

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
North Coast Gas Transmission LLC for) Case No. 07-1172-PL-AEC
Approval of a New Contract and an)
Amendment to Existing Contract)

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, North Coast Gas Transmission LLC (“North Coast”) respectfully moves for a protective order to keep the price, volume and shrinkage factor information contained in the amendment (Attachment A) and the new contract (Attachment B) submitted in this case confidential and not part of the public record. The party with whom North Coast has contracted has requested that the prices, volumes and shrinkage be redacted and kept confidential. Further, North Coast believes that for market development public disclosure of individual shipper’s volumes and costs will have a deleterious effect on competition. Similar motions were granted in Case Nos. 04-1590-PL-AEC, 05-1214-PL-AEC, 06-883-PL-AEC, Case No. 06-1359-PL-AEC, and 07-70-PL-AEC, and were filed in Case No. 07-1067-PL-AEC. Additional explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) unredacted copies of the exhibits are submitted under seal.

Respectfully submitted,

/s/

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

North Coast requests that the price, volume and shrinkage factor information contained in the amendment and the new contract for which it seeks approval be protected from public disclosure. North Coast submits that the price, volume and shrinkage factor information, if released to the public, would harm the party with whom North Coast has a contract by providing competitors with proprietary information. The party to the contract and amendment have asked North Coast to seek protection of such information. North Coast agrees with its shipper that such information needs to be kept confidential both for its protection and to permit North Coast to operate in the competitive market for natural gas transport. North Coast only has a few shippers and it competes with transport on the interstate pipelines. By revealing the contract volumes and prices for the new contract and the amendment which makes up what will be the totality of the North Coast's firm through-put, competitors could create effective predatory pricing schemes.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order which is necessary 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 its 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 (O.A.C. § 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.

Section 1333.61(D), Revised Code. 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); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Falconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

- (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.

Applying these factors to the price, volume and shrinkage factor information contained in the new contract and the amendment North Coast seeks to keep confidential, it is clear that a protective order should be granted.

Such sensitive information is generally not disclosed. Its disclosure could give competitors, either of the shipper or North Coast, an advantage. On the other hand, public

disclosure of this information is not likely to either assist the Commission in carrying out its duties under rules, especially if since the Commission staff will have the full text or the agreement to look at, or serve any other public policy.

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, and 07-70-PL-AEC, and were filed in Case No. 07-1067-PL-AEC.

WHEREFORE, for the above reasons, North Coast requests the Commission to grant its motion for a protective order and to maintain the price, volume and shrinkage factor information contained in the amendment (Attachment A) and the new contract (Attachment B) submitted in this proceeding under seal.

Respectfully submitted,

/s/

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LIST OF EXHIBITS
FOR WHICH PROTECTION IS SOUGHT

EXHIBITS

Price, volume and shrinkage information contained in the amendment (Attachment A) and in the new contract (Attachment B) filed by North Coast in this proceeding

REASONS JUSTIFYING PROTECTION

Both of these exhibits contains price, volume and shrinkage information. Disclosure would give an undue advantage to competitors and would hinder competition.

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Summary: Motion North Coast Gas Transmission LLC's Motion for Protective Order electronically filed by Stephen M Howard on behalf of North Coast Gas Transmission LLC