

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Suburban Natural Gas Company for) Case No. 10-2465-GA-AEC
Approval of a Contract with Bakery Feeds,)
a Division of Griffin Industries.)

FINDING AND ORDER

The Commission finds:

- (1) Suburban Natural Gas Company (Suburban or Company) is a public utility and natural gas company subject to the jurisdiction of this Commission by virtue of the provisions of Sections 4905.02 and 4905.03(A)(5), Revised Code.
- (2) On November 1, 2010, Suburban filed an application requesting approval of a natural gas service agreement with Bakery Feeds (Bakery Feeds or Customer). Bakery Feeds is currently a customer on Suburban's system pursuant to Suburban's General Service Tariff. Suburban received from the Customer a request for a proposed contract to supply natural gas service to the plant and office operated in North Baltimore, Ohio. The Customer is located on a property presently capable of being served by more than one natural gas distribution company and has requested competitive contract proposals from Suburban and at least one other natural gas distribution company. According to Suburban, the rates set forth in the contract submitted for Commission approval are compensatory and will enable Suburban to conduct operations profitably, with respect to service to the Customer. Suburban states that, since Bakery Feeds presently receives service at this facility from Suburban, failure of the Commission to approve the contract could result in Suburban's loss of this customer and the revenue stream attributable to the customer, all of which would have a significant and negative impact upon Suburban and its remaining customers.
- (3) Concurrent with the application, Suburban filed a motion for protective order, in accordance with Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), seeking confidential treatment of

those portions of the contract pertaining to the price per thousand cubic feet to be paid by the Customer and the term of the contract. Suburban states that confidential treatment is warranted given the competitive situation existing for the Customer's facility. In support of its motion, Suburban asserts that public disclosure of the unit price would impair its ability to respond to competitive opportunities in the marketplace. Furthermore, disclosure of the term of the contract would alert competitors to renewal and cancellation opportunities which could impair Suburban's ability to serve the Customer. Suburban explains that, in the ordinary course of Suburban's business, this information is treated as confidential and is not disclosed.

- (4) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, 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* (2000), 89 Ohio St.3d 396, 399.
- (5) Similarly, Rule 4901-1-24, O.A.C., 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 non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (6) 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." Section 1333.61(D), Revised Code.
- (7) The Commission has reviewed the information included in Suburban'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 Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the Commission finds that the information contained in Suburban's application contains 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 Suburban's motion for protective order is reasonable, with regard to Suburban's application, and should be granted.

- (8) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until May 22, 2012. Until that date, the docketing division should maintain, under seal, the information filed confidentially.
- (9) Rule 4901-1-24(F), O.A.C., 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 Suburban 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 Suburban.
- (10) The Commission has reviewed the application filed in this case and finds that the proposed natural gas service agreement is reasonable and in the public interest, and should be approved.

It is, therefore,

ORDERED, That the request for approval of an agreement between Suburban and Bakery Feeds is granted. It is, further,

¹ See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

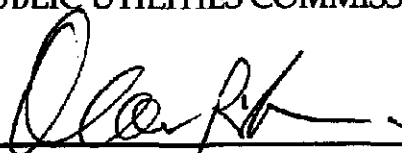
ORDERED, That the motion for protective order for the information be granted subject to findings (8) and (9). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the information, which was filed under seal in this docket on November 1, 2010, for a period of 18 months, ending on May 22, 2012. It is, further,

ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Finding and Order be served upon Suburban, Bakery Feeds, and any other interested person of record.

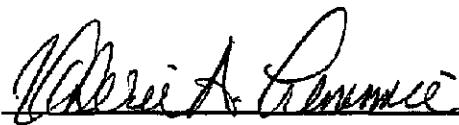
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser

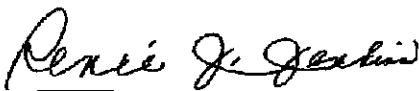


Cheryl L. Roberto

JR/clh

Entered in the Journal

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Renee J. Jenkins
Secretary