

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The East)	
Ohio Gas Company d/b/a Dominion Energy)	Case No. 17-0820-GA-ATA
Ohio for Approval of Changes in Rules and)	
Regulations)	

**MOTION FOR PROTECTIVE ORDER OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO**

In accordance with Ohio Adm. Code 4901-1-24(D), The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or the Company) respectfully moves for a protective order to keep confidential and not part of the public record (1) certain pricing information contained in the supplemental application filed today and (2) the entire precedent agreement and exhibits attached as Exhibit 1 to that application. This information is considered confidential information by both DEO and by DEO's counterparty, the pipeline developer, and should be kept confidential. Public disclosure of this information could also have a negative effect on competition and market development for this capacity on the Risberg Line.

Good cause exists to grant this motion for the reasons set forth in the attached Memorandum in Support.

Dated: June 27, 2017

Respectfully submitted,

/s/ Andrew J. Campbell

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ATTORNEYS FOR THE EAST OHIO GAS
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MEMORANDUM IN SUPPORT

Under Ohio Adm. Code 4901-1-24(D), the Commission and other designees “may issue any order which is necessary to protect the confidentiality of information contained in [a document filed with the Commission], to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

The information for which DEO seeks protective agreement should be protected in accordance with both state and federal law.

A. Ohio law prohibits the release of trade secrets, including pricing information.

Ohio law prohibits the release of trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399 (2000). “Trade secret,” among other things, means “any business information or plans, financial information, or listing of names, addresses, or telephone numbers” that meets two conditions:

(1) “[i]t 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” and

(2) “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

R.C. 1333.61(D)(1)–(2). The information identified above satisfies these conditions and should be kept confidential.

The information has independent economic value. Knowledge of the price of capacity and other terms and conditions of service negotiated by DEO, other than such information as is being disclosed in open-season postings by the developer, could place the developer at a

competitive disadvantage with other potential shippers. For similar reasons, the Commission has repeatedly recognized that non-public pricing information is worthy of protection. *See, e.g., In re Generation Pipeline*, Case No. 17-524-GA-AEC, Order at 3 (Apr. 19, 2017) (“the Commission finds that the pricing, shrinkage factor, and volume information contained in Exhibit B to the natural gas transportation service agreement constitutes trade secret information”); *In re Appl. of Ohio Power Company*, Case No. 15-279-EL-RDR, 2015 Ohio PUC LEXIS 233, Finding & Order at *7 (Mar. 18, 2015) (granting protective treatment for “pricing information”); *In re Appl. of N. Coast Gas Transmission LLC*, Case No. 14-158-PL-AEC, 2014 Ohio PUC LEXIS 59, Finding & Order at (Mar. 19, 2014) (granting protective treatment for “pricing, volumes, and shrinkage factors”).

DEO has also taken reasonable efforts to protect the information. Only a limited number of management-level DEO personnel have participated in negotiations, and DEO has not disclosed information regarding the price, terms, and conditions of service outside of this narrow group. DEO has not otherwise disclosed this information and has treated it as sensitive and confidential. And DEO now files this motion for protective treatment.

Additionally, under Ohio Adm. Code 4901-1-24(D), nondisclosure of this information is not inconsistent with Title 49 of the Revised Code. The Commission and Staff will have full access to the information needed to provide complete and thorough review of the application, and no provision of Ohio law would support the competitive harm that would result from the disclosure of this information.

B. Other factors support the protection of this information under Ohio law.

DEO would also observe that the following factors, identified by the Supreme Court of Ohio in addition to the statutory factors, support protecting this information. *See State ex rel. Plain Dealer v. Ohio Dep’t of Ins.*, 80 Ohio St. 3d 513, 524–25 (1997).

First, with the exception of those terms and conditions contained in the open-season posting (which are being disclosed), the negotiated rate for capacity and the terms and conditions of the precedent agreement are *not* “known outside” of DEO. *Id.* No other entity, save the pipeline developer, has access to this information. Second, the information is not widely “known to those inside” of DEO. *Id.* As explained, only a small group of management-level personnel had access to this information. Third, DEO has taken reasonable “precautions to guard the secrecy of the information,” *id.*, by carefully limiting disclosure of the information, including internally, and marking documents containing the information appropriately. Fourth, for reasons explained above, the information would be “valu[able]” to competitors and potential shippers in the marketplace were it to be published. *Id.* Finally, regarding the “time and expense it would take for others to acquire and duplicate the information,” *id.*, it would be impossible for any party to acquire this information at this time, unless it were disclosed.

For these reasons, Ohio law compels the protection of this information.

C. Federal law also supports protecting this information, including the precedent agreement in its entirety.

Protection of this information is also supported by federal law. Federal Energy Regulatory Commission (FERC) precedent has consistently recognized the need to withhold sensitive rate information during the certificate-phase of a pipeline’s development to prevent its disclosure from undercutting proposed pipeline projects. *See Kinder Morgan Interstate Gas Transmission LLC*, 122 FERC ¶ 61,154 at ¶¶ 40–42 (2008) (rejecting arguments for a pipeline to provide negotiated rate agreement, even under a confidentiality agreement, to a competitor during a certificate proceeding, because it could run the risk of undercutting the applicants’ pipeline project). For this reason, FERC “provides for the confidential treatment of negotiated rate precedent agreements in certificate cases.” *Id.* ¶ 41. “Exposing the terms of the precedent

agreement to [the competitor pipeline] and any other [of the developer's] competitors could undercut [its] plans to develop new sources of supply.” *Id.* Thus, in addition to Ohio law, federal law supports the protection of the information requested by DEO.

D. It may be necessary to limit disclosure of confidential information to potential shippers on the Risberg Line.

Finally, DEO would note that it may be necessary to limit the disclosure of confidential information to intervenors who may be potential shippers on the Risberg Line. RH energytrans is in the midst of an open season through which it is attempting to solicit shipper interest in subscribing to firm transportation on the Risberg Line. Such shippers will have the opportunity to offer their own negotiated rates, and if the rate negotiated by DEO is disclosed to these entities, it will give them an unfair competitive advantage *vis à vis* the developer. If this situation presents itself, DEO will attempt to reach a mutually acceptable resolution with the party in question, but if that is not possible, it may be necessary to seek further relief from the Commission.

WHEREFORE, DEO respectfully requests that the Commission grant the motion for a protective order and grant all other necessary and proper relief.

Dated: June 27, 2017

Respectfully submitted,

/s/ Andrew J. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic mail to
the following persons this 27th day of June, 2017:

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This foregoing document was electronically filed with the Public Utilities

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6/27/2017 2:58:32 PM

in

Case No(s). 17-0820-GA-ATA

Summary: Motion for Protective Order and Memorandum in Support electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio