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11-4444-PL-UNC

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Spelman )  
Pipeline Holdings, LLC for Commission ) Case No. 11-4444-PL-UNC  
Authorization to Become a Pipeline )  
Company and for Approval of its Tariffs. )

FINDING AND ORDER

The Commission finds:

- (1) On July 22, 2011, Spelman Pipeline Holdings, LLC (Spelman) filed an application for authority to operate as an intrastate pipeline company in Ohio. In its application, Spelman indicates that it will operate, maintain, and transport natural gas through a pipeline system to natural gas retail suppliers, local distribution customers, and all other customers on a nondiscriminatory open-access basis.
- (2) The Commission notes that this case was initially designated as an application for tariff approval (11-4444-PL-ATA). However, because the application involves not only Spelman's tariff, but also Spelman's establishment as a pipeline company, the case designation should be changed to Case No. 11-4444-PL-UNC.
- (3) On August 18, 2011, Spelman filed an affidavit of Martin Whelum, verifying the application and exhibits. On September 27, 2011, Spelman filed an amendment to its application that substitutes a rate of \$.50 per decatherm (Dth) for interruptible transportation service, for a rate of \$.95 per Dth.
- (4) The information contained in the Commission's file in this proceeding reveals the following:
  - (a) Spelman is a limited liability company organized in Ohio, with its principal offices in Mentor, Ohio.
  - (b) Spelman is a wholly-owned subsidiary of Gas Natural, Inc. a holding company and parent of natural gas public utilities in Montana, Wyoming, Maine, North Carolina, Pennsylvania, and Ohio,

including Brainard Gas Corporation, Northeast Ohio Natural Gas Corporation, and Orwell Natural Gas Company.

- (c) On April 8, 2011, Spelman acquired from Marathon Petroleum Company, pipelines and related assets, formerly used for the shipment of petroleum products in Ohio and Kentucky. In Ohio, these assets include more than 142 miles of pipeline from Marion to Youngstown, a pipeline segment from Clinton to the Cleveland metropolitan area, and 15 acres of associated land and buildings.
  - (d) Spelman is in the process of rehabilitating the pipeline segment from Marion to Youngstown. Because these facilities have not previously been utilized for natural gas, there are no existing receipt or delivery points. Spelman is engaged in negotiations with interstate and intrastate pipelines for the establishment of such points.
  - (e) The application contains information on the technical, financial, and managerial qualifications of Spelman.
  - (f) Spelman filed a proposed tariff as part of its application.
  - (g) The application includes the affidavit of Martin K. Whelan, president of Spelman, that verifies the information provided in the application is true and accurate.
- (5) The Commission finds sufficient information contained within the application to make its determination and, therefore, the Commission finds that no hearing on the application is necessary. Upon review of the application and supporting exhibits, we find that Spelman has the technical, managerial, and financial capabilities to operate as an intrastate pipeline company. Therefore, the Commission finds that Spelman's application is reasonable and should be approved. Accordingly, Spelman should be authorized to operate as a pipeline company pursuant to Sections 4905.02 and 4905.03,

Revised Code, which is subject to the Commission's jurisdiction. Spelman shall be subject to the Commission's jurisdiction to inspect, for purposes of the public safety, all gas and natural gas pipelines owned, operated, or controlled by Spelman, over which the Commission has jurisdiction, in accordance with Sections 4905.06 and 4905.90 through 4905.96, Revised Code. Spelman should provide notice to the Commission's Gas Pipeline Safety Section at least 14 days prior to placing the pipeline in operation. In addition, we find that the terms and conditions in the proposed tariff do not appear to be unjust or unreasonable, and should be approved.

- (6) On July 22, 2011, Spelman filed a motion for a protective order requesting confidential treatment of Exhibit C, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), and requesting that this exhibit of its application be kept under seal. In its motion for a protective order, Spelman states that Exhibit C consists of pro forma income statements and a balance sheet.
- (7) In support of its motion for a protective order, Spelman explains that Exhibit C contains confidential and proprietary business information which is maintained as confidential by the company. Spelman states that public disclosure of this information could be potentially harmful to Spelman's competitive position as an intrastate pipeline company and would have a deleterious effect on competition. Therefore, Spelman requests that the information found in Exhibit C be treated as confidential.
- (8) 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.
- (9) 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."

- (10) 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.
- (11) The Commission has examined the information covered by the motion for a protective order filed by Spelman, as well as the assertions set forth in the supportive memoranda. 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,<sup>1</sup> the Commission finds that the information contained in Exhibit C, filed in this docket on July 22, 2011, constitutes trade secret information. Release of this document 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. Accordingly, the Commission finds that Spelman's motion for a protective order is reasonable, with regard to Exhibit C filed on July 22, 2011, therefore, the motion should be granted.
- (12) Rule 4901-1-24(F), O.A.C., provides that protective orders expire 18 months after the date of issuance. Therefore, confidential treatment shall be afforded to Exhibit C for a period ending 18 months from the date of this finding and order or until April 12, 2013. Until that date, the docketing division should maintain, under seal, Exhibit C, which was filed under seal in this docket on July 22, 2011.

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

- (13) 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 Spelman 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 Spelman.

It is, therefore,

ORDERED, That the application of Spelman be approved and that Spelman is authorized to provide intrastate pipeline service within the state of Ohio, subject to the Commission's regulations. It is, further,

ORDERED, That the proposed tariff filed by Spelman be approved. It is, further,

ORDERED, That Spelman is authorized to file four complete copies of its tariff, in final form, consistent with this finding and order. Spelman shall file one copy in this case docket and one copy in its TRF docket (or may file electronically as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, That the effective date of the proposed tariff shall be a date not earlier than both the date of this finding and order and the date upon which four complete, printed copies of final tariffs are filed with the Commission. It is, further,

ORDERED, That Spelman shall be subject to the Commission's jurisdiction to inspect, for purposes of the public safety, all gas and natural gas pipelines owned, operated, or controlled by Spelman, over which the Commission has jurisdiction, in accordance with Sections 4905.06 and 4905.90 through 4905.96, Revised Code. It is, further,

ORDERED, That Spelman provide notice to the Commission's Gas Pipeline Safety Section at least 14 days prior to operation. It is, further,

ORDERED, That the motion for a protective order filed by Spelman be granted with regard to the information contained in Exhibit C of Spelman's application filed on July 22, 2011. It is, further,

ORDERED, That the docketing division maintain, under seal, the unredacted Exhibit C, which was filed under seal in this docket on July 22, 2011, for a period of 18 months, ending on April 12, 2013. 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 each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

  
Steven D. Lesser

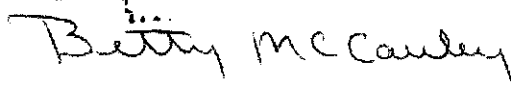
  
Andre T. Porter

  
Cheryl L. Roberto

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Entered in the Journal

**OCT 12 2011**

  
Betty McCauley

Betty McCauley  
Secretary