

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

FINDING AND ORDER

Entered in the Journal on September 9, 2020

I. SUMMARY

{¶ 1} The Commission approves the application of Generation Pipeline LLC for an amendment to a reasonable arrangement with IronUnits LLC for the transportation of natural gas.

II. DISCUSSION

{¶ 2} Generation Pipeline LLC (Generation Pipeline) 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 October 31, 2019, in Case No. 19-1976-GA-AEC, Generation Pipeline filed an application, pursuant to R.C. 4905.31, seeking approval of a reasonable arrangement under which Generation Pipeline would provide transportation of natural gas within the state of Ohio to IronUnits LLC (IronUnits).

{¶ 5} By Finding and Order dated December 18, 2019, the Commission approved the application filed by Generation Pipeline in Case No. 19-1976-GA-AEC and the natural gas transportation service agreement between it and IronUnits (IronUnits Agreement).

{¶ 6} On July 20, 2020, Generation Pipeline filed the application in this case, pursuant to R.C. 4905.31, seeking approval of an amendment to the IronUnits Agreement.

{¶ 7} On August 20, 2020, Staff filed its review and recommendation in response to Generation Pipeline's application.

A. Procedural Issue

{¶ 8} On July 20, 2020, Generation Pipeline filed a motion for protective order, seeking to protect certain terms related to pricing contained in the proposed amendment to the IronUnits Agreement. Generation Pipeline confidentially filed an unredacted copy of the amendment on July 21, 2020. Specifically, Generation Pipeline asserts that these terms found in the amendment 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.

{¶ 9} 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).

{¶ 10} 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."

{¶ 11} 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).

{¶ 12} The Commission has reviewed the information that is the subject of Generation Pipeline’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,¹ the Commission finds that the pricing information contained in the amendment 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 Generation Pipeline’s motion for protective order with respect to the confidential terms contained in the amendment is reasonable and should be granted.

{¶ 13} 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 Generation Pipeline on July 21, 2020.

{¶ 14} 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 Generation Pipeline 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

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).

extend confidential treatment is filed, the Commission may release this information without prior notice to Generation Pipeline.

B. Consideration of the Application

{¶ 15} As noted above, Generation Pipeline requests approval of an amendment to the IronUnits Agreement. As explained in the application, the IronUnits Agreement was entered into to allow Generation Pipeline to provide transportation of natural gas within the state to IronUnits, which is constructing an iron production facility in Toledo, Ohio. On June 30, 2020, Generation Pipeline and IronUnits executed an amendment to the IronUnits Agreement to modify the contract commodity rate for the first five years of service, the commencement date for the contract rates, and the force majeure provisions, including limiting the scope of allowable force majeure events. Generation Pipeline submits that the amendment is a reasonable arrangement, is in the public interest, and should be approved pursuant to R.C. 4905.31.

{¶ 16} In its review and recommendation, Staff states that, following its review of Generation Pipeline's application, Staff finds that the application is reasonable and should be approved.

{¶ 17} Upon review of Generation Pipeline's application, as well as Staff's review and recommendation, the Commission finds that the application does not appear to be unjust or unreasonable and should, therefore, be approved. Accordingly, we find that the amendment to the reasonable arrangement, as pertaining to the transportation of natural gas by Generation Pipeline to IronUnits, should be approved pursuant to R.C. 4905.31.

III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That Generation Pipeline's application be approved. It is, further,

{¶ 20} ORDERED, That the motion for protective order filed by Generation Pipeline

on July 20, 2020, be granted. It is, further,

{¶ 21} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by Generation Pipeline on July 21, 2020, for a period ending 24 months from the date of this Finding and Order. It is, further,

{¶ 22} 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,

{¶ 23} 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

DMH/kck

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

Summary: Finding & Order approving the application of Generation Pipeline LLC for an amendment to a reasonable arrangement with IronUnits LLC for the transportation of natural gas. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio