

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)	
Utility Pipeline, Ltd., Cobra Pipeline)	
Company, Ltd., and Knox Energy)	Case No. 21-0803-GA-ATR
Cooperative Association to Substitute)	
Natural Gas Service and Transfer Assets)	
and Customers)	

MOTION FOR PROTECTIVE ORDER

Utility Pipeline, Ltd. (“UPL”) and Knox Energy Cooperative Association, Inc. (“Knox”) jointly move pursuant to Ohio Adm.Code 4901-1-24 for a protective order to maintain certain portions of the parties’ reply comments in this case under seal and not part of the public record. These parts of the reply comments contain highly confidential, proprietary information that is subject to Ohio law’s protections for trade secrets. *See* R.C. 1333.61(D); Ohio Adm.Code 4901-1-24(A)(7).

Specifically, UPL and Knox agree that (1) the assignment agreements between Knox and UPL, (2) the farm customer and grain dryer contracts with Knox, and (3) the transportation contract between Knox and Orwell-Trumbull Pipeline Co., LLC, are highly sensitive. Public disclosure of this information to NEO and/or Stand Energy, or to the public, would competitively harm some or all of the parties by revealing sensitive contractual terms, including pricing and other information that is integral to Knox and UPL’s business relationships and is not publicly available. These agreements are being submitted as Exhibits A through E to UPL and Knox’s reply comments, and it is requested that these exhibits remain under seal, including with respect to NEO and Stand Energy. The Commission and Staff will not be hindered in their evaluation of the Joint Application, because the protected information will be available on a confidential basis. For the reasons explained in the attached memorandum in support, the parties respectfully request that this motion be granted.

Dated: August 27, 2021

Respectfully submitted,

/s/ David F. Proaño

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MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

In support of their reply comments in favor of the Joint Application, UPL and Knox are submitting confidential and highly sensitive business information, which derives independent economic value and whose disclosure to entities other than Commission and Staff would result in competitive harm to UPL and Knox. Specifically, the reply comments incorporate proposed rates and the assignment agreements between UPL and Knox, which contain, *inter alia*:

- The volumetric adder rates charged to Knox members.
- The fixed per-meter rates charged to Knox members.
- The caps on the rates that can be charged pursuant to the agreements.

(See Reply Comments; Exs. A-C.) The comments also incorporate the contractual rates and terms of service of the farm and grain dryer customers, which are similarly sensitive. (See Ex. D.) Finally, UPL and Knox are submitting a transportation contract with Orwell-Trumbull Pipeline Co., LLC (“OTP”), which reveals the rates and terms of service of such contract. (See Ex. E.) For these reasons, as explained below and in the Affidavit of Andrew Duckworth (“Duckworth Aff.”), the Commission should grant the motion for protective order.

II. LEGAL STANDARD

Ohio Adm.Code 4901-1-24(A) provides, “Upon motion of any party or person from whom discovery is sought, the commission, the legal director, the deputy legal director, or an

attorney examiner may issue any order that is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Such a protective order may be issued so that “[c]ertain matters not be inquired into,” “[t]he scope of discovery be limited to certain matters,” or so that a “trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.” Ohio Adm.Code 4901-1-24(A)(4), (5), (7).

The definition of a “trade secret” is set forth in Ohio’s Uniform Trade Secrets Act, which states:

“Trade secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, 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).

The Ohio Supreme Court has held that the following factors are used to determine a trade secret claim:

1. The extent to which the information is known outside the business;
2. The extent to which it is known to those inside the business, *i.e.*, by the employees;
3. The precautions taken by the holder of the trade secret to guard the secrecy of the information;
4. The savings effected and the value to the holder in having the information as against competitors;

5. The amount of effort or money expended in obtaining and developing the information; and
6. The amount of time and expense it would take for others to acquire and duplicate the information.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-25 (1997).

III. ANALYSIS

The Commission's grant of a protective order in this instance will not impede Commission or Staff's ability to evaluate the Joint Application, because they will have access to the sealed exhibits. However, a protective order is necessary to protect competitively sensitive information contained in UPL and Knox's reply comments.¹ Applying the *Plain Dealer* factors to the agreements, the Commission should conclude that the standard for a protective order has been met.

First, the assignment agreements between UPL and Knox (Exhibits A-C), and the transportation agreements between Knox and other entities (Exhibits D and E), including the pricing information therein, are considered highly confidential and are not shared with outside individuals or entities. Moreover, because the rates charged by Knox to its members are not regulated by the Commission and are not the subject of a ratemaking case or other public proceeding, the kinds of information contained in the agreements are not publicly or widely known. (Duckworth Aff. ¶ 3.)

The second and third *Plain Dealer* factors also counsel in favor of a protective order. While Knox members participate in the governance of the cooperative association, and communicate directly with the Knox Board, to which UPL reports as an independent contractor,

¹ The exhibits constitute competitively sensitive information to which a competitor of UPL's affiliates, *i.e.*, NEO has no right of access. As a competitor of UPL's affiliates, NEO is a quintessential example of a person "who can obtain economic value from [the] disclosure or use" of UPL and/or Knox's confidential information. R.C. 1333.61(B).

most Knox members do not possess the agreements or their contents, though as part-owners of a cooperative association they may request them. Because the operations of Knox (and UPL, to the extent it is an agent of Knox) are generally beyond the jurisdiction of the Commission, Knox and UPL usually do not disclose the agreements in public Commission proceedings. In addition, UPL employees are expected to maintain confidentiality with respect to documents like the assignment and transportation agreements, and to engage in good cybersecurity practices to ensure the protection of all proprietary information and data. (Duckworth Aff. ¶ 4.)

The fourth, fifth, and sixth *Plain Dealer* factors further confirm that the agreements should be subject to a protective order. UPL and Knox have worked together for over two decades. UPL's business model, in which it assists cooperative associations like Knox to deliver affordable natural gas service in often-underserved areas of Ohio and other states, is somewhat unique. Because UPL fills a distinct niche in the market—building, maintaining, and operating natural gas systems in underserved areas—it has developed significant expertise in how to structure its operations and set rates and fees to cover its management costs and capital expenditures. UPL has expended decades of time and resources obtaining and developing this information, which is reflected, in part, in Exhibits A-E. As an independent contractor working under the Knox board of trustees, UPL faces potential competition from other companies that can provide the same services that UPL offers. And should the information in Exhibits A-E become public, those competitors would instantly gain a competitive edge without expending any effort or money in developing this information for themselves, to the detriment of UPL and Knox. For all of these reasons, the agreements in Exhibits A-E are valuable to UPL and Knox, and more importantly, reflects decades of effort and expense by UPL and Knox to build and maintain an effective working relationship. (Duckworth Aff. ¶ 5.)

IV. CONCLUSION

For the foregoing reasons, the motion for protective order should be granted. To the extent that Commission or Staff filings in this case refer to the content of the agreements, it is respectfully requested that those references remain under seal. Public versions of the reply comments with appropriate redactions will be filed by the parties on the docket. Placeholder sheets will be filed on the public docket in lieu of Exhibits A through E.

Dated: August 27, 2021

Respectfully submitted,

/s/ David F. Proaño

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*Counsel for Utility Pipeline, Ltd., and Knox Energy
Cooperative Association, Inc.*

AFFIDAVIT OF ANDREW DUCKWORTH

I, Andrew Duckworth, being first duly cautioned and sworn, swear as follows:

1. I am President of Utility Pipeline, Ltd (“UPL”). I joined UPL in 1999. I oversee all operational functions including, but not limited to, acquisitions, project development, finance, accounting, marketing, human resources, and information systems functions.

2. I have personal knowledge of the above proceedings and the matters hereinafter referred to. I make this affidavit in support of the parties’ Motion for Protective Order and believe the factual allegations contained in this affidavit and in the Motion for Protective Order to be true.


3. The agreements between UPL and Knox, and with other parties, are considered highly confidential by UPL and Knox. Although Knox members can see their rates on their bills, the agreements themselves, and the terms they reflect, are generally not disseminated beyond Knox’s membership. That is because the rates charged to Knox members and the other terms of the agreements are considered proprietary and capable of causing competitive harm to UPL and/or Knox.

4. While Knox members participate in the governance of the cooperative association, and communicate directly with the board of trustees, to which UPL reports as an independent contractor, most Knox members do not possess the agreements or its contents, though as part-owners of a cooperative association they may request it. As a condition of their continued employment, UPL employees are expected to maintain the confidentiality of documents like the agreements. They must also abide by all company policies and best practices with respect to cybersecurity and data of our customers, including Knox and its members.

5. UPL and Knox have worked together since 1998. UPL fills an important and necessary niche in the Ohio market—building, maintaining, and operating natural gas systems in

underserved areas including rural and lake communities. It has developed significant expertise in how to structure its operations and set prices to cover its management costs and capital expenditures. And as an independent contractor working under the Knox board of trustees, it faces potential competition from the other companies that can provide the services that UPL offers. For all of these reasons, the agreements are valuable to UPL and Knox, and more importantly, reflects decades of effort and expense by UPL and Knox to build and maintain an effective working relationship.

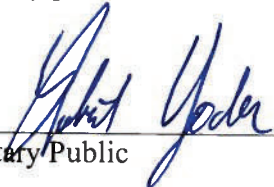
Further, affiant sayeth naught.


Andrew Duckworth

STATE OF OHIO

COUNTY OF STARK

Sworn to and subscribed before me, a notary public for the State of Ohio, on this 27th day of August, 2021.


Notary Public

My commission expires: 12-05-2023



ROBERT YODER
Notary Public, State of Ohio
My Commission Expires 12-05-2023

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Summary: Motion for Protective Order and Memorandum in Support electronically filed by Mr. David F. Proano on behalf of Utility Pipeline, Ltd. and Knox Energy Cooperative Association, Inc.