

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
NORTH COAST GAS TRANSMISSION,
LLC FOR APPROVAL OF A NATURAL GAS
TRANSPORTATION SERVICE
AGREEMENT.

CASE NO. 22-1172-PL-AEC

FINDING AND ORDER

Entered in the Journal on March 8, 2023

I. SUMMARY

{¶ 1} The Commission approves the application of North Coast Gas Transmission LLC for approval of a natural gas transportation service agreement.

II. DISCUSSION

{¶ 2} North Coast Gas Transmission LLC (North Coast) is a pipeline company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02. As such, North Coast is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4905.31 authorizes the Commission to approve schedules or reasonable arrangements between a public utility and another public utility or one or more of its customers. The statute provides that every such schedule or reasonable arrangement shall be under the supervision and regulation of the Commission, and is subject to change, alteration, or modification by the Commission.

{¶ 4} On December 16, 2022, North Coast filed an application, pursuant to R.C. 4905.31, seeking approval of a reasonable arrangement with KNG Energy, Inc. (KNG Energy) in the form of a natural gas transportation service agreement (TSA).

{¶ 5} With its December 16, 2022 application, North Coast also filed a motion for protective order.

{¶ 6} On January 27, 2023, Staff filed its review and recommendations with respect to North Coast's application.

A. Procedural Issue

{¶ 7} On December 16, 2022, North Coast filed a motion for protective order, seeking to protect the shrinkage, quantity, and pricing terms contained in Exhibit A of the TSA and the delivery points contained in Exhibit B of the TSA, which is included as Attachment A to the application. North Coast asserts that the specified information constitutes confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61(D), and as recognized by Ohio Adm.Code 4901-1-24. No memoranda contra the motion for protective order were filed.

{¶ 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 Commission 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 Commission has reviewed the information that is the subject of North Coast’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 Commission finds that the shrinkage, quantity, and pricing information included in Attachment A, Exhibit A and the delivery points contained in Attachment A, Exhibit B to the application constitute trade secret information. Release of the information is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the Commission finds that North Coast's motion for protective order with respect to the confidential information contained in Attachment A is reasonable and should be granted.

{¶ 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 Finding and Order. Until that date, the Commission's docketing division should maintain, under seal, the information filed confidentially by North Coast on December 16, 2022.

{¶ 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 North Coast 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 North Coast.

B. Consideration of the Application

{¶ 14} North Coast requests approval of a TSA under which North Coast will provide KNG Energy firm transportation service for receipt points from the Buckeye 425

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).

Pipeline. The TSA will replace an existing agreement between the parties, which will terminate concurrently with the effective date of the new TSA. North Coast states that it is executing the new TSA in preparation for the abandonment of the Buckeye 425 Pipeline, which is the subject of an application pending in Case No. 22-474-GA-ABN.

{¶ 15} North Coast explains that the TSA has an effective term of February 1, 2023, through December 31, 2023, continuing thereafter on a monthly basis unless terminated by either party with 30 days' written notice. Additionally, the parties agree on a maximum daily quantity, monthly demand and commodity charges, and other terms regarding North Coast's provision of natural gas transportation services. North Coast submits that the TSA is a reasonable arrangement, is in the public interest, and should be approved pursuant to R.C. 4905.31.

{¶ 16} In its review and recommendations, Staff notes that it reviewed North Coast's application. Following its review, Staff concludes that the application is reasonable and should be approved.

{¶ 17} Upon review of the application filed by North Coast, as well as Staff's review and recommendation, the Commission finds that the application does not appear to be unjust or unreasonable and should, therefore, be approved. Accordingly, we find that the agreement, as agreed upon by North Coast and KNG Energy, should be approved pursuant to R.C. 4905.31.

III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That North Coast's application be approved. It is, further,

{¶ 20} ORDERED, That the motion for protective order filed by North Coast December 16, 2022, be granted. It is, further,

{¶ 21} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by North Coast on December 16, 2022, for a period ending 24 months from the date of this Finding and Order. It is, further,

{¶ 22} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 23} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

PAS/dr

**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 22-1172-PL-AEC

Summary: Finding & Order approving the application of North Coast Gas
Transmission LLC for approval of a natural gas transportation service agreement.
electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission
of Ohio