

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
ASPIRE ENERGY EXPRESS, LLC FOR  
APPROVAL OF A NATURAL GAS  
TRANSPORTATION SERVICE  
AGREEMENT.

CASE NO. 20-1528-PL-AEC

## FINDING AND ORDER

Entered in the Journal on November 4, 2020

### I. SUMMARY

{¶ 1} The Commission approves the application of Aspire Energy Express, LLC for a reasonable arrangement with Guernsey Power Station LLC for the transportation of natural gas.

### II. DISCUSSION

{¶ 2} Aspire Energy Express, LLC (Aspire or the Company) 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 September 21, 2020, Aspire filed an application, pursuant to R.C. 4905.31, seeking approval of a reasonable arrangement with Guernsey Power Station LLC (Guernsey). Under the terms of a firm transportation service agreement (TSA) between the parties, Aspire intends to provide firm transportation service of natural gas to the Guernsey Power Station, which is an 1,875 megawatt combined cycle electric generation facility being developed by Guernsey.

{¶ 5} By Finding and Order issued on October 21, 2020, in Case Nos. 19-2021-PL-ACE and 19-2022-PL-ATA, the Commission granted Aspire authority to operate as an intrastate pipeline company in Ohio and approved the tariff proposed by the Company. As outlined more particularly therein, Aspire will construct and own the intrastate pipeline facilities that will interconnect with the Rockies Express Pipeline (REX Pipeline) and potentially other points of receipt, with its initial purpose being to provide natural gas transportation service to the Guernsey Power Station.

{¶ 6} In the application in the present case, Aspire states that construction of the Guernsey Power Station began last year and continues today. Transportation service under the TSA has thus not yet begun but Aspire submitted the application to ensure that any required reviews and approvals could be made without jeopardizing construction and start dates for the pipeline and associated facilities. Accordingly, Aspire requests expedited approval of its application in this case. Aspire also states that the TSA contains terms and conditions related to the construction of the transporter facilities, which have been redacted from both the public and confidential versions of the application, as the Company believes these terms and conditions are not subject to the Commission's approval.

{¶ 7} On October 14, 2020, Staff filed its review and recommendation.

#### *A. Procedural Issue*

{¶ 8} On September 21, 2020, Aspire also filed a motion for protective order, seeking to protect certain terms in the TSA regarding the shrinkage factor, pricing including credit support requirements, all references to volumes, and other financial terms related to default remedies. Aspire confidentially filed unredacted copies of the TSA on September 21, 2020. Specifically, Aspire asserts that these terms found in the TSA 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.

{¶ 9} 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).

{¶ 10} 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.”

{¶ 11} 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).

{¶ 12} The Commission has reviewed the information that is the subject of Aspire’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 subject information contained in the TSA 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

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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).

Revised Code. Therefore, the Commission finds that Aspire's motion for protective order with respect to the confidential terms contained in the TSA is reasonable and should be granted.

{¶ 13} 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 Aspire on September 21, 2020.

{¶ 14} 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 Aspire 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 Aspire.

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

{¶ 15} As noted above, Aspire seeks approval of the TSA between it and Guernsey, pursuant to which Aspire will provide transportation of natural gas to the Guernsey Power Station. Under the agreement, the primary receipt point will be the interconnection between the facilities of the REX Pipeline and the facilities of Aspire, which is known as the "Aspire/REX Guernsey Power Station" on the REX Pipeline. The primary delivery point will be the interconnection between the facilities of Aspire and Guernsey, also to be known as "Aspire/REX Guernsey Power Station" under the TSA. The primary term of the TSA commences on the earlier of the date natural gas is first delivered to the delivery point by Aspire or the transporter facilities start date (as those terms are defined in the TSA), and shall be in effect for ten years from that date.

{¶ 16} On October 14, 2020, Staff filed its review and recommendation in this case. Because Staff's recommendation was filed prior to the October 21, 2020 Finding and Order in Case Nos. 19-2021-PL-ACE and 19-2022-PL-ATA which granted Aspire authority to operate as an intrastate pipeline in Ohio and approved its tariff, Staff stated that its recommendation in this proceeding was contingent on Commission approval in those two cases. Staff states that it finds the TSA to be reasonable and, assuming approval of the application in Case Nos. 19-2021-PL-ACE and 19-2022-PL-ATA, recommends that the application in this proceeding be approved.

{¶ 17} Upon review of Aspire's application, 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 reasonable arrangement, as pertaining to the transportation of natural gas by Aspire to Guernsey, should be approved pursuant to R.C. 4905.31.

### III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That Aspire's application be approved. It is, further,

{¶ 20} ORDERED, That the motion for protective order filed by Aspire on September 21, 2020, be granted. It is, further,

{¶ 21} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by Aspire on September 21, 2020, for a period ending 24 months from the date of this Finding and Order. It is, further,

{¶ 22} 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,

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

COMMISSIONERS:

*Approving:*

M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

DMH/kck

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 20-1528-PL-AEC**

Summary: Finding & Order approving the application of Aspire Energy Express, LLC for a reasonable arrangement with Guernsey Power Station LLC for the transportation of natural gas. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio