

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

2017 NOV -9 AM 8:36
CATHY L. BROWN, CLERK
KANAWHA COUNTY CIRCUIT COURT

CRESTWOOD APPALACHIA
PIPELINE, LLC,

Plaintiff,

v.

MOUNTAINEER KEYSTONE, LLC,

Defendant.

and

MOUNTAINEER KEYSTONE, LLC,

Counterclaim Plaintiff,

v.

CRESTWOOD APPALACHIA
PIPELINE, LLC,

Counterclaim Defendant.

Case No: 17-C-383

Judge Paul T. Farrell

AGREED PROTECTIVE ORDER

AND NOW, it is hereby STIPULATED and AGREED by Crestwood Appalachia Pipeline, LLC ("Crestwood") and Arsenal Resources LLC ("Arsenal"), formerly called Mountaineer Keystone LLC (collectively, the "Parties"), through their undersigned counsel, that because the discovery and trial of the above-captioned action will involve the production of documents, information, and materials that the parties may regard as confidential, proprietary, or secret in nature, the following provisions shall govern confidentiality in this proceeding.

1. This Protective Order shall apply to all documents and other information produced or exchanged in the above-captioned action ("Confidential Information") by the Parties or any third party or their present or former agents, employees, or representatives (collectively the

"Producing Party"). It applies to those materials designated "Confidential," as well as those materials that do not have any designation.

2. The provisions of this Protective Order extend to deposition exhibits or transcripts, hearing or trial exhibits, and any discovery materials produced by a party in response to or in connection with any discovery conducted in this action, and any copies, notes, abstracts or summaries of the foregoing materials. All of the aforementioned materials are deemed Confidential Information, even if they are not designated "Confidential."

3. If a third party supplies any documents, information, or materials for production in this litigation, the Receiving Party shall notify the other party and make any such documents, information, or materials available as soon as practicable. To the extent that a third party produces or supplies information, documents, or other materials, those materials shall be treated consistent with this Protective Order.

4. Except as stated in this paragraph, all materials produced in this action shall only be used for the purposes of this action. The parties and their affiliates also agree, however, that all materials produced in this action and all deposition transcripts or exhibits, hearing or trial transcripts, hearing or trial exhibits, and any other discovery materials produced by a party in response to or in connection with any discovery conducted in this action may be used in the pending litigation involving the Ohio Soinski project.

5. If information subject to a claim of attorney-client privilege, work product immunity, or information that is otherwise exempt from discovery is inadvertently or mistakenly produced, such production will in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work-product immunity for such information. If such information is inadvertently or mistakenly produced, upon written request made by the Producing Party within

twenty-one (21) calendar days of discovery of such inadvertent mistake or production, the information for which a claim of inadvertent production is made, including all copies, will be returned within seven (7) business days of such request regardless of whether the Receiving Party intends to challenge the Producing Party's assertion. Any Receiving Party who has reasonable cause to believe that it has received information subject to a claim of immunity or privilege, or is otherwise exempt from discovery, shall notify the Producing Party in writing within five (5) business days of receipt of the inadvertent production. All copies of inadvertently or mistakenly produced documents will be destroyed, and any document, material, or information reflecting the contents of the inadvertently produced information will be expunged. If the parties cannot agree that the document or information is privileged, immune, or otherwise not discoverable, the Producing Party or the Receiving Party shall move the court for a resolution within seven (7) business days of the notice of the inadvertent production. The Receiving Party must conditionally return the material as described herein pending a resolution of the challenge.

6. Subject to the requirements set forth below, Confidential Information, including any copies, notes, abstracts or summaries thereof, may be disclosed to and viewed by only (except Confidential Information designated "Attorneys' Eyes Only," which is addressed below): (a) the Receiving Party; (b) the Producing Party; (c) counsel of record, including their legal assistants, secretaries and other staff, as well as outside photocopying or graphic production vendors; (d) expert witnesses or other outside consultants, and the employees or agents assisting them, provided such experts or consultants sign a certification that they will not disclose or use the information except in accordance with this Protective Order; (e) witnesses in the course of preparation for or in the course of a deposition, hearing, or trial, in the good faith belief of counsel that such disclosure of Confidential Information is necessary for legitimate purposes of preparation of such

testimony; (f) court, court staff, court reporters, and notarizing officers; and (g) any other persons to whom the parties agree in writing, including but not limited to, any trier of fact in relation to the Ohio Soinski project.

7. Confidential Information that is proprietary, a trade secret or otherwise commercially sensitive; financial information; or information subject to a confidentiality agreement with a third party may be designated "Attorneys' Eyes Only." Confidential Information so designated may be disclosed to persons listed in paragraph 6(c-g) and outside counsel for the Receiving Party, but shall not be disclosed, provided, or otherwise made known to the Receiving Party or any affiliated entity, or to any employee, officer, director, or other agent thereof.

8. Either party may object in writing to the designation of materials by its adversary as "Confidential" or "Attorneys' Eyes Only." Following such objection, the burden is on the designating party to justify the label in writing within five (5) business days of receipt of the objection. If the designating party withdraws its claim, then it shall reproduce the materials at issue without the designation. If the parties cannot resolve the dispute, either party may petition the court to resolve the matter within fifteen (15) business days of receipt of written justification for the label.

9. Within sixty (60) days following a final disposition or resolution of the above-captioned action, counsel for the Receiving Party shall, at option of the Producing Party, surrender to counsel for the Producing Party or destroy all Confidential Information previously furnished by the Producing Party. Counsel for the Receiving Party shall confirm in writing their compliance with any such request of counsel for the Producing Party, including copies, extracts, notes and summaries made or containing information therefrom or certify that such materials have been destroyed and not retained in any form, fashion, or medium. Nothing herein shall be construed to

require the Receiving Party to destroy any attorney work product or any material provided to the court at trial, including exhibits.

10. The provisions of this Protective Order shall not terminate upon the conclusion and dismissal of this action.

11. Neither the termination of this action nor the termination of employment of any person who has access to any Confidential Information shall relieve such person from the obligation of maintaining the confidentiality of such information.

12. Nothing contained in this Protective Order shall affect the right, if any, of any party or witness to make any other type of objection, claim, or other response to discovery requests, including, without limitation, interrogatories, requests for admissions, and requests for production of documents or questions at a deposition. If during the course of discovery any party shall find a document in its possession that requires confidentiality protections in addition to those set forth in this Protective Order, such party may object to production of the document, and should attempt to negotiate in good faith the appropriate level of protection with the other parties.

13. The parties will abide by this Protective Order upon execution, including until such time as it is entered by the Court.

ENTERED this 1st day of November 2017.



Paul T. Farrell
Presiding Judge

STATE OF West Virginia
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 9th
DAY OF Nov 2017
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Dated: October 31, 2017

HENDRICKSON & LONG PLLC

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S.R.

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11/9/17

Date: *11/9/17*
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RP
Deputy Circuit Clerk *Bns Ct*