

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbia Gas of Ohio, Inc. for Ap-)	
proval of an Economic Develop-)	Case No. 17-1679-GA-EDP
ment Project: Application for Ap-)	
proval of an Economic Develop-)	
ment Project: FWD:Energy, South-		
ern Ohio Industrial District Project.		

**MOTION FOR A PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT
OF COLUMBIA GAS OF OHIO, INC.**

Pursuant to Ohio Admin. Code 4901-1-24(D), Columbia Gas of Ohio, Inc. ("Columbia") hereby requests that the Public Utilities Commission of Ohio ("Commission") issue a Protective Order with respect to some capital expenditure numbers related to the FWD:Energy, Southern Ohio Industrial District Project ("the Project") which is the subject of the Application filed in this docket this same date. The information redacted in the Application is confidential and contains proprietary trade secrets, which are subject to protection from disclosure under Ohio law. Columbia further requests that the Protective Order be effective for a 24-month period, pursuant to Ohio Admin. Code 4901-1-24(F), from the date of the order in this case.

The reasons for this motion are more fully explained in the attached Memorandum in Support.

Respectfully submitted by,

COLUMBIA GAS OF OHIO, INC.

/s/ Joseph M. Clark

Joseph M. Clark, Counsel of Record

Stephen B. Seiple, Asst. General Counsel
(0003809)

Joseph M. Clark, Sr. Counsel (0080711)

P.O. Box 117

290 W. Nationwide Blvd.

Columbus, Ohio 43216-0117

Telephone: (614) 460-6988

E-mail: sseiple@nisource.com

josephclark@nisource.com

(Willing to accept service by e-mail)

Attorneys for

COLUMBIA GAS OF OHIO, INC.

MEMORANDUM IN SUPPORT

Columbia Gas of Ohio, Inc. ("Columbia") is a natural gas utility, regulated by the Public Utilities Commission of Ohio ("Commission"). FWD:Energy is a Nevada-based corporation that has developed a proprietary, patent pending system that converts scrap rubber from tires and other sources into valuable energy-related products. FWD:Energy plans to start a business in an existing building on the previously-owned Dow Chemical plant site in Hanging Rock, Ohio. The new plant will utilize FWD:Energy's technology to integrate industrial-scale microwave processing, which is efficient and environmentally sound, to create its energy-related products,

Pursuant to Revised Code § 4929.163, Columbia filed an Application in this same docket requesting Commission approval of this economic development project. The application filed concurrently in this docket contains confidential trade secret information. Specifically, the confidential trade secret information in the application (and redacted in the public version) includes total project costs for the line extension, the deposit required, and FWD:Energy's contribution towards the deposit. If this information is released to the public, Columbia and FWD:Energy would suffer substantial harm as its respective competitors would have access to proprietary trade secrets.

The need to protect confidential and proprietary information is recognized under Ohio administrative law. Ohio Admin. Code 4901-1-24 provides:

Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the Commission...the attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by...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.

Pursuant to Ohio Admin. Code 4901-1-24(D)(2), Columbia is filing two unredacted copies of the Application, under seal, thus allowing the Commission full access to all information. The Commission will be able to fulfill all of its statutory

obligations, meaning that public nondisclosure of the proprietary information contained within the Application is not inconsistent with the purposes of Title 49 of the Revised Code.

Furthermore, under the Ohio Uniform Trade Secrets Act¹, a “Trade Secret” is defined as:

(D) 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, address, 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.

The redacted information in the Application meets the criteria for being considered a “Trade Secret” under Revised Code § 1333.61. First, the redacted content is investment information that is of a business and financial nature. Second, Columbia and FWD:Energy derive independent economic value from the investment information not being readily ascertainable by others. The capital investment agreed to by each party was the result of negotiated bargaining by the contributing entities, and public disclosure of the results of these negotiations could harm each entity’s bargaining position in subsequent economic development ventures that may be similar to the Project at issue here. Finally, it is reasonable under the circumstances to redact the confidential investment information contained within the Application given the public nature of proceeding before the Commission.

The Supreme Court of Ohio has held that pricing information is confidential. In *Ohio Consumers’ Counsel v. Pub. Util. Comm. et al.*, the Court found that the Commission’s determination that account numbers, price of generation and volume of generation specified in a contract had independent economic value was

¹ Revised Code § 1333.61 (emphasis added)

reasonable.² Further, the Court found that the “Commission has the statutory authority to protective competitive agreements from disclosure...”³ Finally, granting Columbia’s Motion would be consistent with its precedent granting protective treatment for the same or very similar investment information.⁴

This request for a Protective Order is reasonable, necessary and will not prejudice any other party or individual. In fact, to the extent Columbia’s and FWD:Energy’s ability to compete effectively is preserved, Ohio consumers will be better served.

For all of the foregoing reasons, Columbia respectfully requests that a Protective Order be issued to protect the confidential and proprietary trade secret information from public disclosure. The Commission should deem the materials in the Application confidential for a period of 24 months from the date of the order in this case.

² *Ohio Consumers’ Counsel v. Pub. Util. Comm. et al.*, 121 Ohio St. 3d 362, 369 (2009).

³ *Id.* at 370.

⁴ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of the Sofidel Pipeline as an Economic Development Project*, Case No. 16-2069-GA-EDP, Entry at 3 (November 18, 2016); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Reasonable Arrangement for Transporting Natural Gas*, Case No. 16-1555-GA-AEC, Finding and Order at 3 (August 31, 2016); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with Nucor Steel Marion, Inc.*, Case No. 17-1906-GA-EDP, Entry at 3 (September 29, 2017).

Respectfully submitted,
COLUMBIA GAS OF OHIO, INC.

By: /s/ Joseph M. Clark
Joseph M. Clark (Counsel of Record)

Stephen B. Seiple, Asst. General Counsel
(0003809)

Joseph M. Clark, Sr. Counsel (0080711)

290 W. Nationwide Blvd.

P.O. Box 117

Columbus, Ohio 43215

Telephone: (614) 460-6988

Email: sseiple@nisource.com

josephclark@nisource.com

(Willing to accept service by email)

Attorneys for
COLUMBIA GAS OF OHIO, INC.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/15/2017 1:51:55 PM

in

Case No(s). 17-1679-GA-EDP

Summary: Motion for Protective Order and Memorandum in Support electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.