

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Generation Pipeline LLC for Approval of an Amendment to a Natural Gas Transportation Service Agreement.)
Case No. 20-1297-GA-AEC)

MOTION FOR PROTECTIVE ORDER

Pursuant to Ohio Adm.Code 4901-1-24(D), Generation Pipeline LLC (“Generation Pipeline”) respectfully moves for a protective order to keep confidential and not part of the public record certain terms regarding pricing contained in Attachment A to the application filed this same day in this case (collectively, the “Sensitive Information”). This Sensitive Information is considered confidential by Generation Pipeline, and should be redacted and kept confidential. Further, Generation Pipeline believes that, for market development, public disclosure of individual shipper’s Sensitive Information will have a deleterious effect on competition.

The Public Utilities Commission of Ohio (“Commission”) granted protective treatment to the same type of pricing terms when it reviewed and approved the original transportation service agreement between Generation Pipeline and IronUnits LLC. *See In the Matter of the Application of Generation Pipeline LLC for Approval of a Natural Gas Transportation Service Agreement*, Case No. 19-1976-GA-AEC, Finding and Order at ¶ 10 (December 18, 2019). In addition, the Commission has granted protective treatment to this type of information in other unrelated proceedings. *See In the Matter of the Application of North Coast Gas Transmission LLC for Approval of Two New Contracts and Amendments to Four Existing Contracts*, Case No. 08-1164-PL-AEC, Finding and Order at 2 (October 29, 2008); and *In the Matter of the Application of North Coast Gas Transmission LLC for Approval of Contracts with The East Ohio Gas Company dba Dominion East Ohio, and Columbia Gas of Ohio, Inc. that will Allow the*

Operation of Lines in Connection with Each Other Pursuant to Section 4905.48(A), Revised Code, Case No. 09-564-GA-ATR, Entry at 3 (September 9, 2009).

Additional reasons supporting this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above-cited Rule, two unredacted copies of Attachment A to the application are being submitted under seal.

Respectfully submitted,

/s/ Michael J. Settineri

Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)

VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street

Columbus, Ohio 43215

Tel: (614) 464-5462

Fax: (614) 719-5146

mjsettineri@vorys.com

glpetrucci@vorys.com

(Both are willing to accept service via email)

Attorneys for Generation Pipeline LLC

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

Generation Pipeline requests protective treatment for the price terms (“Sensitive Information”) contained in the IronUnits Amendment (Attachment A to the application filed in this proceeding). The Sensitive Information, if released to the public, would harm Generation Pipeline and the party with whom Generation Pipeline has a contract by providing their competitors with proprietary information. Generation Pipeline believes that such information should be kept confidential both for its protection and to permit Generation Pipeline to operate in the competitive market for natural gas transport. Generation Pipeline only has a few shippers, and if the Sensitive Information were made public, competitors could create effective predatory pricing schemes.

Ohio Adm.Code 4901-1-24(D) provides that the Commission or certain designated employees may issue an order to protect the confidentiality of information contained in documents filed with the Commission’s Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission

has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the “public records” statute must also be read in pari materia with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR, Entry (February 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules. *See, e.g.*, Ohio Adm.Code 4901-1-24(A)(7).

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“Trade secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, 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). This definition clearly reflects the state policy favoring the protection of trade secrets, such as the information which is the subject of this motion.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction; the trade secrets statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the

protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. *See, e.g., Elyria Tel. Co.*, Case No. 89-965-TP-AEC, Finding and Order (September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA, Finding and Order (May 31, 1989); and *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR, Entry (August 17, 1990).

In *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

- (1) The extent to which the information is known outside the business,
- (2) the extent to which it is known to those inside the business, i.e., by the employees,
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information,
- (4) the savings effected and the value to the holder in having the information as against competitors,
- (5) the amount of effort or money expended in obtaining and developing the information, and
- (6) the amount of time and expense it would take for others to acquire and duplicate the information.

Id. at 524-525, quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Applying these factors to the pricing terms contained in Attachment A to the application that Generation Pipeline seeks to keep confidential, it is clear that a protective order should be granted. First, the Commission found that this same type of pricing terms in the original transportation service agreement between Generation Pipeline and IronUnits LLC constituted trade secret information and granted it protective treatment only a few months ago. *See In the Matter of the Application of Generation Pipeline LLC for Approval of a Natural Gas Transportation Service Agreement*, Case No. 19-1976-GA-AEC, Finding and Order at ¶ 10

(December 18, 2019). Second, the pricing terms in the amendment are similarly sensitive information and are generally not disclosed. Disclosure could give competitors, either of the shipper or of Generation Pipeline, an advantage. Third, public disclosure of this information is not likely to either assist the Commission in carrying out its duties under R.C. 4905.31, especially since the Commission will have the full text of the agreements to review.

Similar motions were filed and granted in Case Nos. 04-1590-PL-AEC, 05-1214-PL-AEC, 06-883-PL-AEC, 06-1359-PL-AEC, 07-70-PL-AEC, 07-1067-PL-AEC, 07-1172-PL-AEC, 08-1164-PL-AEC, 09-564-GA-ATR, 09-1016-PL-AEC, 10-2535-PL-AEC, 11-5533-PL-AEC, 16-2046-PL-AEC, 17-1911-PL-AEC, 17-2431-PL-AEC, and 18-1658-PL-AEC.

WHEREFORE, for the above reasons, Generation Pipeline requests the Commission grant its motion for a protective order and to maintain under seal the pricing terms contained in the amendment agreement included as Attachment A to the application submitted in this proceeding.

Respectfully submitted,

/s/ Michael J. Settineri

Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

Columbus, Ohio 43215

Tel: (614) 464-5462

Fax: (614) 719-5146

mjsettineri@vorys.com

glpetrucci@vorys.com

(Both are willing to accept service via email)

Attorneys for Generation Pipeline LLC

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/20/2020 3:59:03 PM

in

Case No(s). 20-1297-GA-AEC

Summary: Motion for Protective Order and Memorandum in Support electronically filed by Mr. Michael J. Settineri on behalf of Generation Pipeline LLC