

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION
OF GENERATION PIPELINE LLC
FOR APPROVAL OF A NATURAL
GAS TRANSPORTATION SERVICE
AGREEMENT.**

CASE No. 17-524-GA-AEC

FINDING AND ORDER

Entered in the Journal on April 19, 2017

I. SUMMARY

{¶ 1} The Commission approves the application of Generation Pipeline LLC for a reasonable arrangement with Interstate Chemical Company for the transportation of natural gas.

II. DISCUSSION

{¶ 2} Generation Pipeline LLC (Generation Pipeline) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4905.31 authorizes the Commission to approve schedules or reasonable arrangements between a public utility and 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.

{¶ 4} On February 24, 2017, Generation Pipeline filed an application, pursuant to R.C. 4905.31, seeking approval of a reasonable arrangement under which Generation Pipeline would provide transportation of natural gas within the state of Ohio to Interstate Chemical Company (ICC).

{¶ 5} On March 24, 2017, Staff filed its review and recommendations in response to Generation Pipeline's application.

A. *Procedural Issue*

{¶ 6} On February 24, 2017, Generation Pipeline filed a motion for protective order, seeking to protect certain terms regarding pricing, shrinkage factor, and volume contained in Exhibit B to the natural gas transportation service agreement filed for the Commission's approval in this case. Specifically, Generation Pipeline asserts that these terms found in Exhibit B 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. 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 Generation 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,¹ the Commission finds that the pricing, shrinkage factor, and volume information contained in Exhibit B 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 Generation Pipeline's motion for protective order with respect to the confidential terms contained in Exhibit B to the natural gas transportation service agreement is reasonable and should be granted.

{¶ 11} 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 Generation Pipeline on February 24, 2017.

{¶ 12} 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 Generation 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 Commission may release this information without prior notice to Generation Pipeline.

B. *Consideration of the Application*

{¶ 13} As noted above, Generation Pipeline requests approval of a reasonable arrangement to provide transportation of natural gas within the state to ICC. In the application, Generation Pipeline explains that the natural gas transportation service agreement between ICC and Generation Pipeline provides for a Startup Phase to commence

¹ 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).

upon Generation Pipeline's completion of construction of new facilities at the Delivery Point in Lucas County and to continue for a period of 180 days. Generation Pipeline further explains that Year 1 of the agreement will commence immediately following the end of the Startup Phase but, in no event, will Year 1 commence later than January 1, 2018. Finally, Generation Pipeline notes that, after the first year, the agreement will continue on a month-to-month basis unless it is cancelled by either party upon 30 days' notice.

{¶ 14} In its review and recommendations, Staff notes that the transportation service agreement between Generation Pipeline and ICC provides for firm service, with demand and commodity rates, and a maximum daily quantity that can be adjusted up or down by 20 percent at the end of Year 1 and Year 7. Staff states that, following its review of Generation Pipeline's application, Staff finds that the application is reasonable and should be approved.

{¶ 15} Upon review of Generation Pipeline's 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 reasonable arrangement between Generation Pipeline and ICC should be approved pursuant to R.C. 4905.31.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That Generation Pipeline's application be approved. It is, further,

{¶ 18} ORDERED, That the motion for protective order filed by Generation Pipeline on February 24, 2017, be granted. It is, further,

{¶ 19} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by Generation Pipeline on February 24, 2017, for a period ending 24 months from the date of this Finding and Order. It is, further,

{¶ 20} 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,

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


THE PUBLIC UTILITIES COMMISSION OF OHIO



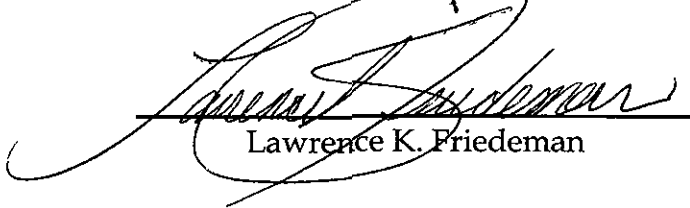
Asim Z. Haque, Chairman



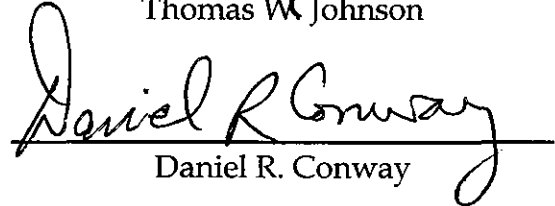
M. Beth Trombeld



Thomas W. Johnson



Lawrence K. Friedeman

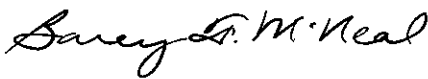


Daniel R. Conway

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Barcy F. McNeal
Secretary