

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Aqua Ohio,)
Inc. for Approval of a Water Purchase) Case No. 18-0223-WW-AEC
Agreement.)

MOTION FOR PROTECTIVE ORDER OF AQUA OHIO, INC.

In accordance with Ohio Adm. Code 4901-1-24(D), Aqua Ohio, Inc. (Aqua or the Company) respectfully moves for a protective order to keep confidential and not part of the public record certain pricing information contained in the exhibit to the application filed today in the above-captioned case. This information is considered confidential information by both Aqua and by Aqua's counterparty, POET Biorefining – Marion, LLC (POET), and should be kept confidential. Public disclosure of this information could also have a negative effect on negotiations between Aqua and other customers. Good cause exists to grant this motion for the reasons set forth in the attached Memorandum in Support.

Dated: February 2, 2018

Respectfully submitted,

/s/ Andrew J. Campbell
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ATTORNEYS FOR AQUA OHIO, INC.

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 Aqua seeks protective treatment should be protected in accordance with state law and in furtherance of the Stipulation approved by the Commission in Case No. 16-0907-WW-AIR.

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 in and redacted from the Water Purchase Agreement (Agreement) between Aqua and POET satisfies these conditions and should be kept confidential.

The information has independent economic value. Knowledge of the price of water service and other terms and conditions negotiated in the Agreement could place Aqua at a competitive disadvantage in negotiations with other commercial and industrial customers. 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”).

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

Aqua 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, the negotiated rate for water service and the terms and conditions of the Agreement are *not* “known outside” of Aqua. *Id.* No other entity, save POET, has access to this information. Second, the information is not widely “known to those inside” of Aqua. *Id.* As explained, only a small group of management-level personnel had access to this information. Third, Aqua 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, the information would be “valu[able]” to competitors and other customers with whom Aqua is currently in negotiations 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.

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

Dated: February 2, 2018

Respectfully submitted,

/s/ Andrew J. Campbell

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Summary: Motion for Protective Order and Memorandum in Support electronically filed by Ms. Rebekah J. Glover on behalf of Aqua Ohio, Inc.