

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of)
The East Ohio Gas Company d/b/a)
Dominion East Ohio, Constitution Gas)
Transport Co., Inc., and Knox Energy) Case No. 11-4324-GA-ATR
Cooperative Association, Inc., for)
Approval of the Transfer of Assets and)
Substitution of Service.)

ENTRY

The attorney examiner finds:

- (1) By finding and order issued August 17, 2011, the Commission approved an application filed on July 14, 2011, as supplemented July 25, 2011, and July 28, 2011, by The East Ohio Gas Company d/b/a Dominion East Ohio (DEO), Constitution Gas Transport Co., Inc. (Constitution), and Knox Energy Cooperative Association, Inc. (Knox) (collectively, joint applicants). The Commission approved two separate but interdependent transactions, which transfer certain assets from Constitution to DEO, and transfer certain assets from Constitution to Knox and substitute Knox as the provider of service to residential customers of Constitution.
- (2) On July 14, 2011, joint applicants filed a motion for a protective order regarding pricing information contained in the Asset Purchase Agreement between Constitution and Knox, attached to the application as Exhibit B.
- (3) In support of their July 14, 2011, motion for a protective order, joint applicants explain that the pricing information contained in Exhibit B contains business information disclosing the negotiated financial terms of the transactions which were approved by the Commission. Joint applicants assert that the Commission has previously recognized that negotiated price and quantity terms can be sensitive information in a competitive environment. See *In the Matter of the Application of North Coast Gas Transmission LLC for Approval of a New Contract and Amendments to Three Existing Contracts*, Case No. 05-1214-PL-AEC. Joint applicants further argue that the redacted price information derives

independent economic value from not being generally known to others, and that disclosure of the specific financial details of the transaction would place joint applicants at a disadvantage in future negotiations and prevent joint applicants from being able to competitively negotiate future transactions. According to joint applicants, disclosure would likely result in a disadvantage to the ratepayers or members of the joint applicants.

- (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, Ohio Administrative Code (O.A.C.), allows the attorney examiner 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 attorney examiner has examined the information covered by the motion for protective order filed by joint applicants, 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 attorney examiner finds that the price information contained in Exhibit B constitutes trade secret information as it has independent economic value. Release of this information is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that Exhibit B has been reasonably redacted to remove the confidential information contained therein, and has been docketed as such. Therefore, the attorney examiner finds that joint applicants' motion for protective order is reasonable and should be granted with regard to the confidential information contained in Exhibit B filed on July 14, 2011.

- (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 March 14, 2013. 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. Therefore, if joint applicants wish to extend this confidential treatment, they 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 docketing division may release this information without prior notice to the joint applicants.

It is, therefore,

ORDERED, That the motion for protective order filed by joint applicants on July 14, 2011, be granted in accordance with Finding (7). 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 Commission's docketing division maintain, under seal, the unredacted Exhibit B filed under seal in this docket on July 14, 2011, for a period of 18 months, ending on March 14, 2013. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

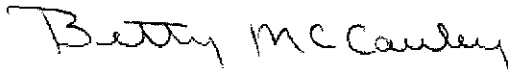


By: Katie L. Stenman
Attorney Examiner



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Betty McCauley
Secretary