

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. 15-1265-PL-AEC  
Approval of an Amendment to a Natural )  
Gas Transportation Service Agreement. )

FINDING AND ORDER

The Commission finds:

- (1) Suburban Natural Gas Company (Suburban) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02. North Coast Gas Transmission LLC (North Coast) is a pipeline company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02. As such, Suburban and North Coast (collectively, Joint Applicants) are subject to the jurisdiction of the Commission.
- (2) R.C. 4905.31 authorizes the Commission to approve schedules or reasonable arrangements between a public utility and another public utility or one or more of its customers. The statute provides that every such schedule or reasonable arrangement shall be under the supervision and regulation of the Commission, and is subject to change, alteration, or modification by the Commission.
- (3) In Case No. 06-1100-PL-AEC, the Commission approved, pursuant to R.C. 4905.31, the Joint Applicants' Natural Gas Transportation Service Agreement for an initial 10-year term, beginning on November 1, 2008, and ending on October 31, 2018. *In re North Coast Gas Transmission LLC and Suburban Natural Gas Company*, Case No. 06-1100-PL-AEC, Entry (Feb. 7, 2007). The agreement was intended to enable Suburban to utilize North Coast's Toledo-Marion pipeline for transportation of natural gas within the state to supplement and diversify Suburban's available supplies and suppliers of natural gas, and to better fulfill Suburban's supply obligations to customers.

- (4) On July 9, 2015, in the above-captioned case, the Joint Applicants filed a joint application, pursuant to R.C. 4905.31, for approval of a proposed Second Amendment to the Natural Gas Transportation Service Agreement that would permit the Joint Applicants to terminate the agreement before the end of its term. The Joint Applicants also request authority for Suburban to recover the amortized termination fee and interest charges associated with the termination of the agreement through its gas cost recovery (GCR) mechanism. On that same date, the Joint Applicants filed a revised joint application that includes a redacted version of the Second Amendment to the Natural Gas Transportation Service Agreement.
- (5) On August 6, 2015, Staff filed its review and recommendations in response to the revised joint application. The revised joint application and Staff's review and recommendations are summarized below.

#### Procedural Issues

- (6) On July 8, 2015, the Joint Applicants filed a motion for protective order, seeking to protect certain confidential financial settlement information contained in the Second Amendment to the Natural Gas Transportation Service Agreement filed for the Commission's approval in this case. Specifically, the Joint Applicants assert that the financial settlement terms found in the Second Amendment constitute confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61(D), and as recognized by Ohio Adm.Code 4901-1-24. The Joint Applicants also request that their responses to any requests for additional information from Staff be treated as confidential under the protective order. No memoranda contra the motion for protective order were filed.
- (7) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information that, 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*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

- (8) Similarly, Ohio Adm.Code 4901-1-24 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (9) 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." R.C. 1333.61(D).
- (10) The Commission has reviewed the information that is the subject of the Joint Applicants' 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 Commission finds that the financial settlement information contained in the Second Amendment to the Natural Gas Transportation Service Agreement constitutes 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 the Joint Applicants' motion for protective order with respect to the financial settlement information contained in the Second Amendment is reasonable and should be granted.

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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).

- (11) Regarding the Joint Applicants' request that responses to any requests for additional information from Staff be granted protected status, the Commission notes that the Joint Applicants have not filed any such responses under seal in the docket or otherwise indicated that there are, in fact, any such responses to be filed. If the Joint Applicants do seek, at some point, to file an actual response to a data request from Staff, and they believe that the response should be afforded protected status, the Joint Applicants should file the response under seal, along with a motion for protective order, consistent with the requirements of Ohio Adm.Code 4901-1-24(D). Accordingly, this portion of the motion for protective order filed by the Joint Applicants on July 8, 2015, is premature and should be denied.
- (12) Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Finding and Order. Until that date, the Commission's docketing division should maintain, under seal, the information filed confidentially by the Joint Applicants on July 8, 2015.
- (13) Ohio Adm.Code 4901-1-24(F) 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 the 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 Commission may release this information without prior notice to the Joint Applicants.

#### Consideration of the Application

- (14) In the revised joint application, the Joint Applicants request that, due to changes in supply, pricing, and service logistics, the term of the Natural Gas Transportation Service Agreement be amended, such that the agreement is terminated at this point, rather than on October 31, 2018, as previously scheduled. The Joint Applicants state that, under the terms of the existing agreement, Suburban is required to

pay a monthly demand charge to North Coast, regardless of whether any gas is delivered from North Coast to Suburban, plus a volumetric charge. The Joint Applicants further state that, for several reasons, Suburban has not utilized, for more than a year, gas from North Coast and does not intend to do so in the future, thereby rendering the existing agreement uneconomical for Suburban's customers. Therefore, consistent with the Second Amendment, the Joint Applicants propose that Suburban be authorized to pay an early termination fee to buy out the remainder of the agreement with North Coast. The Joint Applicants recommend that the buyout be amortized over a period of 60 months, with the amortization to be included in the expected gas cost (EGC) component of Suburban's GCR calculation, which, according to the Joint Applicants, would reduce the monthly gas costs paid by Suburban's customers. Accordingly, the Joint Applicants request that Suburban be authorized to recover the amortized termination fee and interest charges through its GCR mechanism.

- (15) In support of the revised joint application, the Joint Applicants note that termination of the Natural Gas Transportation Service Agreement would be consistent with the Commission's decision in Suburban's recent GCR audit proceeding, which requires Suburban to evaluate the necessity for its capacity contracts when they near expiration. *In re Suburban Natural Gas Company*, Case No. 14-216-GA-GCR, et al., Opinion and Order (Feb. 3, 2015). In addition, the Joint Applicants emphasize that termination of the agreement would reduce the EGC component paid by Suburban's customers in the GCR rate, without compromising system reliability. Finally, the Joint Applicants assert that termination of the agreement would serve the public interest. In particular, the Joint Applicants point out that, in light of changed circumstances, Suburban is now able to access gas from the Eastern Utica Shale at lower cost and with consistent delivery, such that the agreement with North Coast is no longer practicable or economical for Suburban and its customers. According to the Joint Applicants, if the agreement is terminated, Suburban would continue to have access to adequate gas

supply, maintain a diversity of suppliers, and provide reliable service and optimal pricing to its customers.

- (16) In its review and recommendations, Staff states that it has reviewed the revised joint application. Staff reports that North Coast and Suburban have negotiated a termination fee that is less than the remaining cost of the Natural Gas Transportation Service Agreement, which would allow Suburban to reduce its GCR rate by approximately \$0.18 per thousand cubic feet. Staff, therefore, finds that the revised joint application is reasonable and recommends that it be approved by the Commission.
- (17) Upon review of the revised joint application, as well as Staff's review and recommendations, the Commission finds that the application does not appear to be unjust or unreasonable and should, therefore, be approved. Accordingly, we find that the Second Amendment to the Natural Gas Transportation Service Agreement should be approved pursuant to R.C. 4905.31.<sup>2</sup> Further, Suburban should be authorized to recover the amortized termination fee and interest charges through its GCR mechanism. The Commission directs Staff, in Suburban's next GCR audit proceeding, to examine the calculation of the amortized termination fee and interest charges to ensure that they are being properly calculated and included for recovery in the GCR rate.

It is, therefore,

ORDERED, That the revised joint application be approved. It is, further,

ORDERED, That the motion for protective order filed by the Joint Applicants on July 8, 2015, be granted, in part, and denied, in part. It is, further,

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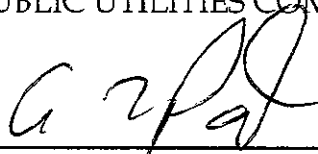
<sup>2</sup> A review of the Commission's dockets indicates that the Joint Applicants neglected to file the First Amendment to the Natural Gas Transportation Service Agreement. The Commission reminds the Joint Applicants that they have an obligation to comply with R.C. 4905.31, and, in the future, any agreements or amendments to agreements should be filed on a timely basis with the Commission for prior approval.

ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by the Joint Applicants on July 8, 2015, for a period ending 24 months from the date of this Finding and Order. It is, further,

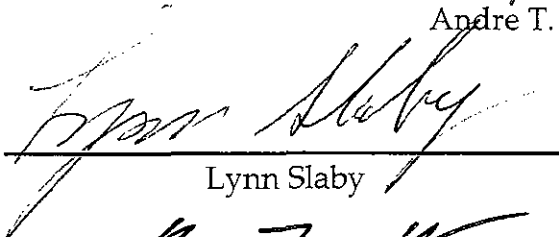
ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

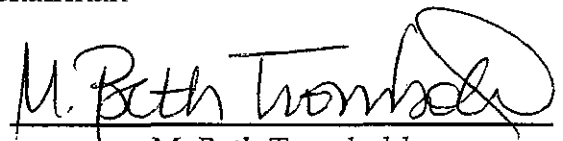
THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman



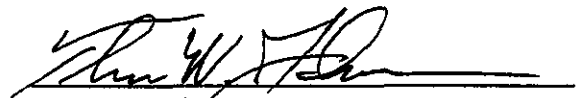
Lynn Slaby



M. Beth Trombold



Asim Z. Haque




Thomas W. Johnson

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**SEP 09 2015**



Barcy F. McNeal  
Secretary