

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CASE No. 19-2004-PL-AEC

FINDING AND ORDER

Entered in the Journal on January 15, 2020

I. SUMMARY

{¶ 1} The Commission approves the application of North Coast Gas Transmission LLC for authority to amend a natural gas transportation service agreement.

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 another public utility or 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 31, 2019, 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 delivery and balancing services within the state of Ohio to another public utility, Orwell Natural Gas Company (Orwell), which recently merged into Northeast Ohio Natural Gas Corp. (NEO).¹

{¶ 5} On December 13, 2019, Staff filed its review and recommendations in response to the application filed by North Coast.

¹ On January 3, 2019, in Case No. 18-1484-GA-UNC, et al., the Commission approved a merger of Orwell, Brainard Gas Corp., and Spelman Pipeline Holdings, LLC into NEO.

A. Procedural Issue

{¶ 6} On October 31, 2019, North Coast filed a motion for protective order, seeking to protect the pricing and volume information contained in Attachment A to the application. Specifically, North Coast asserts that the pricing and volume information found in Attachment 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. 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 North Coast'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,² the Commission finds that the pricing and volume information contained in Attachment A to the application 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 motion for protective order with respect to the confidential information contained in Attachment A 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 North Coast on October 31, 2019.

{¶ 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 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 Application

{¶ 13} As noted above, North Coast requests approval of amendments to its existing natural gas service agreement with Orwell, which was initially approved by the

² 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).

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 the application, North Coast states that, following the Commission's approval of the merger of Orwell into NEO, North Coast and NEO agreed to an amendment of the existing agreement with Orwell. Specifically, North Coast seeks approval of amendments that, as of November 1, 2019, would provide balancing services for the term of November 1, 2019, through March 31, 2020; 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; and set forth other terms regarding North Coast's provision of gas balancing services, while leaving the remaining terms and conditions of the agreement unchanged. North Coast asserts that the amendments to the agreement are in the public interest and should be approved pursuant to R.C. 4905.31.

{¶ 14} In its review and recommendations, Staff notes that it reviewed North Coast's application. Following its review, Staff concludes that the application is reasonable and should be approved.

{¶ 15} Upon review of the application filed by North Coast, 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 amendments to North Coast's existing natural gas transportation service agreement with Orwell, as agreed upon by North Coast and NEO, should be approved pursuant to R.C. 4905.31.

III. ORDER

{¶ 16} It is, therefore,

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

{¶ 18} ORDERED, That the motion for protective order filed by North Coast on October 31, 2019, be granted. It is, further,

{¶ 19} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by North Coast on October 31, 2019, 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.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/mef

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1/15/2020 4:53:01 PM

in

Case No(s). 19-2004-PL-AEC

Summary: Finding & Order that the Commission approves the application of North Coast Gas Transmission LLC for authority to amend a natural gas transportation service agreement electronically filed by Docketing Staff on behalf of Docketing