

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

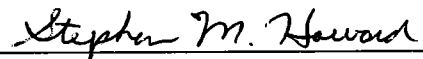
In the Matter of the Application of)	
Generation Pipeline LLC for Approval of a)	Case No. 17-524-GA-AEC
Natural Gas Transportation Service Agreement.)	

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code, Generation Pipeline LLC (“Generation Pipeline”) respectfully moves for a protective order to keep confidential and not part of the public record the price, volume and shrinkage factor information contained in the Natural Gas Transportation Service Agreement. The prices, volumes and shrinkage factors are considered confidential information by Generation Pipeline, and should be redacted and kept confidential. Further, Generation Pipeline believes that, for market development, public disclosure of individual shipper’s volumes and costs will have a deleterious effect on competition.

The Public Utilities Commission of Ohio (“Commission”) has granted protective treatment this type of information in past proceedings. *See, In the Matter of the Application of Generation Pipeline LLC for Approval of Two New Contracts and Amendments to Four Existing Contracts*, Case No. 08-1164-PL-AEC, Finding and Order at 2 (October 29, 2008). The reasons supporting this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, two (2) unredacted copies of the confidential portions of the Agreement are submitted under seal.

Respectfully submitted,



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

Generation Pipeline requests that the price, volume and shrinkage factor information contained in the Natural Gas Transportation Service Agreement for which it seeks approval be protected from public disclosure. Generation Pipeline submits that the price, volume and shrinkage factor information, if released to the public, would harm the parties with whom Generation Pipeline has a contract by providing competitors with proprietary information. Generation Pipeline believes that such information needs to be kept confidential both for its protection and to permit the Shipper to operate in the competitive market for natural gas transport. By revealing the contract volumes, prices and shrinkage factors in the Natural Gas Transportation Service Agreement, competitors could create effective predatory pricing schemes.

Rule 4901-1-24(D), Ohio Administrative Code, provides that the Commission or certain designated employees may issue an order to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the “public records” statute must also be read in pari materia with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982.) Likewise, the Commission has facilitated the protection of trade secrets in its rules. *See, e.g.*, Rule 4901-1-24(A)(7), O.A.C.

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“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.

Section 1333.61(D), Revised Code. This definition clearly reflects the state policy favoring the protection of trade secrets, such as the information which is the subject of this motion.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction; the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). 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, and now the new entrants who will be providing power through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in

numerous proceedings. 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).

In State ex rel. The Plain Dealer v. Ohio Dept. of Ins., (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

- (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.

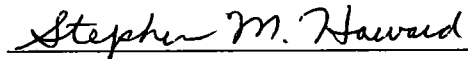
Id. at 524-525, quoting Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Applying these factors to the price, volume and shrinkage factor information contained in the Natural Gas Transportation Service Agreement Generation Pipeline seeks to keep confidential, it is clear that a protective order should be granted. The price, volume and shrinkage factor information is sensitive information and is generally not disclosed. Its disclosure could give competitors, either of the shipper or of Generation Pipeline, an advantage. On the other hand, public disclosure of this information is not likely to either assist the Commission in carrying out its duties under Section 4905.48, Ohio Revised Code, especially since the Commission will have the full text of the agreements to review.

WHEREFORE, for the above reasons, Generation Pipeline requests the Commission to grant its motion for a protective order and to maintain under seal the price, volume and shrinkage

factor information contained in the Natural Gas Transportation Service Agreement submitted in this proceeding.

Respectfully submitted,



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**LIST OF EXHIBITS
FOR WHICH PROTECTION IS SOUGHT**

EXHIBITS

Price, volume and shrinkage information contained in the Natural Gas Transportation Service Agreement attached to the Application.

REASONS FOR PROTECTION

This Agreement contains price, volume and shrinkage information. Disclosure would give an undue advantage to all parties to the contract and competitors, and would hinder competition.

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Case No(s). 17-0524-GA-AEC

Summary: Motion Motion for Protective Order electronically filed by Mr. Stephen M Howard on behalf of Generation Pipeline LLC