

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application to Modify,)
in Accordance with Section 4929.08,)
Revised Code, the Exemption Granted to)
The East Ohio Gas Company d/b/a)
Dominion East Ohio in Case No. 07-1224-)
GA-EXM. Case No. 12-1842-GA-EXM

**MOTION FOR LIMITED INTERVENTION
MOTION FOR PROTECTIVE ORDER
AND MOTION FOR FIVE-DAY EXTENSION TO FILE
REDACTED REPORTS ON BEHALF OF
CONSTELLATION ENERGY GAS CHOICE, INC.
INTEGRYS ENERGY SERVICES – NATURAL GAS, LLC**

INTRODUCTION

Now come Constellation Energy Gas Choice, Inc. and IntegrYS Energy Services – Natural Gas, LLC, subsidiaries of Exelon Corporation and, pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code and the Attorney Examiner’s Entry of April 1, 2015, respectfully move the Public Utilities Commission of Ohio (“Commission”) for a limited intervention in the matter at bar for the purpose of requesting (a) a protective order as to confidential information previously submitted to the Commission Staff (“Staff”) and (b) five additional business days to provide redacted copies of confidential reports to the Commission which can be made public.

MOTION FOR LIMITED INTERVENTION

Constellation Energy Gas Choice, Inc. and IntegrYS Energy Services – Natural Gas, LLC (hereinafter together “Constellation”) are certificated competitive retail natural gas service (“CRNGS”) providers who, during the period 2013 to the present, have provided

CRNGS in The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”) service area. Constellation voluntarily provided reports to the Staff of the Commission upon request and those reports concerned the CRNGS that it provided in DEO’s service territory and other Staff-requested information. In addition, DEO submitted spreadsheets which show Constellation’s sales volume and pricing information. In its January 2013 Opinion and Order, the Commission indicated that the Staff would protect the confidential information which the suppliers were voluntarily submitting. This ruling was upheld in the March 2013 Entry on Rehearing. In expectation of that confidential treatment of business-sensitive information, all of the reports submitted to Staff by Constellation on the DEO sales program were marketed “confidential”.

Constellation is not a party to this proceeding, thus to perfect its request for a protective order, Constellation now seeks limited intervention for the sole purpose of protecting the confidential and business-sensitive information it previously provided Commission Staff, as well as “DEO” spreadsheets which show individual supplier or account sales volume and pricing information, under the assurance that the Commission would take the appropriate action to protect the confidential information when Constellation was making it available to the Commission Staff.

MOTION FOR PROTECTIVE ORDER

Constellation is a member of the Ohio Gas Marketers Group \ Retail Energy Supply Association. Those groups had worked with the Staff to standardize the information being provided by the participating CRNGS providers since the goal of collecting the confidential information was for the Staff to aggregate the data for a Staff Report to be prepared sometime in the future.

From a review of Constellation's records, the confidential reports as well as DEO's spreadsheets submitted to the Commission Staff have seven types of confidential and business-sensitive information which are protected from public production by the Public Records Act. The seven types of information for which Constellation seeks protection are: 1) the number and salaries of its full- and part-time employees; 2) its individual sales and pricing data; 3) the dollar value of capital expenditures made in Ohio; 4) Constellation's Ohio investments; 5) a description of the products Constellation is offering; 6) the individual product rate codes; and 7) value-added services including promotions being offered. A more detailed explanation of why these seven types of information are accorded protection is addressed in the attached Memorandum in Support. Constellation also hereby incorporates the Memorandum of Support in the corresponding motion and memorandum in support filed by the Ohio Gas Marketers Group / Retail Energy Supply Association.

MOTION FOR A FIVE-DAY EXTENSION TO FILE REDACTED REPORTS

On April 1, 2015, an Entry was issued in the matter at bar and posted on the Commission website under this docket number requiring all suppliers who had filed confidential reports with the Staff to secure copies of those reports, review the reports, make the necessary redactions, and resubmit the reports back to the Attorney Examiner and the Staff within three business days (excluding Good Friday). Since Constellation was not a party to the proceeding, it received no notice other than the information supplied to it by the trade associations on the first business day following posting. This has left Constellation with two business days to obtain, review and respond. Two business days is simply not a sufficient amount of time to obtain, review and respond. Since Constellation responded within two business days of receiving actual notice, it cannot be said that Constellation has delayed or

taken an inordinate amount of time to respond and protect its rights. As a practical matter, Constellation requires five business days to obtain the official copies of the reports it submitted and to prepare the proper redactions.

WHEREFORE, Constellation hereby requests the Commission grant it: (1) limited intervention; (2) a protective order maintaining the confidentiality of (a) all the Reports submitted by Constellation and (b) DEO's spreadsheets to the Staff of the Commission so that they are not made public at this time; and (3) five business days from the time of an entry on this matter to submit redacted reports which redact the seven types of protected information listed above.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF
MOTION FOR LIMITED INTERVENTION
MOTION FOR PROTECTIVE ORDER
AND MOTION FOR FIVE-DAY EXTENSION TO FILE
REDACTED REPORTS**

Rule 4901-1-24(D), O.A.C., provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents submitted to the Commission Staff to the extent that state and federal law prohibit the release of such information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Ohio Revised Code. State law recognizes the need to protect information that is confidential in nature, as are the proprietary details contained in (a) the reports which Constellation provided and (b) DEO's spreadsheets provided to the Staff of the Commission for its study ("Study Information"). Section 4929.23(A), Revised Code, specifically permits the Commission to grant confidentiality to competitive information.¹ Sections 4901.12 and 4905.07, Revised Code, facilitate the protection of trade secrets in the Commission's possession.² Sections 4901.12 and 4905.07, Revised Code, reference Section 149.43, Revised Code, and therefore incorporate the exemption from the public record of information and

¹ Section 4929.23(A), Revised Code, provides: "A retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall provide the public utilities commission with such information, regarding a competitive retail natural gas service for which it is subject to certification, as the commission considers necessary to carry out sections 4929.20 to 4929.24 of the Revised Code. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information."

² Section 4901.12, Revised Code, provides: "Except as otherwise provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records. "Section 4905.07, R.C., provides: "Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys."

records the release of which is prohibited by law.³ State law prohibits the release of information meeting the definition of a trade secret.

The proprietary details contained in the Study Information comprise competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret as defined by Section 1333.61(D), Revised Code. The definition of trade secret contained in Section 1333.61(D), Revised Code, is as follows:

”Trade secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, 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.

In State ex rel. The Plain Dealer v. the Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

- (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.

³ Section 149.43(A)(1)(v), Revised Code, provides in part: “‘Public record’ does not mean records the release of which is prohibited by state or federal law.”

Id. at 524-525 (quoting Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

After applying these six factors to the information sought to be protected, it is clear that the proprietary details in the Study Information contain proprietary data and are confidential as trade secrets. The proprietary details in the seven types of information for which protection is requested are information and contain technical information regarding: 1) the number and salaries of its full- and part-time employees; 2) its individual sales and pricing data; 3) the dollar value of capital expenditures made in Ohio; 4) Constellation's Ohio Investments; 5) a description of the products Constellation is offering; 6) the individual product rate codes; and the 7) value-added services including promotions being offered.

When the Study Information was submitted to the Commission Staff, it was intended from the start to be confidential and all the reports were marked "confidential." So there is no question of intent by Constellation to keep the information confidential. The proprietary details for which protection is sought are not generally known in the market and are not readily ascertainable by other means.

Courts in other jurisdictions have also held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction; the trade secrets statute creates a duty to protect the information which is the subject of this motion. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses through the Uniform Trade Secrets Act, including public utilities, and now Constellation who provides CRNGS. This Commission previously carried out its obligations in this regard in numerous proceedings, including

litigated cases and licensure dockets. Granting Constellation's Motion would be consistent with this precedent and continue the solid public policy embraced by the Commission's precedent in the past protecting proprietary and confidential information.

All of the Study Information which is subject to this motion –the spreadsheets from DEO (showing the individual CRNGS suppliers' revenue month billing; residential, non-residential and total customer counts, Mcf volumes, commodity amounts, the average rate billed, and rate information) and the data collected from Constellation (showing the supplier name, quarter ending date, rate code, product description, value-added services, the number of full-time and part-time employees, the value of capital expenditures expressed in dollars and any other Ohio investment) – constitutes trade secret information and should not be disclosed. However, if any part of this information should be released, the Commission should ensure any details released would not permit OPAE (or anyone else to whom this information is released as part of a public records request) to piece together Constellation's information with other information released so that the trade secret information of Constellation is divulged. Further to this point, the recipient of the information should make no difference as to the Commission's consideration, as the Commission cedes control of the information after release in the public domain and the information would therefore be available to anybody, including Constellation's competitors.

In summary, the Commission should find that all use of the seven types of information submitted in the Study Information constitutes a trade secret and should be exempted from any public information provided in response to the OPAE request. Further, Constellation should be given five additional business days to present redacted versions of the Study Information which can be made public.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "MHP Petricoff", written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail on the following persons this 8th day of April, 2015:



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Summary: Motion Motion for Limited Intervention, Motion for Protective Order and Motion for Five-Day Extension to File Redacted Reports electronically filed by M HOWARD PETRICOFF on behalf of Constellation Energy Gas Choice, Inc. and Integrys Energy Services - Natural Gas, LLC