

The Commission approved the amendment to IEPC's Certificate in Good Standing by order on December 17, 2014. The Commission stated that IEPC, in order to maintain the confidentiality of the previously-designated information from the September 11, 2014 hearing, "shall file a petition seeking such relief within 60 days after the entry of this Order." Order, Docket No. 07-0446, at 56 (Dec. 17, 2014). In response to that directive, IEPC submits the instant Petition requesting that the Commission protect from disclosure the confidential information from the September 11 hearing. In support of this Petition, IEPC respectfully states as follows:

1. The Public Utilities Act provides that the Commission must give adequate protection for confidential and proprietary information furnished, delivered, or filed by any person, corporation, or other entity. 220 ILCS 5/4-404. Consistent with that duty, the Illinois Administrative Code provides that "at any time during the pendency of a proceeding, the Commission or the Hearing Examiner may . . . enter an order to protect the confidential, proprietary, or trade secret nature of any data, information or studies." Here, such a protective order was entered on December 28, 2007 and reinstated in the reopened proceedings on September 4, 2014.

2. The information IEPC seeks to protect concerns the commitments to ship on the SAX pipeline made by Marathon and one other shipper, which is protected from disclosure to the public by federal law. Specifically, the Interstate Commerce Act, which governs the actions of IEPC, provides a general prohibition on disclosure of shipper information:

(a) General Prohibition.— A pipeline carrier providing transportation subject to this part, or an officer, agent, or employee of that carrier, or another person authorized to receive information from that carrier, that knowingly discloses to another person, except the shipper or consignee, or a person who solicits or knowingly receives information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under this part without the consent of

the shipper or consignee, if that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, is liable to the United States for a civil penalty of not more than \$1,000.

49 U.S.C.S. § 16103(a). Thus, absent the consent of the shippers, disclosure by IEPC of the details of their commitments is prohibited because the information “maybe used to the detriment of the shipper” or “may disclose improperly, to a competitor, the business transactions of the shipper.”

3. The Pliura Intervenors previously argued in Docket No. 07-0446 that “there is no factual basis to assert that the disclosure of committed volumes may in any conceivable way be used to the detriment of the shipper or consignee or in any way place the shipper or consignee at a competitive disadvantage.” Pliura Intervenors’ Motion Pursuant to Protective Order to Remove Designation of Confidentiality, Docket No. 07-0446, at 10 (Oct. 24, 2014). To the contrary, detailed information regarding shipping arrangements is exactly the kind of information that has been protected from disclosure pursuant to 49 U.S.C.S. § 16103(a) time and again. *See, e.g., In the Matter of the Application of N. Dakota Pipeline Co. LLC for A Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, 2014 WL 5794287, *2 (Minn. P.U.C.) (protecting trade secret information in a pipeline company’s Transportation Service Agreements with shippers “so as to avoid competitive injury to an entity that is a signatory to an Executed TSA, and prevent unauthorized disclosure of materials”); *In the Matter of the Application of Enbridge Energy Ltd. P’ship for A Certificate of Need for the Line 67 Station Upgrade Project*, 2014 WL 1400826, *4 (Minn. P.U.C.) (preventing disclosure of pro-rata reductions in oil consignments: “to the extent that news of apportioned shipments could prompt higher costs for refineries, lower levels of tax receipts and increased demand for crude oil from the Gulf Coast, a very wide-ranging set of impacts could follow from removing trade secret protection from these

forecasts.”). Thus, IEPC's shippers' commitment is the type of information that has been found, time and again, to require protection from disclosure under federal law.

4. Here, public dissemination of information concerning Marathon’s specific commitment would subject IEPC to liability under the Interstate Commerce Act and would also conflict with the well-established purpose of 49 U.S.C.S. § 16103(a). *See, e.g., Commonwealth v. White*, 179 S.W. 469, 470 (Ky. 1915) (“Under the operation of the original [Interstate Commerce Act of 1887], it was found that great abuses existed, and to prevent those abuses and to protect shippers from the injury resulting from the improper acts of the common carrier in disclosing information as to the transactions of shippers to their competitors, the amendment above referred to was enacted”); *In the Matter of Enbridge Energy Limited Partnership for a Certificate of Need for the Line 67 Station Upgrade Project*, 2014 WL 1400826, *4 (Minn. P.U.C.) (“Moreover, a key purpose of the Interstate Commerce Act is to prevent abuses from speculators and profiteers by shielding this kind of detail from public view”).

5. Notably, the Illinois Freedom of Information Act (the “FOIA”) affords similar protection to confidential and proprietary information like shipper commitments. Section 7(g) exempts the following from “inspection and copying”:

Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

Illinois courts have applied Section 7(g) broadly. *See Roulette v. Dep't of Cent. Mgmt. Servs.*, 141 Ill. App. 3d 394, 399-400 (1st Dist. 1986) (“The Illinois legislature intended that the term trade secret would be construed broadly. The Bill's authors included the trade secret exemption because they did not wish to discourage private parties from doing business with the State.”).

The term “trade secret” in the context of the FOIA includes information that “(1) would either inflict substantial competitive harm or (2) make it more difficult for the agency to induce people to submit similar information in the future.” *BlueStar Energy Servs., Inc. v. Illinois Commerce Comm'n*, 374 Ill. App. 3d 990, 995 (1st Dist. 2007). In *BlueStar Energy Services, Inc.*, the court protected a settlement agreement because Ameren willingly disclosed the agreement only after the ICC agreed to treat the disclosure as confidential. *Id.* at 995-96. The court held that the agreement was exempt from the FOIA because “[d]isclosure of the information after the ICC’s representation that the documents would not be disclosed would discourage Ameren and other similarly situated organizations from providing the ICC with similar information in the future.” *Id.* at 996. The Commission faces the identical scenario with regard to the confidential information in this case: the information was produced subject to a protective order and public disclosure of the information now would inflict competitive harm on the shippers and make it more difficult for the ICC to obtain similar information in the future. Thus, the information here clearly falls within the ambit of the Section 7(g) exemption.

6. The confidential treatment of commercially-sensitive information mandated by the Interstate Commerce Act and the Illinois Freedom of Information Act is consistent with the general willingness of courts and agencies to protect information that might cause competitive harm. *See Re Potomac Electric Power Co*, 86 P.U.R. 4th 75, 97 (D.C.P.S.C. 1987) (holding that information is protected from discovery when it is a trade secret or “disclosure might be harmful”); *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (DC Cir. 1974) (commercial or financial information is “confidential” if “disclosure of the information is likely . . . to cause substantial harm to the competitive position of the person from whom the information is obtained.”). The Commission’s Order in Docket No. 11-0427 is also instructive. There, a

provider of retail electric services petitioned for confidential treatment of certain information related to its business operations. The petitioner argued that “the electric service industry is high competitive” and disclosure of the confidential information could be used to “derive confidential trade information and market sensitive information regarding its provision of services to customers in Illinois.” *GSE Consulting L.P. Petition for Confidential Treatment.*, Docket No. 11-0427, 2011 WL 2450619 (Ill. C. C.). Competitors could, among other things, determine its “business structure via an understanding of its contractual relationships.” *Id.* The Commission found that disclosure of the information would cause the petitioner “competitive harm” and exempted the information from public disclosure. *Id.* Similarly, Marathon and the other committed shipper on the SAX pipeline are engaged in a competitive industry, and certain information about shipment contracts would give competitors unfair insight into their business strategies.

7. The exception in 49 U.S.C.S. § 16103(b) does not affect the confidential and proprietary status of the information at issue. The exception provides that a pipeline carrier may provide protected information “in response to a legal process issued under authority of a court of the United States or a State.” Here, the specific information at issue *was* provided to interested parties in response to such legal process – a ruling of the ALJ acting on behalf of the ICC, a state agency. However, that information was provided during discovery, which in and of itself facilitated the legal process of determining the merits of this docket. *See May Centers, Inc. v. S.G. Adams Printing & Stationery Co.*, 153 Ill. App. 3d 1018, 1022 (5th Dist. 1987) (holding that information should be kept confidential where it did not hinder “defendant’s ability to gather information in discovery,” and public disclosure would lead to a “possible erosion of plaintiff’s

bargaining position”; *id.* at 1023 (“Defendant's stated need to spread (as opposed to gather) the information freely . . . are speculation on this record.”).

8. The protection of the confidential information does not violate any right of access to information and Illinois courts generally allow such protection from public dissemination. *See Statland v. Freeman*, 112 Ill. 2d 494, 500 (1986); *May Centers, Inc.*, 153 Ill. App. 3d at 1021 (“There is ample precedent for the entry of a protective order preventing dissemination of sensitive discoverable materials to third parties or for purposes unrelated to the lawsuit.”). Here, the information pertaining to Marathon and the other committed shipper on the SAX pipeline has already been disclosed to the parties involved in Docket No. 07-0446 for purposes of the litigation. Moreover, public dissemination of shipper information would harm the committed shippers’ business interests and thereby constitute a violation of the Interstate Commerce Act.

9. Illinois Administrative Code Section 200.430 provides that the proposed expiration date for the proprietary status of the data, information, or studies sought to be protected can be “. . .no more than five years from the date of submission. Notwithstanding the preceding sentence, however, the proposed expiration date may exceed five years upon a showing of good cause.”

10. IEPC submits that a showing of “good cause” has been made to protect the confidential shipper information in a concurrent fashion and duration as the FERC, given the requirements of the Interstate Commerce Act and the legal precedent noted above. Moreover, disclosure of the information related to shipping commitments on the SAX pipeline would be harmful to the shippers’ competitive interests.

11. A shorter duration of protection would not be adequate because the Certificate in Good Standing and eminent domain authority for the SAX pipeline are currently on appeal in the

Fourth District Appellate Court and may delay the construction and use of the SAX pipeline. Thus, in the near term, the confidential information will still be indicative of the shippers' business strategies and highly relevant to competitors. *See Frontier North Inc.*, Docket No. 13-0213, 2013 WL 4508744, at *2 (Ill. C. C.) (protecting information for five years in response to Petitioner's argument that making the information available after only two years would "provide [competitors] with competitively sensitive marketing information."). The information related to shipping commitments should maintain its confidential and proprietary status.

12. To the extent the Commission finds that good cause has not yet been shown to grant an extended period of protection concurrent with the protection afforded at the FERC, IEPC respectfully requests that the Commission set an evidentiary hearing on the issue.

WHEREFORE, Illinois Extension Pipeline Company, L.L.C. respectfully requests that the Commission enter an Order protecting the confidential information identified in Attachment A or, in the alternative, initiate a proceeding whereby a factual determination of good cause can be shown.

Respectfully submitted,

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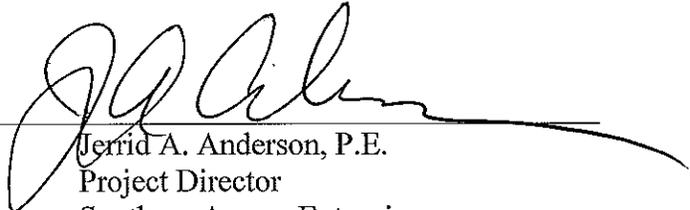
By: /s/ G. Darryl Reed
 One of Its Attorneys

Dated: February 13, 2015

VERIFICATION

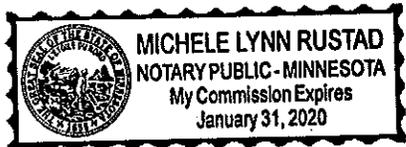
STATE OF MINNESOTA)
)
COUNTY OF SAINT LOUIS) SS

Jerrid A. Anderson, P.E., first being duly sworn upon oath, deposes and says that he is the Project Director, Southern Access Extension Project of Enbridge Inc., the ultimate parent of Illinois Extension Pipeline, L.L.C.; that he is authorized to make this verification on behalf of Petitioner; and that he has read the above and foregoing Petition, including the attachment appended thereto, and knows the contents thereof, and that said contents are true and correct to the best of his knowledge, information, and belief.


Jerrid A. Anderson, P.E.
Project Director
Southern Access Extension

SUBSCRIBED AND SWORN
To before me this 13th day of February, 2015


Notary Public



IEPC ATTACHMENT A

Petitioner IEPC identifies below the specific information IEPC claims is confidential, by quoting the line containing such information and redacting the confidential information from the quotation. The location of such redacted information is identified by asterisks. All page and line numbers pertain to the transcript of the September 11, 2014 *in camera* hearing in Docket No. 07-0446.

Page 1192, line 8 - A. I believe that's ***** barrels per day;

Page 1193, line 18 – *****-barrel per day Marathon shipping commitment;

Page 1193, line 20 - A. It's in the range of ***** to ***** years;

Page 1194, line 18 - A. That it's ***** barrels per day;

Page 1195, line 24 - commitment is ***** barrels per day;

Page 1196, lines 6 -7 - answer to the question of whether it is under the ***** or the *****- year commitment;

Page 1196, lines 23-24 - today on whether it is either the *****-year commitment or the *****-year commitment, because you simply don't;

Page 1197, line 8 - *****-year or a *****-year commitment;

Page 1202, line 4 - Shipping Agreement for either a ***** or *****-year term;

Page 1203, lines 3-4 - There is a ***** shipper, which apparently is ***** barrels per day, that has made a;

Page 1204, line 7 - shipper, which is ***** barrels per day, has any;

Page 1204, line 13 - shipper that made the commitment for ***** barrels a;

Page 1206, line 7 - Was the smaller shipper that at *****;

Page 1207, line 4 - *****-barrels per day shipment;

Page 1209, line 23 - believe the answer you gave was ***** to ***** years;

Page 1210, line 9 - it's ***** years;

Page 1210, line 12 - To the extent that the ****-year;

Page 1210, line 24 - returns to the office and confirm if it is not ****;

Page 1258, line 23 - So **** barrels from Marathon;

Page 1258, line 24 - And **** from the other;

Page 1259, line - . That **** barrels, yes;

Page 1259, line 7 - Is that **** barrels a day;

Page 1259, line 9 - And I am sorry. Was it **** years or ****, to;

Page 1259, line 11 - It was **** years;

Page 1259, line 12 - **** years, okay;

Page 1259, line 14 - ****-barrel a day commitment, who is that? Who is;

Page 1259, line 15 - the shipper that's committed the ****-barrels a;

Page 1261, line 7 - committed shipper is that has committed to ****;

Page 1264, line 7 - represent as **** barrels per day, the project;

Page 1264, line 9 - **** barrels a day;

Page 1264, line 14 - Without Marathon's ****, if you got one;

Page 1264, line 15 - shipper at 90 -- I am sorry, one shipper at ****;

Page 1265, line 22 - gotten Marathon to apparently commit to ****;

Page 1266, line 4 - up by Marathon's **** or **** plus the ****;

Page 1267, line 5-6 - Enbridge bound for the next **** years to allow Marathon to ship ****

barrels a day on that