

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
COLUMBIA GAS OF OHIO, INC.
FOR APPROVAL OF AN ECONOMIC
DEVELOPMENT PROJECT WITH
FWD:ENERGY.

CASE No. 17-1679-GA-EDP

ENTRY

Entered in the Journal on December 12, 2017

{¶ 1} Columbia Gas of Ohio, Inc. (Columbia) is a natural gas company, pursuant to R.C. 4905.03, and a public utility, pursuant to R.C. 4905.02, and is, therefore, subject to the Commission's jurisdiction.

{¶ 2} R.C. 4929.163 provides that a natural gas company may file an application with the Commission for approval of an economic development project. The application must include a description of the economic development project, the infrastructure development costs to be expended on the project, and the support for the project by an economic development entity or chamber of commerce, as well as describe how the project meets the criteria set forth in rules adopted by the Commission. Ohio Adm.Code 4901:1-43-03 sets forth the requirements for an economic development project notice filed by a natural gas company with the Commission and the process for approval of the notice.

{¶ 3} On November 15, 2017, Columbia filed, pursuant to R.C. 4929.163 and Ohio Adm.Code 4901:1-43-03(A), an application for approval of an economic development project with FWD:Energy, in Lawrence County, Ohio.

{¶ 4} On that same date, Columbia also filed a motion for protective order, seeking to protect the total project costs for the line extension, the deposit required, and FWD:Energy's contribution toward the deposit. Specifically, Columbia asserts that this information constitutes confidential, sensitive, and proprietary trade secret information,

as defined in R.C. 1333.61(D), and as recognized by Ohio Adm.Code 4901-1-24. Additionally, Columbia notes that its request would include some of the same type of capital investment information that has been previously protected by the Commission. *In re Columbia Gas of Ohio, Inc.*, Case No. 17-1906-GA-EDP, Entry (Sept. 29, 2017); *In re Columbia Gas of Ohio, Inc.*, Case No. 16-2069-GA-EDP, Entry (Nov. 18, 2016); *In re Columbia Gas of Ohio, Inc.*, Case No. 16-1555-GA-AEC, Finding and Order (Aug. 31, 2016). No memoranda contra the motion for protective order were filed.

{¶ 5} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term “public records” excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

{¶ 6} Similarly, Ohio Adm.Code 4901-1-24 allows the attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * 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.”

{¶ 7} Ohio law defines a trade secret as “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).

{¶ 8} The attorney examiner has reviewed the information that is the subject of Columbia's motion for protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the capital expenditure numbers and related information constitutes trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that Columbia's motion for protective order with respect to this capital investment information is reasonable and should be granted.

{¶ 9} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry. Until that date, the Commission's docketing division should maintain, under seal, the information filed confidentially by Columbia on November 15, 2017.

{¶ 10} Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Columbia wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Columbia.

{¶ 11} On November 15, 2017, Columbia also filed a motion for a limited waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a), which requires a natural gas company to

¹ See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25, 687 N.E.2d 661 (1997).

include information pertaining to the estimated state and local taxable base increase in its economic development project notice. In its memorandum in support, Columbia explains that it does not have access to this information and cannot reasonably estimate the full tax receipt impacts without such information. Columbia also notes that it has complied with all other requirements of Ohio Adm.Code 4901:1-43-03, and believes that it has provided the Commission sufficient information to consider its application for an economic development project. No memoranda contra Columbia's motion for a limited waiver were filed.

{¶ 12} Initially, the attorney examiner notes that Ohio Adm.Code 4901:1-43-02(B) provides that the Commission may waive any requirement in the chapter, other than a requirement mandated by statute, for good cause shown. Upon consideration of Columbia's motion for a waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a), the attorney examiner finds that Columbia's motion should be granted, contingent upon the Commission's review and consideration of the application. If the Commission later finds that additional information is needed, Columbia may be required to submit the requisite information at that time. The attorney examiner notes that the waiver extends only to the requirement that Columbia provide information pertaining to the estimated state and local taxable base increase associated with the economic development project, and that Columbia must comply with all other requirements imposed by Title 49 of the Revised Code and the Commission's rules and regulations.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That Columbia's motion for protective order be granted. It is, further,

{¶ 15} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by Columbia on November 15, 2017, for a period ending 24 months from the date of this Entry. It is, further,

{¶ 16} ORDERED, That Columbia's motion for a limited waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a) be granted, consistent with Paragraph 12. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Sarah Parrot

By: Sarah J. Parrot
Attorney Examiner

JRJ/sc

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Summary: Attorney Examiner Entry granting protective order and granting Columbia's motion for a limited waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a) consistent with Paragraph 12. - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio