THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
WATERVILLE GAS COMPANY FOR
APPROVAL OF A NATURAL GAS
TRANSPORTATION AGREEMENT WITH
JOHNS MANVILLE INTERNATIONAL, INC.

CASE NO. 11-5437-GA-AEC

ENTRY

Entered in the Journal on April 28, 2022

{¶ 1}   By Finding and Order dated November 22, 2011, the Commission, inter alia, found that the price and volume information contained in Exhibit A of the application filed by Waterville Gas Company (Waterville) for approval of a contract with Johns Manville International, Inc. constituted trade secret information and that its release into the public record was prohibited under state law. The Commission, therefore, granted a protective order for Waterville's price and volume information for an 18-month period. By Entry dated March 28, 2013, the protective order then was extended for 18 months. Subsequently, by Entries dated January 14, 2015, January 19, 2017, and May 3, 2019, the protective order was extended to May 3, 2021.

{¶ 2}   On February 23, 2021, Waterville filed a motion, pursuant to Ohio Adm.Code 4901-1-24(F), to renew the protective order concerning the price and volume information contained in Exhibit A, which was filed under seal on October 13, 2011. Waterville seeks to continue the protective order issued on November 22, 2011, and extended on March 28, 2013, January 14, 2015, January 19, 2017, and May 3, 2019. Waterville asserts that the protective information continues to be competitively sensitive and proprietary business information.

{¶ 3}   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 R.C. Title 49. R.C. 149.43 specifies that the term "public records" excludes information which, 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).

{¶ 4}   Similarly, Ohio Adm.Code 4901-1-24 allows an 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 non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

{¶ 5}   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).

{¶ 6}   The attorney examiner has reviewed the information included in Waterville's motion for protective order, as well as the assertions set forth in the supportive memorandum.   Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,[1] the attorney examiner finds that the price and volume information contained in Exhibit A contains trade secret information. Its release is, therefore, 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. Therefore, the attorney examiner finds that Waterville's motion for protective order is reasonable with regard to the price and volume information in Exhibit A, and should be granted.

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[1]   *See State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 7} 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 docketing division should maintain, under seal, the price and volume information in Exhibit A, which was filed under seal on October 13, 2011.

{¶ 8} 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 Waterville wishes to extend this confidential treatment, it 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 Waterville.

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That the motion of Waterville for renewal of the protective order be granted. It is, further,

{¶ 11} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by Waterville on October 13, 2011, for a period ending 24 months from the date of this Entry. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/James M. Lynn

By: James M. Lynn
        Attorney Examiner

SJP/hac

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Case No(s). 11-5437-GA-AEC

Summary: Attorney Examiner Entry ordering that the motion of Waterville for renewal of the protective order be granted and that the Commission's docketing division maintain, under seal, the confidential information filed by Waterville on October 13, 2011, for a period ending 24 months from the date of this Entry electronically filed by Heather A. Chilcote on behalf of James M. Lynn, Attorney Examiner, Public Utilities Commission