

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of North)
Coast Gas Transmission LLC for Approval) Case No. 21-1021-PL-AEC
of an Amendment to a Customer Agreement.)

MOTION FOR PROTECTIVE ORDER

Pursuant to Ohio Adm.Code 4901-1-24(D), North Coast Gas Transmission LLC (“North Coast”) respectfully moves for a protective order to keep confidential and not part of the public record certain terms regarding pricing and volumes as contained in the letter amendment attached as Attachment A to the application filed this same day in this case (collectively, the “Sensitive Information”). This Sensitive Information is considered confidential by North Coast, and should be redacted and kept confidential. Further, North Coast believes that, for market development, public disclosure of an individual shipper’s Sensitive Information will have a deleterious effect on competition.

The Public Utilities Commission of Ohio (“Commission”) has granted protective treatment of this type of information in past proceedings. *See In the Matter of the Application of North Coast Gas Transmission LLC for Approval of Natural Gas Transportation Service Agreement Amendments*, Case No. 20-1649-PL-AEC, Finding and Order at ¶ 11 (December 2, 2020); *In the Matter of the Application of North Coast Gas Transmission LLC for Approval of Contracts with The East Ohio Gas Company dba Dominion East Ohio, and Columbia Gas of Ohio, Inc. that will Allow the Operation of Lines in Connection with Each Other Pursuant to Section 4905.48(A), Revised Code*, Case No. 09-564-GA-ATR, Entry at 3 (September 9, 2009); and *In the Matter of the Application of North Coast Gas Transmission LLC for Approval of Two New Contracts and Amendments to Four Existing Contracts*, Case No. 08-1164-PL-AEC, Finding and Order at 2 (October 29, 2008).

Further, similar motions were granted in Case Nos. 04-1590-PL-AEC, 05-1214-PL-AEC, 06-883-PL-AEC, 06-1359-PL-AEC, 07-70-PL-AEC, 07-1067-PL-AEC, 07-1172-PL-AEC, 09-1016-PL-AEC, 10-2535-PL-AEC, 11-5533-PL-AEC, 17-1911-PL-AEC, 17-2431-PL-AEC, 18-0781-PL-AEC, 18-1658-PL-AEC, and 19-2004-PL-AEC. Additional reasons supporting this motion are set forth in the attached Memorandum in Support. Consistent with Ohio Adm.Code 4901-1-24(D), an unredacted copy of the letter agreement is being submitted under seal.

Respectfully submitted,

/s/ Michael J. Settineri

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**MEMORANDUM IN SUPPORT OF THE
MOTION FOR PROTECTIVE ORDER**

North Coast requests that the price terms and all references to volumes (i.e., Sensitive Information) contained in the amendment for which it seeks approval be protected from public disclosure. North Coast submits that the Sensitive Information, if released to the public, would harm the party with whom North Coast has a contract, by providing competitors with proprietary information. North Coast believes that such information needs to be kept confidential both for its protection and to permit North Coast to operate in the competitive market for natural gas transport. By revealing the Sensitive Information, competitors could create effective predatory pricing schemes.

Ohio Adm.Code 4901-1-24(D) provides that the Commission or certain designated employees may issue an order to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect certain types of information like that which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised

Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re General Telephone Co., Case No. 81-383-TP-AIR, Entry (February 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules. *See, e.g.*, Ohio Adm.Code 4901-1-24(A)(7).

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“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). This definition clearly reflects the state policy favoring the protection of trade secrets, such as the information that is the subject of this motion.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities who will be providing power through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. *See, e.g., Elyria Tel. Co.*, Case No. 89-965-TP-AEC, Finding and Order (September 21, 1989); *Ohio Bell Tel.*

Co., Case No. 89-718-TP-ATA, Finding and Order (May 31, 1989); and *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR, Entry (August 17, 1990).

In *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513 (1997), the Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

(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.

Id. at 524-525, quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Applying these factors to the pricing and volume terms contained in Attachment A to the application, it is clear that a protective order should be granted. The pricing and volume terms are sensitive information and are generally not disclosed. North Coast has taken precautions to guard its secrecy as evidenced by its prior requests for protective treatment. Disclosure could give competitors an advantage. On the other hand, public disclosure of this information is not likely to either assist the Commission in carrying out its duties under R.C. 4905.31, especially since the Commission will have the full text of the agreement to review.

Numerous similar motions were filed and granted in Case Nos. 04-1590-PL-AEC, 05-1214-PL-AEC, 06-883-PL-AEC, 06-1359-PL-AEC, 07-70-PL-AEC, 07-1067-PL-AEC, and 07-1172-PL-AEC, 08-1164-PL-AEC, 09-564-GA-ATR, 09-1016-PL-AEC, 10-2535-PL-AEC, 11-5533-PL-AEC, 17-1911-PL-AEC, 17-2431-PL-AEC, 18-0781-PL-AEC, 18-1658-PL-AEC, 19-2004-PL-AEC, and 20-1649-PL-AEC.

For the above reasons, North Coast requests that the Commission grant its motion for a protective order and maintain under seal the pricing and volume terms contained in the unredacted copy of Attachment A to the application submitted in this proceeding.

/s/ Michael J. Settineri

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Summary: Motion Motion for Protective Order electronically filed by Mr. Michael J. Settineri on behalf of North Coast Gas Transmission LLC