

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of )  
NRG Ohio Pipeline Company LLC for )  
Approval of a Letter of Notification for ) Case No. 14-1717-GA-BLN  
the Avon Lake Gas Addition Project in )  
Lorain County, Ohio. )

ENTRY

The administrative law judge finds:

- (1) On December 19, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Applicant) filed a letter of notification application, pursuant to Ohio Adm.Code 4906-11-01, for the purpose of constructing the Avon Lake Gas Addition Project (project), which consists of a proposed natural gas pipeline, metering station, and regulating station in Lorain County, Ohio. In the application, NRG Pipeline states that the proposed pipeline would extend south for approximately 20 miles from the Avon Lake power plant in the city of Avon Lake to a proposed supply tap location southwest of the village of Grafton.
- (2) Along with the application, NRG Pipeline filed, on December 19, 2014, a motion for protective order, in accordance with Ohio Adm.Code 4906-7-07, seeking to protect the confidentiality of the financial information contained in the estimated capital cost section of its application. NRG Pipeline asserts that the financial information constitutes proprietary trade secret information that, if disclosed, would harm the Applicant and provide an undue advantage to its competitors. According to NRG Pipeline, the financial information is not disclosed to the public and its request is consistent with R.C. Title 49 and past precedent. No memoranda contra were filed.
- (3) The administrative law judge (ALJ) has reviewed the information covered by NRG 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,<sup>1</sup> the ALJ finds that the information covered by the motion constitutes trade secret information. Its release is, therefore, prohibited under state law. The ALJ also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Therefore, the ALJ finds that NRG Pipeline's motion for a protective order is reasonable and should be granted.

- (4) Accordingly, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry or until March 3, 2017. Until that date, the docketing division should maintain, under seal, the information filed confidentially on December 19, 2014.
- (5) Ohio Adm.Code 4906-7-07(H)(6) requires a party wishing to extend a protective order to file an appropriate motion in advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If NRG 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 extend confidential treatment is filed, the Board may release this information without prior notice to NRG Pipeline.
- (6) On January 6, 2015, Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and American Transmission Systems, Inc. (ATSI) (collectively, FirstEnergy movants) filed, pursuant to R.C. 4906.08 and Ohio Adm.Code 4906-7-04, a motion to intervene in this proceeding. In support of the motion, the FirstEnergy movants explain that OE and CEI have significant electric transmission and distribution facilities along portions of the proposed route of the project, are the record owners of multiple parcels of real estate along the route, and have significant transmission and distribution right-of-way easements along portions of the route, while ATSI has significant electric transmission facilities located on the OE

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<sup>1</sup> 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).

and CEI fee-owned properties and easements along portions of the route. The FirstEnergy movants, therefore, submit that they have significant interests in this proceeding that cannot be represented by other parties. Further, the FirstEnergy movants submit that, as NRG Pipeline continues to negotiate with property owners along the proposed route for the project, the route may change, which may impact other properties owned by the FirstEnergy movants. The FirstEnergy movants assert that their intervention will contribute to a just and expeditious resolution of the issues in this case and will not unduly delay the proceeding or unjustly prejudice any existing party.

- (7) On January 9, 2015, a petition to intervene in this proceeding was filed by various property owners in Lorain County, Ohio (collectively, property owner petitioners).<sup>2</sup> The property owner petitioners state, in support of their petition, that the proposed pipeline would be constructed on their land, which may significantly impact their rights to use and enjoy their property and pose risks to their health and safety. Additionally, the property owner petitioners note that their petition was filed in accordance with the current statutory deadline of 30 days, as set forth in R.C. 4906.08, and current Ohio Adm.Code 4906-7-04(A)(2)(b). The property owner petitioners explain that they only became aware of the Board's interim requirements governing this type of proceeding upon NRG Pipeline's filing of the proof of publication in the case docket on January 8, 2015. The property owner petitioners further explain that, upon becoming aware of the expedited requirements of the interim rules, their petition was quickly filed.
- (8) On January 20, 2015, NRG Pipeline filed a reply to the motion to intervene filed by the FirstEnergy movants. NRG Pipeline states that it has no objection to the motion and notes that it will continue to work with the FirstEnergy movants to address their concerns about the project. On

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<sup>2</sup> The property owner petitioners are Wesley Parker; Brandon and Mary Thorne; Charles Borling; Samuel Dennis; Carlos and Sonia Llado; Edmund and Angie Carter; Gary and Kathleen Conlin; Stephanie K. Unger; Edward Kurianowicz; Lawrence R. Plas; Mary B. Miller; Richard and Carol Petersen; Richard and Ellen Braatz; Thomas and Johanna Julius; Louis and Gale Betzel; Fathers of St. Joseph Church; and K. Hovnanian Oster Homes, LLC.

January 23, 2015, NRG Pipeline filed a similar reply in response to the petition for intervention filed by the property owner petitioners.

- (9) On January 29, 2015, the property owner petitioners filed a response to NRG Pipeline's reply, reiterating their request for intervention in this proceeding.
- (10) The ALJ finds that, pursuant to Ohio Adm.Code 4906-7-04, the FirstEnergy movants and the property owner petitioners have demonstrated good cause for their requests for intervention in this proceeding. The ALJ finds that the FirstEnergy movants and the property owner petitioners have a real and substantial interest in the proposed project and their participation will contribute to the just and expeditious resolution of the issues in this matter. Accordingly, the requests for intervention filed by the FirstEnergy movants and the property owner petitioners should be granted.

With respect to the question of whether their petition for intervention was timely filed, the property owner petitioners acknowledge that they did not file their petition within the time period prescribed by the Board's interim process requirements, which prescribe that intervention requests be filed within 10 days from the date of publication of notice of the letter of notification application. *In re Review of Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, 4906-15, and 4906-17 of the Ohio Administrative Code*, Case No. 12-1981-GE-BRO, Second Finding and Order (Dec. 17, 2012) at 3. Nevertheless, the ALJ finds that the petition, which is unopposed, should be granted, given that the property owner petitioners have demonstrated that they would be directly affected by the proposed project and have otherwise satisfied the Board's intervention criteria.

It is, therefore,

ORDERED, That NRG Pipeline's motion for a protective order be granted. It is, further,

ORDERED, That the requests for intervention filed by the FirstEnergy movants and the property owner petitioners be granted. It is, further,

ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

OHIO POWER SITING BOARD

s/Sarah Parrot

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By: Sarah J. Parrot  
Administrative Law Judge

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

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**in**

**Case No(s). 14-1717-GA-BLN**

Summary: Administrative Law Judge Entry granting NRG Pipeline's motion for protective order and granting the requests for intervention filed by the FirstEnergy movants and the property owner petitioners. - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio