

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION OF
NORTH COAST GAS TRANSMISSION LLC
FOR APPROVAL OF A NATURAL GAS
TRANSPORTATION SERVICE AGREEMENT
AMENDMENT.**

CASE NO. 16-2046-PL-AEC

**IN THE MATTER OF THE APPLICATION OF
NORTH COAST GAS TRANSMISSION LLC
FOR APPROVAL OF A NATURAL GAS
TRANSPORTATION SERVICE AGREEMENT
AMENDMENT.**

CASE NO. 17-1911-PL-AEC

FINDING AND ORDER

Entered in the Journal on March 28, 2018

I. SUMMARY

{¶ 1} The Commission approves the applications of North Coast Gas Transmission LLC for amendments to its reasonable arrangement for the transportation of natural gas to Orwell Natural Gas Company.

II. DISCUSSION

{¶ 2} North Coast Gas Transmission LLC (North Coast) is a pipeline 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 October 19, 2016, in Case No. 16-2046-PL-AEC, North Coast filed an application, pursuant to R.C. 4905.31, seeking approval of amendments to a reasonable arrangement under which North Coast provides natural gas transportation service within the state of Ohio to Orwell Natural Gas Company (Orwell).

{¶ 5} On September 5, 2017, in Case No. 17-1911-PL-AEC, North Coast filed a second application, pursuant to R.C. 4905.31, seeking approval of additional amendments to its reasonable arrangement with Orwell.

{¶ 6} On March 2, 2018, Staff filed its review and recommendations in response to both applications filed by North Coast.

A. Procedural Issue

{¶ 7} On October 19, 2016, North Coast filed a motion for protective order, seeking to protect certain terms regarding pricing and volume contained in Exhibit A to the application filed in Case No. 16-2046-PL-AEC. Specifically, North Coast asserts that the pricing and volume information found in Exhibit A constitutes 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. On September 5, 2017, North Coast filed a similar motion for protective order with respect to certain pricing and volume information in Exhibit A to the application filed in Case No. 17-1911-PL-AEC. No memoranda contra the motions for protective order were filed.

{¶ 8} 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).

{¶ 9} 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."

{¶ 10} 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).

{¶ 11} The Commission has reviewed the information that is the subject of North Coast's motions for protective order, as well as the assertions set forth in the supportive memoranda. 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,¹ the Commission finds that the pricing and volume information contained in Exhibit A to the applications 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 North Coast's motions for protective order with respect to the confidential terms contained in Exhibit A to the applications are reasonable and should be granted.

{¶ 12} 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

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).

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 North Coast on October 19, 2016, in Case No. 16-2046-PL-AEC, and on September 5, 2017, in Case No. 17-1911-PL-AEC.

{¶ 13} 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 North Coast 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 North Coast.

B. *Consideration of the Applications*

{¶ 14} As noted above, North Coast requests approval of amendments to its reasonable arrangement for natural gas transportation service to Orwell. North Coast notes that the reasonable arrangement was initially approved by the Commission in Case No. 10-2535-PL-AEC. *In re North Coast Gas Transmission LLC*, Case No. 10-2535-PL-AEC, Finding and Order (Dec. 8, 2010). In its applications in the present cases, North Coast states that the proposed amendments would extend the term of the agreement; provide a maximum monthly quantity; provide a maximum daily quantity; provide a balancing rate; provide a monthly charge equal to the balancing rate multiplied by the maximum monthly quantity; provide primary service consisting of daily swing rights up to the maximum daily quantity subject to the maximum monthly quantity on a best efforts basis; and set forth other terms regarding North Coast's provision of gas balancing services. North Coast asserts that the amendments are in the public interest and should be approved.

{¶ 15} In its review and recommendations, Staff notes that the proposed amendments to the reasonable arrangement seek to amend the term of the arrangement and

to provide Orwell with additional flexibility with its daily nominations. Staff concludes that North Coast's applications are reasonable and should be approved.

{¶ 16} Upon review of the applications filed by North Coast, as well as Staff's review and recommendations, the Commission finds that the applications do not appear to be unjust or unreasonable and should, therefore, be approved. Accordingly, we find that the amendments to the reasonable arrangement between North Coast and Orwell should be approved pursuant to R.C. 4905.31.

III. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That North Coast's applications be approved. It is, further,

{¶ 19} ORDERED, That the motions for protective order filed by North Coast on October 19, 2016, in Case No. 16-2046-PL-AEC, and on September 5, 2017, in Case No. 17-1911-PL-AEC, be granted. It is, further,

{¶ 20} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by North Coast on October 19, 2016, in Case No. 16-2046-PL-AEC, and on September 5, 2017, in Case No. 17-1911-PL-AEC, for a period ending 24 months from the date of this Finding and Order. It is, further,

{¶ 21} 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,

{¶ 22} 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

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MAR 28 2018

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