

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF NORTHEAST OHIO
NATURAL GAS CORP., ULLICO
INFRASTRUCTURE MASTER FUND, L.P.,
AND ULLICO INFRASTRUCTURE
HEARTHSTONE HOLDCO, LLC FOR
APPROVAL OF THE SALE AND TRANSFER
OF GEP BISON HOLDINGS, INC.

CASE NO. 21-93-GA-UNC

ENTRY

Entered in the Journal on July 31, 2023

{¶ 1} Northeast Ohio Natural Gas Corp. (NEO) is a public utility and natural gas company as defined in R.C. 4905.02 and 4905.03(E), respectively, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} Pursuant to R.C. 4905.04, 4905.05, and 4905.06, the Commission is vested with the power and jurisdiction to supervise and regulate public utilities.

{¶ 3} On January 27, 2021, NEO, along with its parent company Hearthstone Utilities, Inc. (HUI), Ullico Infrastructure Master Fund, L.P. (together with its general Partner UIF GP, LLC, collectively referred to herein as UIF), and Ullico Infrastructure Hearthstone Holdco, LLC (UIHH), filed a joint application with the Commission seeking expedited approval of a transaction in which UIHH, a wholly owned subsidiary of Ullico Infrastructure Master Fund, L.P., is acquiring HUI parent company GEP Bison Holdings, Inc., such that HUI and its subsidiaries will become wholly owned subsidiaries of UIHH. NEO, UIF, and UIHH are collectively referred to herein as the "Applicants."

{¶ 4} Also on January 27, 2021, the Applicants filed a motion for protective order and supporting memorandum, pursuant to which the Applicants sought to protect information that they deem highly proprietary and containing trade secrets which the Applicants believe should be shielded from public disclosure. The Applicants sought

confidential treatment of Exhibit B attached to the application. As described in the Applicants' supporting memorandum, Exhibit B contains the Stock Purchase and Sale Agreement (Agreement) between the parties, which discloses the negotiated and financial terms of the transaction for which the Applicants seek approval. The Applicants asserted that the information contained in Exhibit B constitutes trade secrets that warrant similar protection afforded in the cited cases. Further, the Applicants stated that the information derives independent economic value from not being known to the public and that disclosure of the specific financial details of the transaction would place the Applicants at a disadvantage in any future negotiations that might be required. Finally, the Applicants confirmed that the information that they seek to protect has been the subject of reasonable efforts to maintain its secrecy and that the information is only accessible by personnel that have a legitimate business need to possess it.

{¶ 5} As part of an Entry issued on July 29, 2021, the attorney examiner agreed with the Applicants that price and quantity terms in negotiated contracts constitute trade secrets which are entitled to protective treatment. The attorney examiner also determined, however, that not all provisions in the Agreement constitute trade secret information. The attorney examiner, therefore, directed the Applicants to file on this docket a copy of the Agreement that contains redactions tailored to shield sensitive price and quantity terms, as well as confidential business information that could jeopardize negotiations, within seven business days.

{¶ 6} On August 3, 2021, the Applicants filed a redacted copy of the Agreement in compliance with the directive in the July 29, 2021 Entry.

{¶ 7} By Entry issued August 9, 2021, the attorney examiner granted the motion for protective order with respect to the updated copy of the Agreement and directed the Commission's docketing division to maintain, under seal, the information confidentially filed by the Applicants on January 27, 2021, and August 3, 2021, for a period of 24 months from the date of the Entry.

{¶ 8} On May 25, 2023, the Applicants filed a motion to extend the confidential treatment of the redacted Agreement filed first on the docket on January 27, 2021, and subsequently on August 3, 2021, for an additional two years, thus extending its protection through August 9, 2025.

{¶ 9} No memoranda contra the motion to extend confidential treatment were filed.

{¶ 10} 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).

{¶ 11} Similarly, Ohio Adm.Code 4901-1-24 allows the 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

{¶ 12} 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).

{¶ 13} The attorney examiner has examined the information filed under seal, as well as the assertions set forth in the Applicants’ memorandum in support of its motion to extend confidential treatment. 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, the attorney examiner finds that the identified information continues to constitute trade secret information and the motion should be granted.

{¶ 14} Ohio Adm.Code 4901-1-24(F) specifies that, unless otherwise ordered, a protective order issued under Ohio Adm.Code 4901-1-24(D) expires 24 months after the date of its issuance. In its motion to extend confidential treatment, the Applicants request that confidential treatment of the Agreement be extended for two years from the current expiration date, thus extending confidential treatment to August 9, 2025. The attorney examiner finds this request reasonable and, therefore, the information protected by this Entry shall remain under seal until August 9, 2025. Until such time, the Docketing Division should continue to maintain under seal the information addressed in the motion.

{¶ 15} Although a party may, pursuant to Ohio Adm.Code 4901-1-24, seek an extension of a protective order, the requesting entity must demonstrate the need for the specific time frame requested. Following the end of applicable confidentiality period, the Applicants are directed to perform an evaluation in order to determine whether the protected information continues to require protective treatment. If no such motion is filed, the Docketing Division may release the information without prior notice to the Applicants.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the Applicants' motion to extend confidential treatment be granted and confidential treatment of the subject documents be extended to August 9, 2025, in accordance with Paragraph 14. It is, further,

{¶ 18} ORDERED, That the Applicants comply with the directives set forth in Paragraph 15. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/David M. Hicks

By: David M. Hicks
Attorney Examiner

MJA/dr

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 21-0093-GA-UNC

Summary: Attorney Examiner Entry ordering that the Applicants' motion to extend confidential treatment be granted and confidential treatment of the subject documents be extended to August 9, 2025 in accordance with Paragraph 14 and that the Applicants comply with the directives set forth in Paragraph 15 electronically filed by Debbie S. Ryan on behalf of David M. Hicks, Attorney Examiner, Public Utilities Commission.