

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF NORTHEAST OHIO
NATURAL GAS CORP., ULLICO
INFRASTRUCTURE MASTER FUND, L.P.,
ULLICO INFRASTRUCTURE
HEARTHSTONE HOLDCO, LLC FOR
APPROVAL OF THE SALE AND TRANSFER
OF GEP BISON HOLDINGS, INC. AND
REQUEST FOR EXPEDITED APPROVAL.

CASE NO. 21-93-GA-UNC

ENTRY

Entered in the Journal on July 29, 2021

{¶ 1} Northeast Ohio Natural Gas Corp. (NEO) is a public utility and natural gas company as defined in R.C. 4905.02 and 4905.03(E), respectively, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} Pursuant to R.C. 4905.04, 4905.05, and 4905.06, the Commission is vested with the power and jurisdiction to supervise and regulate public utilities.

{¶ 3} On January 27, 2021, NEO, along with its parent company Hearthstone Utilities, Inc. (HUI), Ullico Infrastructure Master Fund, L.P. (together with its general Partner UIF GP, LLC, collectively referred to herein as UIF), and Ullico Infrastructure Hearthstone Holdco, LLC (UIHH), filed a joint application with the Commission seeking expedited approval of a transaction in which UIHH, a wholly owned subsidiary of Ullico Infrastructure Master Fund, L.P. is acquiring HUI parent company GEP Bison Holdings, Inc., such that HUI and its subsidiaries will become wholly owned subsidiaries of UIHH. NEO, UIF, and UIHH are collectively referred to herein as the “Applicants.”

{¶ 4} Contemporaneous with the application, a motion for permission to appear pro hac vice and a certificate of pro hac vice registration was filed by Elizabeth M. Brama, attorney for Ullico Infrastructure Master Fund L.P. and UIHH, pursuant to which Ms. Brama requests permission to appear pro hac vice in this proceeding.

{¶ 5} Finally, on January 27, 2021, the Applicants also filed a motion for protective order and supporting memorandum, pursuant to which the Applicants seek to protect information that they deem highly proprietary and containing trade secrets which the Applicants believe should be shielded from public disclosure.

{¶ 6} On February 19, 2021, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene, pursuant to which OCC seeks to intervene in this proceeding on behalf of the 28,000 residential utility customers of NEO who may be affected by the merger.

{¶ 7} On July 13, 2021, Staff filed its review and recommendation of the application.

{¶ 8} Gov.Bar R. XII(2)(A) provides rules governing eligibility to practice pro hac vice in Ohio. Pursuant to Gov.Bar R. XII(2)(A)(7), motions for admission pro hac vice must be accompanied by a certificate of pro hac vice registration furnished by the Supreme Court Office of Attorney Services.

{¶ 9} Having reviewed the motion for permission to appear pro hac vice filed by Ms. Brama, as well as the affidavit and Supreme Court Office of Attorney Services certificate attached to the motion, the attorney examiner finds that the motion is reasonable and should be granted.

{¶ 10} In the motion for protective order filed on January 27, 2021, the Applicants seek confidential treatment of Exhibit B attached to the application. As described in the Applicants' supporting memorandum, Exhibit B contains the Stock Purchase and Sale Agreement (Agreement) between the parties, which discloses the negotiated and financial terms of the transaction for which the Applicants seek approval. The Applicants aver that the Commission has previously recognized that negotiated price and quantity terms can be sensitive information in a competitive environment. *In re North Coast Gas Transm., LLC*, Case No. 05-1214-PL-AEC, Entry (Nov. 9, 2005) at 2. The Applicants also highlight that the Commission has previously issued a protective order where the disclosure of certain confidential business information of a utility would jeopardize its business position in

negotiations with other parties. See *In re Vectren Retail LLC, d/b/a Vectren Source*, Case No. 02-1668-GA-CRS, Entry (June 8, 2005). Additionally, with respect to sales transactions, the Applicants point to past Commission rulings which state that a protective order can be necessary in such transactions in case a transfer is not approved, and future negotiations are needed. See *In re Northeast Ohio Natural Gas Corp.*, Case No. 03-1229-GA-UNC, Finding and Order (June 5, 2003); *In re The East Ohio Gas Co.*, Case No. 11-4324-GA-ATR, Entry (Sep. 14, 2011).

{¶ 11} The Applicants assert that the information contained in Exhibit B constitutes trade secrets that warrant similar protection afforded in the cited cases. The Applicants state that the information derives independent economic value from not being known to the public and that disclosure of the specific financial details of the transaction would place the Applicants at a disadvantage in any future negotiations that might be required. The Applicants believe that public disclosure of the information would not assist the Commission in carrying out its duties, as the Commission and Staff still have access to the confidentially filed documents. Finally, the Applicants confirm that the information that they seek to protect has been the subject of reasonable efforts to maintain its secrecy and that the information is only accessible by personnel that have a legitimate business need to possess it.

{¶ 12} 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).

{¶ 13} Similarly, Ohio Adm.Code 4901-1-24 allows the attorney examiner 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.”

{¶ 14} 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).

{¶ 15} The attorney examiner has reviewed the information that is the subject of the Applicants’ motion for protective order, as well as the assertions set forth in the supporting memorandum. The attorney examiner agrees with the Applicants that price and quantity terms in negotiated contracts constitute trade secrets which are entitled to protective treatment, particularly in a pending sales transaction such as this. The Applicants, however, seek protective treatment of the entire Agreement, which in base form is a common financial agreement. Not all the provisions in the Agreement constitute trade secret information. The attorney examiner, therefore, directs the Applicants to file on this docket a copy of the Agreement that contains redactions tailored to shield sensitive price and quantity terms, as well as confidential business information that could jeopardize negotiations, within seven business days from the date of this Entry. After reviewing the newly filed agreement, the attorney examiner will issue a ruling on the motion for protective order based upon this redacted version.

{¶ 16} As previously stated, the OCC filed on February 19, 2021, a motion to intervene in this proceeding. As explained in the supporting memorandum, OCC seeks to intervene to carry out its authorization under R.C. Chapter 4911 and to safeguard the interests of the 28,000 residential utility customers served by NEO. As an advocate for the residential customers, OCC states that it has a real and substantial interest in this case. Further, OCC declares that its intervention will not unduly prolong or delay the proceeding

and will contribute to an equitable resolution of the matter. In summary, OCC feels that it meets the criteria set forth in R.C. 4903.221, Ohio Adm.Code 4901-1-11, and Supreme Court precedent concerning intervention, and that its motion should be granted. No memoranda contra the motion to intervene were filed.

{¶ 17} Upon review, the attorney examiner finds that OCC's motion to intervene meets the requirements of Ohio Adm.Code 4901-1-11, is reasonable, and should be granted.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the January 27, 2021 motion for permission to appear pro hac vice filed by Elizabeth M. Brama be granted as stated in Paragraph 9. It is, further,

{¶ 20} ORDERED, That the Applicants file a copy of the Agreement that contains redactions tailored to shield sensitive price and proprietary information, as directed in Paragraph 15. It is, further,

{¶ 21} ORDERED, That OCC's motion to intervene be granted as stated in Paragraph 17. It is, further,

{¶ 22} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ David M. Hicks

By: David M. Hicks
Attorney Examiner

SJP/mef

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in

Case No(s). 21-0093-GA-UNC

Summary: Attorney Examiner Entry granting the motion to appear pro hac vice and the motion for intervention; and requiring applicant to file a redacted version of the agreement for which they are requesting confidential treatment. electronically filed by Ms. Mary E. Fischer on behalf of David M. Hicks, Attorney Examiner, Public Utilities Commission of Ohio