

## **THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE  
APPLICATION OF BRAINARD GAS  
CORPORATION FOR APPROVAL OF A  
REASONABLE ARRANGEMENT FOR THE  
TRANSPORTATION OF NATURAL GAS.**

**CASE NO. 17-2486-GA-AEC**

### **FINDING AND ORDER**

Entered in the Journal on January 31, 2018

#### **I. SUMMARY**

{¶ 1} The Commission approves the application of Brainard Gas Corporation for a proposed addendum to its reasonable arrangement with Hans Rothenbuhler & Son, Inc.

#### **II. DISCUSSION**

{¶ 2} Brainard Gas Corporation (Brainard) 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 December 11, 2017, Brainard filed an application, pursuant to R.C. 4905.31, seeking approval of an addendum to its reasonable arrangement with Hans Rothenbuhler & Son, Inc. (Rothenbuhler).

{¶ 5} On January 8, 2018, Staff filed its review and recommendations in response to the application filed by Brainard.

**A. Procedural Issue**

{¶ 6} On December 12, 2017, Brainard filed a motion for protective order, seeking to protect certain price-related terms contained in the application filed for the Commission's approval in this case. Specifically, Brainard asserts that the price-related terms found in the application 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 Brainard'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,<sup>1</sup> the Commission finds that the price-related information contained in the application 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 Brainard's motion for protective order with respect to the confidential pricing terms contained in the application 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 Brainard on December 12, 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 Brainard 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 Brainard.

**B. *Consideration of the Application***

{¶ 13} As noted above, Brainard requests approval of an addendum to its reasonable arrangement for natural gas transportation service to Rothenbuhler's manufacturing facilities in Middlefield, Ohio. Brainard notes that the reasonable arrangement was

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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).

approved by the Commission in Case No. 14-948-GA-AEC. *In re Brainard Gas Corp.*, Case No. 14-948-GA-AEC, Finding and Order (Aug. 19, 2015). Brainard states that the proposed addendum would, among other things, extend the term and modify the rate set forth in the transportation service agreement. Brainard asserts that approval of the addendum will enable Brainard to continue providing Rothenbuhler with reliable natural gas transportation service at an acceptable cost and will not impair or reduce the quality of service to other customers.

{¶ 14} In its review and recommendations, Staff notes that the proposed addendum would extend the term of Brainard's transportation agreement with Rothenbuhler through October 31, 2018, and modify the transportation rate. Staff concludes that the application is reasonable and should be approved.

{¶ 15} Upon review of the application filed by Brainard, 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 addendum to the reasonable arrangement between Brainard and Rothenbuhler should be approved pursuant to R.C. 4905.31.

### III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the application filed by Brainard on December 11, 2017, be approved. It is, further,

{¶ 18} ORDERED, That the motion for protective order filed by Brainard on December 12, 2017, be granted. It is, further,

{¶ 19} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by Brainard on December 12, 2017, for a period ending 24 months from the date of this Finding and Order. It is, further,

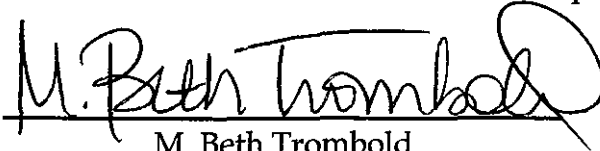
{¶ 20} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

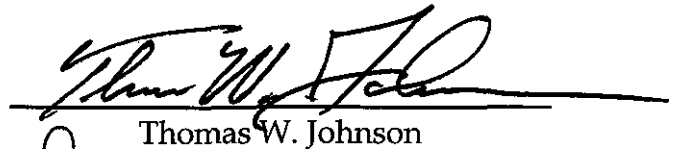
THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



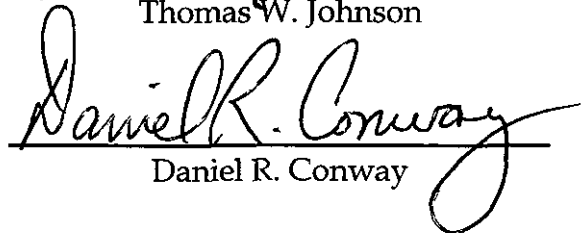
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

SJP/sc

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JAN 31 2018



Barcy F. McNeal  
Secretary