

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Extension Pipeline :
Company, L.L.C. :
 : 15-0107
Petition for Relief to Protect :
Certain Confidential and :
Proprietary Information :

ORDER

By the Commission:

On February 13, 2015, Illinois Extension Pipeline Company, L.L.C. (“Petitioner” or “IEPC”) filed a verified petition with the Illinois Commerce Commission (“Commission”) pursuant to the Commission’s Final Order in Docket No. 07-0446 (On Reopening) seeking to protect from disclosure the highly confidential and proprietary information that was included in the transcript of an *in camera* hearing on September 11, 2014, in Docket No. 07-0446. Specifically, IEPC requests that the Commission treat the redacted information in Attachment A to the petition in this proceeding as confidential.

In Docket No. 07-0446, the Commission granted IEPC a Certificate in Good Standing on July 8, 2009, to construct an extension to the Southern Access pipeline. Subsequently, the Commission reopened Docket No. 07-0446 on June 26, 2014, to consider whether to approve an amendment to the Certificate permitting IEPC to build a pipeline of 24 inches in diameter rather than 36 inches in diameter. The Commission reinstated the protective order entered in the original proceedings. Pursuant to that protective order, IEPC designated certain information as confidential and proprietary relating to the commitments to ship on the Southern Access pipeline made by Marathon Petroleum Company L.P. and one other shipper. Certain intervenors in Docket No. 07-0446 objected to the confidential designation arguing 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.” Docket No. 07-0446, *Pliura Intervenors’ Motion Pursuant to Protective Order to Remove Designation of Confidentiality* at 10 (Oct. 24, 2014). The Commission’s Final Order on Reopening in Docket No. 07-0446 did not grant the intervenors’ motion challenging the designation of the information as confidential. The Commission designated the information as confidential “for now” and directed IEPC to file a petition seeking that such information maintain its confidential designation within 60 days after the entry of the Final Order in that proceeding. Accordingly, IEPC filed the instant petition requesting such relief.

In support of its position, Petitioner states that the Illinois Public Utilities Act (the “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. Petitioner further cites to the Illinois Administrative Code, which provides that the Commission may “. . . enter an order to protect the confidential, proprietary, or trade secret nature of any data, information or studies.” 83 Ill. Adm. Code 200.430. Petitioner notes that the Illinois Freedom of Information Act (“FOIA”) affords similar protection to confidential and proprietary information. 5 ILCS 140/1 *et seq.* Specifically, Section 7(1)(g) of the FOIA provides:

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.

According to Petitioner, 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 Services, Inc. vs. Illinois Commerce Comm’n*, 374 Ill. App. 3d 990, 995 (1st Dist. 2007). Petitioner argues that the redacted 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 Commission to obtain similar information in the future. Petitioner asserts that Marathon and the other committed shipper are engaged in a competitive industry, and certain information about shipment contracts would give competitors unfair insight into their business strategies. Thus, Petitioner states the information clearly falls within the ambit of the Section 7(1)(g) exemption.

Petitioner also states that the information IEPC seeks to protect is protected from disclosure to the public by federal law. Petitioner cites to the Interstate Commerce Act, which governs the actions of IEPC and provides a general prohibition on disclosure of shipper information. 49 U.S.C.S. § 16103(a). According to Petitioner, the Interstate Commerce Act provides that, absent the consent of shippers, disclosure by IEPC of the details of the shippers’ commitments is prohibited because the information “may be used to the detriment of the shipper” or “may disclose improperly, to a competitor, the business transactions of the shipper.” *Id.* Specifically, 49 U.S.C.S. § 16103(a) provides:

(a) General Prohibition. – A pipeline carrier providing transportation subject to this part, or an officer, agent, or employee of that carrier, or another persona 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.

Petitioner asserts that 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). 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.); *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.). Petitioner argues that disclosure of the 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).

Petitioner further notes that the exception in 49 U.S.C.S. § 16103(b) does not affect the confidential and proprietary status of the information at issue. This 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 State." 49 U.S.C.S. § 16103(b). Petitioner states that the specific information at issue here was provided to interested parties in response to such legal process.

Petitioner notes that Illinois Administrative Code Section 200.430 provides that the proposed expiration date for confidential status of protected information can be no more than five years from the date of submission. However Section 200.430 further provides, ". . . the proposed expiration date may exceed five years upon a showing of good cause." 83 Ill. Adm. Code 200.430. Petitioner argues that IEPC has made a showing of "good cause" to protect the confidential shipper information in a concurrent fashion and duration as the Federal Energy Regulatory Commission ("FERC"), given the requirements of the Interstate Commerce Act and legal precedent. Petitioner asserts that a shorter duration of protection would not be adequate because the Certificate of Good Standing and eminent domain authority for the Southern Access pipeline are currently on appeal in the Fourth District Appellate Court and may delay the construction and use of the pipeline. Petitioner states that the confidential information will still be indicative of the shippers' business strategies and highly relevant to competitors.

Since all the facts necessary for the Commission to grant the requested relief are contained in the petition, no hearing is necessary. Any responses to the verified petition were due by June 12, 2015. There were no intervenors in this proceeding, and no responses to the petition. The Commission finds that the redacted information is market sensitive, the disclosure of which may cause competitive harm to the shippers. The

Commission further finds that Petitioner has shown good cause to extend the period of protection concurrent with the protection afforded at the FERC.

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Petitioner is a Delaware Limited Liability Company authorized to conduct business in the State of Illinois;
- (2) the Commission has jurisdiction over Petitioner and the subject matter of the petition;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) the verified petition states that the redacted information in Attachment A to the petition is confidential, the disclosure of which may cause competitive harm, and should not be part of the public record;
- (5) the redacted information should be exempt from public disclosure under Section 7(1)(g) of the FOIA;
- (6) Petitioner has shown good cause to extend the confidential treatment of the redacted information as contemplated by 83 Ill. Adm. Code 200.430; and
- (7) the redacted information shall be afforded confidential and proprietary treatment in concurrence with the FERC.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the redacted information in Appendix A to IEPC's petition shall be afforded confidential treatment, is exempt from public disclosure, and will be accessible only by the Commission and the Commission Staff.

IT IS FURTHER ORDERED that the redacted information in Appendix A to the IEPC's petition shall be afforded an extended period of protection and retain its confidential designation in concurrence with the protection afforded at the FERC.

IT IS FURTHER ORDERED that the Commission retains jurisdiction over Petitioner and the subject matter hereof for the purpose of issuing such further order or orders as it may deem necessary.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 10th day of September, 2015.

(SIGNED) BRIEN SHEAHAN

Chairman