

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION OF
NORTH COAST GAS TRANSMISSION LLC
FOR APPROVAL OF A NATURAL GAS
TRANSPORTATION SERVICE AGREEMENT
AMENDMENT.**

CASE NO. 17-2431-PL-AEC

FINDING AND ORDER

Entered in the Journal on March 28, 2018

I. SUMMARY

{¶ 1} The Commission approves the application of North Coast Gas Transmission LLC for amendments to its reasonable arrangement for the transportation of natural gas to POET Biorefining-Marion, LLC.

II. DISCUSSION

{¶ 2} 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, 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 1, 2017, North Coast filed an application, pursuant to R.C. 4905.31, seeking approval of amendments to a reasonable arrangement under which North Coast provides natural gas transportation service within the state of Ohio to POET Biorefining-Marion, LLC (POET).

{¶ 5} On March 8, 2018, Staff filed its review and recommendation in response to the application filed by North Coast.

A. Procedural Issue

{¶ 6} On December 1, 2017, North Coast filed a motion for protective order, seeking to protect certain terms regarding the shrinkage factor, pricing, and volumes contained in Exhibit B to the reasonable arrangement. Specifically, North Coast asserts that the shrinkage factor, pricing, and volume information found in Exhibit B constitutes 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 North Coast'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 shrinkage factor, pricing, and volume information contained in Exhibit B to the reasonable arrangement 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 North Coast's motion for protective order with respect to the confidential terms contained in Exhibit B 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 North Coast on December 1, 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 North Coast 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 North Coast.

B. Consideration of the Application

{¶ 13} As noted above, North Coast requests approval of amendments to its reasonable arrangement for natural gas transportation service to POET. North Coast notes that the reasonable arrangement was initially approved by the Commission in Case No. 07-70-PL-AEC. *In re North Coast Gas Transmission LLC*, Case No. 07-70-PL-AEC, Entry (Feb. 28, 2007). In its application in the present case, North Coast states that it seeks to amend the arrangement in response to an expansion of POET's facilities expected to be completed by June 1, 2018.

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).

According to North Coast, the proposed amendments would address the primary receipt point, primary delivery point, shrinkage factor, maximum daily quantity, rates, character of service, term, reimbursement of construction costs, recovery of damages and stranded costs, and meter site easement. North Coast asserts that the amendments are in the public interest and will enable North Coast to provide transportation service to POET under reasonable rates and conditions.

{¶ 14} In its review and recommendation, Staff notes that the proposed amendments to the reasonable arrangement contemplate the expansion of POET's facilities and address other terms and conditions of the arrangement between North Coast and POET. Staff concludes that North Coast's application is reasonable and should be approved.

{¶ 15} Upon review of the application filed by North Coast, as well as Staff's review and recommendation, the Commission finds that the application does not appear to be unjust or unreasonable and should, therefore, be approved. Accordingly, we find that the amendments to the reasonable arrangement between North Coast and POET should be approved pursuant to R.C. 4905.31.

III. ORDER

{¶ 16} It is, therefore,

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

{¶ 18} ORDERED, That the motion for protective order filed by North Coast on December 1, 2017, be granted. It is, further,

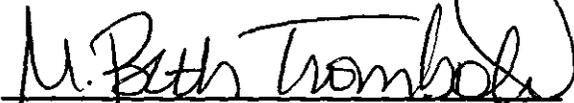
{¶ 19} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by North Coast on December 1, 2017, for a period ending 24 months from the date of this Finding and Order. It is, further,

{¶ 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,

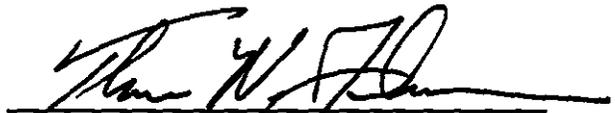
{¶ 21} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

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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MAR 28 2018



Barcy F. McNeal
Secretary