

BEFORE THE OHIO POWER SITING BOARD

**In the Matter of the Letter of Notification)
of Generation Pipeline LLC to Construct,)
Operate, and Maintain, the Ironville)
Lateral in Lucas County, Ohio)**

Case No. 18-1601-GA-BLN

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

Pursuant to Rule 4906-2-21 of the Ohio Administrative Code, Generation Pipeline LLC (“Generation” or “the Applicant”) respectfully moves for a protective order to keep the estimated capital costs of the Ironville Lateral (“Project”) identified on page 6 of the Letter of Notification in this case, confidential and not part of the public record. This information should be kept from public disclosure and treated as confidential and sensitive information. Public disclosure of the information would have an adverse effect given Generation’s current and ongoing negotiations with contractors and vendors involved with the project.

WHEREFORE, Generation respectfully moves for a protective order to keep the estimate costs found on page 6 of the Letter of Notification confidential and not part of the public record. Additional explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. Pursuant to Ohio Adm.Code 4906-2-21(D)(3), three unredacted copies of the confidential page 6 of the Letter of Notification are being submitted under seal.

Respectfully submitted,

/s/ Michael J. Settineri

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

Generation Pipeline LLC has submitted the estimated costs of the Project found at page 6 of the Letter of Notification under seal and requests that it be protected from public disclosure. Estimated capital costs of a project constitutes confidential and trade secret information. Revealing this sensitive and confidential information in a publicly filed document could lead to confusion in contractor and vendor negotiations, and have an adverse impact on the applicant's current negotiations with those contractors and vendors. To avoid revealing this confidential information, Generation asks that the Board grant this motion for protective order and prevent the public disclosure of the estimated capital costs for this project

Rule 4906-2-21(D) of the Ohio Administrative Code provides that:

“[u]pon motion of any party or person filing a document with the board’s docketing division relative to a case before the board, the board or the administrative law judge assigned to the case 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 it is determined that both of the following criteria are met: The information is deemed by the board or administrative law judge assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code.

The non-disclosure of the information will not impair the purposes of Title 49. The Board and its Staff have full access to the information in order to fulfill its statutory obligations.

Furthermore, no purpose of Title 49 would be served by the public disclosure of the information sought to be protected.

State law recognizes the need to protect certain types of information which are the subject of this motion. Sections 1331.61 to 1333.69, Revised Code. The need to protect the designated information from public disclosure in this case is clear, and there is compelling legal authority supporting the requested protective order. 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 Ohio 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, a 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 Board to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act. This Board or its Administration Law Judge has previously carried out its obligations in this regard in numerous proceedings, including the protection of estimated

capital costs. *See, e.g., North Coast Gas Transmission LLC*, Case No. 14-1754-GA-BLN (Entry Dec. 30, 2014).

In *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted the six factors test set forth in *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App. 3d 131, 134-135, 7 OBR 165, 169, 454 N.E. 2d. 588, 592. The factors to be considered in recognizing a trade secret are:

- (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.

Applying these factors to the information that Generation seeks to keep confidential, it is clear that the information has independent economic value, is the subject of reasonable efforts to maintain its secrecy, and meets the six factor test set forth above.

Such estimated capital cost information is generally not disclosed and constitutes a trade secret. Its disclosure could negatively impact negotiations with potential contractors and vendors of Generation and lead to an undue advantage during negotiations. On the other hand, public disclosure of this information is not likely to either assist the Board in carrying out its duties under rules, especially since the Board staff will have the full text or the agreement to look at, or serve any other public policy.

WHEREFORE, for the above reasons, Generation requests that the Administrative Law Judge grant its motion for a protective order to maintain the estimated capital cost information on page 6 of the Letter of Notification as confidential and not subject to public disclosure.

Respectfully submitted,

/s/ Michael J. Settineri

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Summary: Motion for Protective Order electronically filed by Mr. Michael J. Settineri on behalf of Generation Pipeline LLC