, 2017.

{¶ 14} In its review and recommendations, Staff notes that the proposed reasonable arrangement is for firm transportation service and contains a maximum daily quantity, volumetric transportation rate, overrun fee, minimum bill provision, and demand charges. Staff further notes that the reasonable arrangement includes an initial term of seven years, continuing thereafter as a year-to-year agreement, subject to a minimum one-year cancellation notice by either party. Staff concludes that the application is reasonable and should be approved.

{¶ 15} Upon review of the application filed by KNG, as well as Staff's review and recommendations, the Commission finds that the application does not appear to be unjust or unreasonable and should, therefore, be approved. Accordingly, we find that the reasonable arrangement between KNG and POET should be approved pursuant to R.C. 4905.31.

### III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That KNG's application be approved. It is, further,

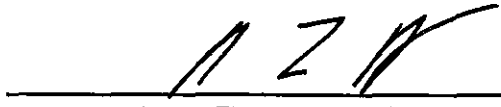
{¶ 18} ORDERED, That the motion for protective order filed by KNG on August 8, 2017, be granted. It is, further,

{¶ 19} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by KNG on August 8, 2017, for a period ending 24 months from the date of this Finding and Order. It is, further,

{¶ 20} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 21} ORDERED, That a copy of this Finding and Order be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Asim Z. Haque, Chairman

  
M. Beth Trombold

  
Thomas W. Johnson

  
Lawrence K. Friedeman

  
Daniel R. Conway

SJP/sc

Entered in the Journal

SEP 06 2017

  
Barcy F. McNeal

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Secretary