

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of North	)	
Coast Gas Transmission, LLC for Authority	)	
to Become a Natural Gas Company in Ohio,	)	
Replace its Existing P.U.CO. Tariff No. 2,	)	Case No. 21-1029-GA-ATA
and Move to the PUCO Rolls as a Regulated	)	
Natural Gas Company.	)	

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**MOTION FOR PROTECTIVE ORDER**

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Pursuant to Ohio Administrative Code Rule 4901-1-24(D), North Coast Gas Transmission, LLC moves for a protective order to keep confidential, and not part of the public record, the proprietary financial data contained in Exhibit C to its Application filed today. The reasons underlying this motion are detailed in the attached Memorandum in Support. This same day, North Coast Gas Transmission, LLC is submitting the confidential version of Exhibit C under seal in accordance with the directives of the Commission in *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings during the Declared State of Emergency and Related Matters*, Case Nos. 20-591-AU-UNC et al., Entry (April 8, 2020) and Entry (September 9, 2020).

Respectfully submitted,

/s/ Michael J. Settineri

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

North Coast Gas Transmission, LLC (“North Coast”) requests protection from public disclosure for the confidential and proprietary financial data contained in Exhibit C of its Application for Authority to Become a Natural Gas Company in Ohio, Replace its Existing P.U.CO. Tariff No. 2 and Move to the PUCO Rolls as a Regulated Natural Gas Company. Exhibit C contains sensitive financial information of North Coast and its parent. Release of this information to the public would harm both North Coast and its parent by providing competitors with proprietary and sensitive information regarding their financial wherewithal. This information is by statute worthy of confidential treatment.

Ohio Administrative Code (“O.A.C.”) 4901-1-24(D) provides that the Public Utilities Commission of Ohio (“Commission”) or certain designated employees may 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 (“R.C.”). State law recognizes the need to protect certain types of information, including that which is the subject of this motion. The non-disclosure of the information in Exhibit C attached to North Coast’s Application will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill their 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*, O.A.C. 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. Section 1333.61(D) (emphasis added). This definition clearly reflects the state policy favoring the protection of trade secrets such as the financial information that is the subject of this motion.

In *State ex rel The Plain Dealer the Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, the Supreme Court of Ohio 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)).

After applying these factors to the information sought to be protected, it is clear that a protective order should be granted. Exhibit C to North Coast's Application contains sensitive financial information that is generally not disclosed to the public and is limited to only certain personnel within the company and its parent. Its disclosure could give competitors an understanding of not only North Coast's financial condition but also its parent's financial condition, providing competitors with an advantage that would harm North Coast and its parent. In addition, public disclosure of this confidential information is not likely to assist the Commission in carrying out its duties. The Commission has recognized the sensitivity of financial statements and even adopted rules allowing protective treatment when submitted by certain entities. *See, e.g.,* Ohio Administrative Code 4901:1-27-08(A) and 4901:1-24-08(A).

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 and the suppliers 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).

WHEREFORE, for the above reasons, North Coast requests that the Commission grant its motion for a protective order and to maintain under seal Exhibit C to the Application for Authority to Become a Natural Gas Company in Ohio, Replace its Existing P.U.CO. Tariff No. 2, and Move to the PUCO Rolls as a Regulated Natural Gas Company.

Respectfully submitted,

/s/ Michael J. Settineri

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## **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 4th day of October 2021 upon all persons/entities listed below:

Counsel for Staff of the Public Utilities Commission of Ohio      [John.jones@ohioattorneygeneral.gov](mailto:John.jones@ohioattorneygeneral.gov)

/s/ Michael J. Settineri  
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