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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

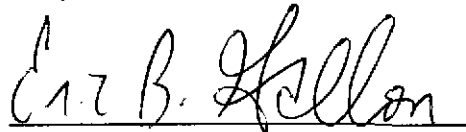
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In the Matter of the Complaint of)
The Manchester Group, LLC,)
)
Complainant,)
) Case No. 08-360-GA-CSS
v.)
)
Columbia Gas of Ohio, Inc.)
)
Respondent.)

MOTION FOR EXTENSION OF
THE COMMISSION'S PROTECTIVE ORDER
BY COLUMBIA GAS OF OHIO, INC.

Pursuant to Rule 4901-1-24(D) and (F) and Rule 4901-1-38(B), Ohio Administrative Code, Columbia Gas of Ohio, Inc. ("Columbia") respectfully requests that the Commission extend the protective order entered in this proceeding on October 14, 2009, by an additional eighteen months. A memorandum in support of this motion is attached hereto.

Respectfully submitted,



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COLUMBIA GAS OF OHIO, INC.

**MEMORANDUM IN SUPPORT OF MOTION FOR EXTENSION OF
THE COMMISSION'S PROTECTIVE ORDER BY COLUMBIA GAS OF OHIO, INC.**

On September 11, 2009, Complainant The Manchester Group, LLC ("Manchester") filed an expanded and redacted First Amended Complaint in this proceeding. The redacted paragraphs described an agreement ("the Agreement") between Columbia and certain of Columbia's affiliates on the one hand, and a third party on the other hand, to provide particular unregulated services to that third party. Paragraphs 17 and 18 of the First Amended Complaint described particular obligations of Columbia and its affiliates under the Agreement. Paragraph 19 of the First Amended Complaint stated the fees that the third party agreed to pay for specific services under the Agreement. The paragraphs redacted from Manchester's First, Second, Third, and Fourth Claims assert that the specified terms and conditions of the Agreement violated certain sections of the Ohio Revised Code. Additionally, the redacted provision in Manchester's prayer for relief asked for a finding that one of Columbia's obligations under the Agreement was "unlawful and unreasonable, and . . . void as applied to Columbia." Manchester filed a motion to protect these redacted provisions of the First Amended Complaint, along with several other redacted paragraphs, as confidential, trade secret information. (See Motion for Protective Treatment (Sept. 15, 2009).) Columbia filed a memorandum in support of that motion on October 2, 2009.

On October 14, 2009, the Public Utilities Commission of Ohio (the "Commission") issued an Entry granting in part and denying in part Manchester's motion to protect these redacted provisions as confidential, trade secret information. The Commission approved the redaction of paragraphs 17, 18, 19, 33, 40, 41, 46, 47, and paragraph 4 on page 9 of the First Amended Complaint. (Entry at p. 3 (Oct. 14, 2009).) The Commission rejected Manchester's motion with regard to paragraphs 15, 16, 20, 39, and 45 of the First Amended Complaint. Manchester filed a revised First Amended Complaint on October 20, 2009. The Commission ordered that the unredacted First Amended Complaint be maintained under seal for 18 months, or until April 14, 2011. (*Id.* at p. 4.)

On October 29, 2009, Manchester filed a motion to compel certain other agreements between Columbia and certain of Columbia's affiliates on the one hand, and a third party on the other hand. That motion was redacted to remove descriptions of the Agreement referenced above.

On July 29, 2010, Manchester filed a notice that it was voluntarily dismissing its First Amended Complaint without prejudice. The Commission treated the notice as a motion to dismiss and granted the request to dismiss on August 25, 2010.

Rule 4901-1-24(D) of the Ohio Administrative Code (O.A.C.) provides that the Commission may issue any order necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division "to the extent that state or federal law prohibits the release of the information" (including where the information constitutes a trade secret under Ohio law) and where non-disclosure of the information is consistent with the purposes of Title 49 of the Revised Code. By default, such orders expire 18 months after the date of issuance. Rule 4901-1-24(F). A party may extend a protective order by filing "an appropriate motion at least forty-five days in advance of the expiration date of the existing order." *Id.* Columbia did not file such a motion before the expiration date of the Commission's Entry granting Manchester's motion for protective treatment. However, Rule 4901-1-38(B) states that the Commission "may, . . . for good cause shown, waive any requirement, standard, or rule set forth in this chapter or prescribe different practices or procedures to be followed in a case." Consequently, Columbia respectfully requests that the Commission waive the extension deadline in Rule 4901-1-24(F) and extend its prior Entry granting protective treatment to the redacted portions of Manchester's First Amended Complaint for another 18 months.

The criteria for what should be kept confidential by the Commission is well-established. "Trade secret" is defined by state law to mean "information, including . . . any business information or plans [or] financial 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). The Ohio Supreme Court has delineated additional factors to be considered in recognizing a trade secret:

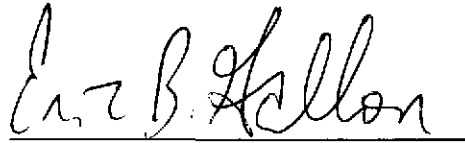
- (1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

State ex rel. Perrea v. Cincinnati Pub. Schools, Slip Opinion No. 2009-Ohio-4762, at ¶24 (quoting *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-25). However, information need not be a “trade secret” in order to receive protection from public divulgence. The Commission’s rules indicate that the attorney-examiner may grant protective treatment to other “confidential . . . commercial . . . information” as well. Rule 4901-1-24(A)(7), O.A.C.; cf. Rule 4901-1-27(B)(7)(e), O.A.C. (authorizing the presiding officer of a Commission hearing to “[t]ake such actions as are necessary to . . . [p]revent public disclosure of . . . confidential . . . commercial materials and information.”).

Applying this law to the information that Manchester redacted from its Complaint and that the Commission previously found to constitute confidential business information, it is clear that the protective order should be extended. The redacted information describes the terms and conditions under which Columbia agreed to provide particular unregulated services to a particular third party. More specifically, it describes the obligations that Columbia agreed to undertake when providing those services and the cost at which it agreed to provide some of those services. The Agreement itself has not been made public. Columbia has treated the agreement as confidential. To Columbia’s knowledge, the Agreement has not been made public or otherwise shared by the third party. The Agreement was provided to Manchester only under the terms of a protective agreement that limited Manchester’s ability to share or publicize the information. The Agreement has been distributed within Columbia only to those individuals working to provide the unregulated services that are the subject of the Agreement and to internal and external counsel. And, importantly, putting this information into the public domain would put Columbia at a disadvantage in future contract negotiations. As Columbia expressed previously, if third parties know in advance the obligations and prices that Columbia has been willing to accept to provide such services, that knowledge will give them leverage to insist on more advantageous terms and conditions in their own contracts. Publicizing the redacted information could effectively tie Columbia’s hands. And, the potential for harm is no less present today than it was in October 2009.

For these reasons, Columbia respectfully requests that the information that Manchester redacted from its First Amended Complaint be kept under seal and redacted for another 18 months.

Respectfully submitted,

A handwritten signature in black ink, reading "Eric B. Gallon". The signature is fluid and cursive, with the first name "Eric" and last name "Gallon" clearly legible. The signature is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2011, a true and accurate copy of the foregoing Motion for Extension of the Commission's Protective Order by Columbia Gas of Ohio, Inc. was served by electronic mail and by First-Class United States Mail, postage prepaid, upon the following:

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