

FILE

7

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of)
North Coast Gas Transmission LLC and)
Suburban Natural Gas Company for)
Approval of a Natural Gas)
Transportation Agreement)

Case No. ~~06-1100-PL-AEC~~

15-1265-PL-AEC

PUCO

RECEIVED-DOCKETING DIV
2015 JUL -8 PM 4:59

MOTION FOR PROTECTIVE ORDER

Joint Applicants Suburban Natural Gas Company ("Suburban") and North Coast Gas Transmission LLC ("North Coast" or collectively "Joint Applicants"), by and through counsel, hereby move¹ for the entry of a Protective Order designating as confidential and prohibiting the disclosure of certain settlement terms contained in its Second Amendment ("Amendment") to the Natural Gas Transportation Service Agreement ("Agreement"). The Joint Applicants believe that this information should be kept from public disclosure and treated as confidential and sensitive information. The original agreement was approved by the Public Utilities Commission of Ohio ("PUCO" or "Commission") in the above-captioned case on February 7, 2007. As required by Rule 4901-1-24(D)(2), Joint Applicants have filed under seal two copies of the confidential and unredacted Amendment along with this Motion for Protective Order.

The basis for this Motion is set forth in the accompanying Memorandum in Support of this Motion for Protective Order. In brief, however, the above-referenced Amendment contains financial settlement information which North Coast and Suburban consider confidential, and which are maintained as confidential by the Joint Applicants. Public disclosure of this

¹ Pursuant to Ohio Administrative Code 4901-1-24.

information would have an adverse effect on Joint Applicants' ability to conduct related business.

Suburban and North Coast request that the Protective Order be effective for a period of twenty-four (24) months from the effective date of the certificate issued to it in this proceeding. Joint Applicants further request that any responses to subsequent requests for additional information or clarification which the Commission Staff may make with regard to this Amendment or related information also be permitted to be filed under seal, pursuant to the same Protective Order requested herein.

WHEREFORE, North Coast and Suburban respectfully request that its motion be granted.

Respectfully Submitted,

/s/Christopher J. Allwein

Christopher J. Allwein (0084914)
Kegler Brown Hill & Ritter Co., LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 43215
Telephone (614) 462-5496
Fax (614) 464-2634
callwein@keglerbrown.com

Attorney for Suburban Natural Gas Company

Michael J. Settineri (0073369)
Vorys, Sater, Seymour AND Pease, LLP
52 East Gay Street
Columbus, Ohio 43215
(614)464-5462
misettineri@vorys.com

Attorney for North Coast Transmission LLC

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)	
North Coast Gas Transmission LLC and)	
Suburban Natural Gas Company for)	Case No. 06-1100-PL-AEC
Approval of a Natural Gas)	
Transportation Agreement)	

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

Suburban and North Coast, by and through counsel, hereby file this Memorandum in Support of its Motion for a Protective Order pursuant to Ohio Administrative Code 4901-1-24. The Motion for Protective Order requests that the Commission designate as confidential financial settlement information that North Coast and Suburban have provided in consideration of Joint Applicants' Application for approval of the proposed Amendment to the Agreement previously approved in this case.

Financial settlement terms of the Amendment constitute confidential and trade secret information. Revealing this sensitive and confidential information in a publicly filed document could have an adverse impact on the Joint Applicants' current and future negotiations with other contractors, vendors and utilities. Therefore, Suburban and North Coast ask that the Commission grant this motion for protective order and prevent the public disclosure of the financial settlement terms of this Amendment.

I. Legal Standard

Section 4905.07 of the Ohio Revised Code provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43 of the

Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43 of the 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. *See, In the Matter of the Application for North American Power and Gas, LLC for Certification as a Competitive Retail Electric Marketer*, Case No. 11-5566-EL-CRS, Entry (Dec. 16, 2011) (citing *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d, 396, 399 (2000)).

Similarly, the Commission’s Procedural Rules contemplate that certain information required to be submitted before the Commission which constitutes a trade secret or is otherwise prohibited from release by state or federal law, will need to be protected from public disclosure. Specifically, the Ohio Administrative Code 4901-1-24(D) provides:

Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code....

Ohio law defines a “Trade Secret” as:

[I]nformation, 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. (*Emphasis Added*).

Ohio Rev. Code § 1333.61(D). The Commission facilitates the protection of such trade secrets in its Rules in the Administrative Code as well. *See* Ohio Admin. Code 4901-1-24(A) (7).

The Ohio Supreme Court has adopted the following six factor test to analyze whether information is a trade secret under Ohio Revised Code § 1331:

(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.

State ex rel. Plain Dealer v. Ohio Dep't of Ins., 80 Ohio St. 3d 513, 534-525, 687 N.E.2d 661, 672 (1998) (citing *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-135, 454 N.E.2d 588, 592 (1983)).

Applying these factors to the financial settlement terms of the proposed Amendment that Joint Applicants seek to keep confidential, it is clear that a protective order should be granted. 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. This Commission has previously carried out its obligations in this regard in numerous proceedings.²

² 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). More recent examples of protection of confidential financial information include: *In the Matter of the Application of BlueStar Energy Services, Inc. for Certification as a Competitive Retail Electric Supplier*, Case No. 10-384-EL-CRS, Entry (May 3, 2010); *In the Matter of Application of T.E.S. Energy Services, L.P. for Certification as a Competitive Retail Electric Service Broker/Aggregator*, Case No. 11-2541-EL-AGG, Entry (June 20, 2011) (both granting confidential protection for information, including financial information provided in response to Sections C-3, C-5, and C-7 of the Applications).

II. Argument

As described, the information that Suburban and North Coast request to be prohibited from disclosure in this proceeding is confidential, financial information that is not publicly available. Such information is generally not disclosed by the Joint Applicants and constitutes a trade secret. Joint Applicants respectfully submit that public disclosure of this information is not likely to assist the Commission in carrying out its duties pursuant to Title 49 of the Ohio Revised Code. Rather, the protection of this information will better serve Ohio consumers by facilitating fair competition among businesses that provide gas transmission and distribution services. Finally, the Commission's protection of this information from disclosure would be consistent with prior precedent and would not prejudice any other parties.

III. Conclusion

For the reasons stated above, confidential treatment of the financial settlement information of Suburban and North Coast is appropriate and required by Ohio law and the Commission's Rules. *See* Ohio Rev. Code § 1333.61(D); Ohio Admin. Code 4901-1-24(D). Accordingly, Joint Applicants respectfully request that a Protective Order be issued which permits Suburban and North Coast to file the above-referenced material under seal and requires those with access to those responses to treat them in a confidential manner for a period of twenty-four (24) months from the effective date of the certificate issued in this proceeding. Joint Applicants further request that, should the Commission Staff seek any additional information or clarification with regard to the confidential information provided, the additional information provided also be permitted to be filed under seal and subject to the same Protective Order.

WHEREFORE, for the above reasons, Suburban Natural Gas Company and North Coast Transmission LLC, respectfully request that the Commission grant its motion for a protective order and to maintain the financial settlement terms of the Amendment as confidential and not subject to public disclosure

Respectfully Submitted,

/s/Christopher J. Allwein
Christopher J. Allwein (0084914)
Kegler Brown Hill & Ritter Co., LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 43215
Telephone (614) 462-5496
Fax (614) 464-2634
callwein@keglerbrown.com

Attorney for Suburban Natural Gas Company

Michael J. Settineri (0073369)
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
Columbus, Ohio 43215
(614)464-5462
misettineri@vorys.com

Attorney for North Coast Transmission LLC