

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 August 9, 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} Also, on January 27, 2021, the Applicants filed a motion for protective order and supporting memorandum, pursuant to which the Applicants sought to protect information that they deem highly proprietary and containing trade secrets which the Applicants believe should be shielded from public disclosure. Specifically, the Applicants requested confidential treatment of the entirety of Exhibit B attached to the application. The

Applicants argued that this exhibit, which is the Stock Purchase and Sale Agreement (Agreement) between the parties, discloses the negotiated financial terms of the transaction and that public disclosure of this information could hamper the closing of the transaction and place the Applicants at a disadvantage if any future negotiations are required.

{¶ 5} No memoranda contra the motion for protective order were filed.

{¶ 6} As part of an Entry issued on July 29, 2021, the attorney examiner agreed with the Applicants that price and quantity terms in negotiated contracts constitute trade secrets which are entitled to protective treatment. The attorney examiner also determined, however, that not all provisions in the Agreement constitute trade secret information. The attorney examiner, therefore, directed 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.

{¶ 7} On August 3, 2021, the Applicants filed a redacted copy of the Agreement in compliance with the directive in the July 29, 2021 Entry.

{¶ 8} 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).

{¶ 9} 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.”

{¶ 10} 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).

{¶ 11} The attorney examiner has reviewed the redacted Agreement filed by the Applicants on August 3, 2021, as well as the assertions set forth in the Applicants’ motion for protective order and memorandum in support, and finds that the motion for protective order should be granted. Based upon the newly filed copy of the Agreement, the Applicants have more specifically tailored the protection of sensitive price information and negotiated terms, while making public those terms of the Agreement that do not contain trade secrets. The attorney examiner finds the information redacted in the August 3, 2021 filing constitutes trade secret information and its release, therefore, is prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code.

{¶ 12} 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 Entry. Until that date, the Commission’s docketing division should maintain, under seal, the information filed confidentially by the Applicants on January 27, 2021, and August 3, 2021.

{¶ 13} 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 the Applicants wish to extend this confidential treatment, they 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 the Applicants.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the motion for protective order filed by the Applicants on January 27, 2021, be granted in accordance with Paragraph 11. It is, further,

{¶ 16} ORDERED, That the Commission's docketing division maintain, under seal, the information filed confidentially by the Applicants on January 27, 2021, and August 3, 2021, for a period ending 24 months from the date of this Entry, in accordance with Paragraph 12. It is, further,

{¶ 17} 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

JRJ/kck

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in

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

Summary: Attorney Examiner Entry granting the motion for protective order filed by the Applicants on January 27, 2021, in accordance with Paragraph 11 and ordering that the Commission's docketing division maintain, under seal, the information filed confidentially by the Applicants on January 27, 2021, and August 3, 2021, for a period ending 24 months from the date of this Entry, in accordance with Paragraph 12.
electronically filed by Kelli C. King on behalf of David M. Hicks, Attorney Examiner, Public Utilities Commission of Ohio