

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
NORTHEAST OHIO NATURAL GAS CORP.
FOR APPROVAL OF A NATURAL GAS
TRANSPORTATION SERVICE AGREEMENT.

CASE NO. 20-90-GA-AEC

FINDING AND ORDER

Entered in the Journal on April 8, 2020

I. SUMMARY

{¶ 1} The Commission approves the application of Northeast Ohio Natural Gas Corp., as amended, for a reasonable arrangement with Bloom Carroll Schools for the transportation of natural gas.

II. DISCUSSION

{¶ 2} Northeast Ohio Natural Gas Corp. (NEO) 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 January 15, 2020, NEO filed an application, pursuant to R.C. 4905.31, seeking approval of a reasonable arrangement under which NEO would provide transportation of natural gas within the state of Ohio to Bloom Carroll Schools (Bloom Carroll). NEO filed an amended exhibit to its application on February 14, 2020.

{¶ 5} On March 20, 2020, Staff filed its review and recommendations in response to NEO's application.

A. Procedural Issue

{¶ 6} On January 15, 2020, NEO filed a motion for protective order, seeking to protect the pricing terms in the natural gas transportation service agreement filed for the Commission's approval in this case. Specifically, NEO asserts that the pricing information found in the agreement 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 NEO'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 information contained in 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 NEO's motion for protective order with respect to the pricing information contained in 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 NEO on January 15, 2020, and February 14, 2020.

{¶ 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 NEO 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 NEO.

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).

B. Consideration of the Application

{¶ 13} As noted above, NEO requests approval of a reasonable arrangement to provide transportation of natural gas within the state to Bloom Carroll, which is a school system serving Carroll, Ohio. In the application, NEO notes that Bloom Carroll is building a new elementary school and seeks budget certainty for the facility through a fixed monthly distribution charge rather than the volumetric charge in NEO's tariff. NEO further notes that, in order to accommodate this request, NEO and Bloom Carroll have agreed to a reasonable arrangement that will enable NEO to provide reliable natural gas transportation service at an acceptable cost to Bloom Carroll's new school. NEO adds that its provision of natural gas transportation service to this facility will not impair or reduce the quality of transportation service to other customers. NEO submits that approval of its agreement with Bloom Carroll is in the public interest.

{¶ 14} In its review and recommendations, Staff states that the transportation service agreement between NEO and Bloom Carroll provides for general transportation service, with a fixed monthly charge that would commence with the October 2020 billing cycle. Staff also notes that the agreement would be for an initial term of ten years and continue thereafter on a month-to-month basis until it is canceled by either party with a 60-day notice. Following its review of NEO's application, as well as consideration of the Commission's Gas Transportation Program Guidelines issued in Case No. 93-1636-GA-UNC, et al., Staff concludes that the application is reasonable and should be approved.

{¶ 15} Upon review of NEO's application, as amended, and Staff's review and recommendations, the Commission finds that the amended application does not appear to be unjust or unreasonable and should, therefore, be approved. Accordingly, we find that the reasonable arrangement between NEO and Bloom Carroll should be approved pursuant to R.C. 4905.31.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That NEO's application, as amended, be approved. It is, further,

{¶ 18} ORDERED, That the motion for protective order filed by NEO on January 15, 2020, be granted. It is, further,

{¶ 19} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by NEO on January 15, 2020, and February 14, 2020, 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.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/mef

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Case No(s). 20-0090-GA-AEC

Summary: Finding & Order approving the application of Northeast Ohio Natural Gas Corp., as amended, for a reasonable arrangement with Bloom Carroll Schools for the transportation of natural gas. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio