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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO RECEIVED-DOCKETING DIV

2015 OCT 30 PM 12:00

In the Matter of the Commission Investigative : Case No. 14-205-GA-COI
Audit of Brainard Gas Corporation, Northeast :
Ohio Gas Corporation and Orwell Natural Gas :
Company. :
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**MOTION OF NORTHEAST OHIO NATURAL GAS CORPORATION, ORWELL
NATURAL GAS COMPANY, AND BRAINARD GAS CORPORATION FOR
PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT**

Pursuant to Ohio Administrative Code ("OAC") 4901-1-24(D), Brainard Gas Corporation ("Brainard"), Northeast Ohio Natural Gas Corporation ("Northeast") and Orwell Natural Gas Company ("Orwell") (collectively, "the Companies"), respectfully request that the Public Utilities Commission of Ohio ("Commission") issue a protective order that provides that the attachments (specifically – Attachment A through E) to the Stipulation and Recommendation ("Stipulation") that was filed in this case on October 28, 2015 remain under seal for the reasons set forth in the attached memorandum in support. This motion does not apply to Attachment F of the Stipulation.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Background

On November 13, 2013, the Commission issued an Opinion and Order in *In re Northeast Ohio Natural Gas Corp. and Orwell Natural Gas Company*, Case Nos. 12-209-GA-GCR et al. (“2012 GCR Order”). In the 2012 GCR Order, the Commission stated that an investigative audit of the Companies should be performed. On April 2, 2014, the Commission established this case (Case No. 14-205-GA-COI) for the purpose initiating an investigative audit into the Companies. The Commission directed Staff to issue a Request for Proposal to potential auditors and ultimately selected Rehmann Corporate Investigative Services, LLC (“Rehmann” or the “Auditor”) as the auditor to perform the investigative audit.

During this case, the Companies provided Rehmann, Commission Staff, and the Office of Ohio Consumer’s Counsel (“OCC”) various confidential documents. The confidential documents provided to OCC were provided subject to a confidentiality agreement entered into between the Companies and OCC. Some of these confidential documents are internal policies of the Companies, including gas procurement policies. On October 28, 2015, Staff and the Companies executed the Stipulation. The Companies attached copies of current versions of certain policies to the Stipulation. The Companies attached these documents to the Stipulation strictly for “purposes of illustrating the Companies’ progress as recommended by the Rehmann Report and depicting the status of those policies and procedures at the time of the execution of the Stipulation.”¹ These policies are internal documents that the Companies expended time and money developing, and they are not generally disclosed to the public. The Companies disclosed these documents strictly within the confine of this investigative audit and took steps to protect

¹ See Stipulation, at Footnote 1.

the confidentiality of this information, such as marking these documents as “CONFIDENTIAL” and executing a confidentiality agreement with OCC.

II. Law and Argument

One of the exemptions under the Ohio Public Records Act (the “Act”) is information that “the release of which is prohibited by state or federal law.” R.C. 149.43(A)(1)(v). “Trade secret” information has commonly been viewed as fitting within this exemption. The Commission’s Rules allow for protective treatment of certain trade secrets filed at the Commission in order to prevent disclosure of such information. O.A.C. 4901-1-24(D) states in part:

“(D) 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. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.”

(emphasis added).

Under R.C. 1333.61(D), “Trade secret” means:

“information, 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.”

Expounding upon the definition of “trade secret,” the Supreme Court of Ohio has delineated factors to be considered when analyzing a trade secret claim:

(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 of others to acquire and duplicate information.

State ex. rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 3d 513, 687 N.E.2d 661 (1998).

The internal policies of the Companies constitute confidential information. These documents are “trade secrets” because the Companies do not publish these policies to the general public and use these policies for internal purposes only. This information details the inner workings of the Companies. These internal policies were disclosed strictly for purposes of this case, and were disclosed subject to a confidentiality agreement.² Other entities could duplicate or use these policies if they are disclosed to the public, which would be unfair to the Companies considering the resources and money the Companies devoted to developing these internal documents.

Further, Attachment B contains the gas procurement policies of the Companies. These documents explain the Companies’ internal processes for obtaining competitive natural gas prices. If this information is made public, this would put the Companies at a competitive disadvantage when purchasing gas supplies. Therefore, the Commission should issue an Order protecting the confidentiality of Attachments A- E.

III. Conclusion

For the foregoing reasons, the Companies request that the Commission approve this motion for protective order and file under seal Attachment A- E of the Stipulation This motion

² Although Staff has not executed a confidentiality agreement, Staff has a statutory obligation not to disclose confidential information obtained from public utilities during the course of an investigation. *See* R.C. 4901.16.

does not apply to Attachment F, the Code of Business Conduct, because this document is not confidential.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of foregoing was served this 30th day of October, 2015 by electronic mail upon the following:

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