

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	:	
KNG Energy, Inc. for Approval of a	:	Case No. 17-1757-GA-AEC
Natural Gas Transportation Agreement	:	
with POET Biorefining - Leipsic, LLC.	:	

MOTION FOR EXTENSION OF PROTECTIVE ORDER
OF
KNG ENERGY, INC.

Pursuant to Ohio Adm.Code 4901-1-24(F), KNG Energy, Inc. hereby moves for an extension of the protective order issued by the Commission in its September 6, 2017 finding and order in this docket for those reasons set forth in the accompanying memorandum.

WHEREFORE, KNG Energy, Inc. respectfully requests that its motion be granted.

Respectfully submitted,

/s/ Barth E. Royer

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MEMORANDUM IN SUPPORT
OF
MOTION FOR EXTENSION OF PROTECTIVE ORDER
OF
KNG ENERGY, INC.

By its August 8, 2017 application in this case, KNG Energy, Inc. (“KNG”) sought Commission approval of a natural gas transportation service agreement (“Agreement”) between KNG and POET Biorefining – Leipsic, LLC pursuant to R.C. 4905.31. In conjunction with its application, KNG also filed a motion for a protective order with respect to certain competitively-sensitive, price-related information contained in the Agreement. In accordance with Ohio Adm.Code 4901-1-24, KNG filed a redacted version of the Agreement in the public docket as Attachment A to the application and filed the complete, unredacted version of the Agreement under seal.

The Commission granted KNG’s application and motion for a protective order by its finding and order of September 6, 2017. In accordance with Ohio Adm.Code 4901-1-24(F), the finding and order provided that the protective order prohibiting disclosure of the information filed under seal would automatically expire twenty-four months from the date of the order, and that any party wishing to extend this confidential treatment should file an appropriate motion at least forty-five days in advance of the expiration date setting forth the need for continued

protection from disclosure. Consistent with this directive, KNG now seeks an extension of the protective order, which would otherwise expire on September 6, 2019, so as to continue the prohibition against disclosure of certain price-related terms of the Agreement for an additional twenty-four months.

Ohio Adm.Code 4901-1-24(D) provides, in pertinent part, as follows:

(D) Upon motion of any party or person filing a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or the attorney examiner 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 the information is deemed by the commission, the legal director, or the attorney examiner 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. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.

In its initial motion for a protective order, KNG argued that, consistent with the criteria set forth in the above rule, state law prohibited the release of the terms redacted from the public version of the Agreement submitted as Attachment A to the application, that nondisclosure of said information was not inconsistent with the purposes of Title 49 of the Revised Code, and that, because the information for which protection was sought was limited to the price-related terms of the Agreement, the amount of information protected from public disclosure would be minimized.

The specific information for which continued protection is now being sought is limited to the same price-related terms of the Agreement that were granted protection against disclosure by the Commission in its September 6, 2017 finding and order. As noted in KNG's initial motion for a protective order, such terms are routinely accorded protected status by the Commission

based on a determination that competitively-sensitive information of this type constitutes a “trade secret, or other confidential research, development, (*or*) commercial information under Ohio law.”¹ Indeed, the statutory definition of a “trade secret” includes “business information” that “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

In granting KNG’s initial motion for a protective order, the Commission recognized that the price-related terms of a natural gas transportation agreement fall within the above statutory definition, stating that the information KNG sought to protect constituted trade secret information under R.C. 1333.61(D) and applicable judicial precedent, and that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code.³

The information for which continued protection is sought is no less competitively sensitive now than it was at the time the application was filed, and this price-related information will remain competitively sensitive as long as the Agreement remains in effect. Moreover, because the Commission and its staff have full access to the information for which continued protection is requested, the Commission’s ability to perform its statutory obligations will in no way be impaired by granting the requested extension. Thus, no legitimate public purpose would be served by disclosure of the designated information. Finally, KNG has reasonably limited the information for which continued protection is sought so as to minimize the information that will not be publicly disclosed.

¹ See Ohio Adm.Code 4901-1-24(A)(7).

² See R.C. 1333.61(D).

³ See Finding and Order dated September 6, 2019, at ¶10, citing *State ex rel the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513,524-525, 687 N.E.2d 661 (1997).

WHEREFORE, KNG respectfully requests that the Commission grant its motion to extend the protection of the information filed under seal in conjunction with its August 8, 2017 application in this docket for an additional twenty-four months and recognize KNG's right to again apply to extend this protection not less than forty-five days prior to the date the protection would otherwise expire.

Respectfully submitted,

/s/ Barth E. Royer

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