

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for Ap-)
proval of Demand Side Manage-) Case No. 16-1309-GA-UNC
ment Program for its Residential)
and Commercial Customers.)

In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for Ap-) Case No. 16-1310-GA-AAM
proval to Change Accounting)
Methods.)

**COLUMBIA GAS OF OHIO, INC.'S
REPLY MEMORANDUM TO THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
MEMORANDUM CONTRA COLUMBIA GAS OF OHIO INC.'S
MOTION FOR EXTENSION OF PROTECTIVE ORDER**

I. INTRODUCTION AND BACKGROUND

On December 21, 2016, the Commission granted Columbia Gas of Ohio, Inc.'s ("Columbia") Motions for Protective Order related to confidential, trade secret information in this case.¹ The Commission also directed Columbia to review the documents docketed in this proceeding (including the transcripts), redact only the confidential trade secret information, and file those redacted documents in this docket. On January 12, 2017, and February 24, 2017, respectively, Columbia completed its review and filed the redacted documents under seal in this docket.

On November 5, 2018, Columbia filed a Motion for Extension of Protective Order ("Motion for Extension") to extend protective treatment of the confidential, trade secret information previously granted to Columbia. The Office of the Ohio

¹ Opinion and Order at 12-13.

Consumers' Counsel ("OCC") filed a Memorandum Contra the Motion for Extension on November 20, 2018. Columbia hereby files its Reply to OCC's Memorandum Contra.

OCC chooses to label the protected confidential, trade secrets as "Hidden Information," implying in its labeling that the Commission is failing the general public in protecting this information. The "Hidden Information" moniker is inaccurate and purposefully inflammatory. The information that Columbia provided in its Application, as well as the significant amount of public information in this docket from the litigation process, was and remains more than ample information to provide customers a sufficient view of what they are paying for in Columbia's DSM Program. For example, the Application lays out 33 pages of details about Columbia's DSM Program. Appendix 3 of the Application specifically shows Columbia's Program Projected Budgets. Customers can also visit Columbia's website (<https://www.columbiagasohio.com/ways-to-save>) to educate themselves about the various programs Columbia offers to customers. And the 400+ pages of redacted testimony, briefs, transcripts, motions, and other documents in this docket provide a significant amount of information to the customers who pay for the DSM Program. Continuing to protect the confidential, trade secret information from public disclosure will properly balance the disclosure of DSM Program information to customers with the value Columbia and customers stand to lose by the disclosure of this economically valuable information to competitors that offer energy efficiency services, and to those who might bid to implement Columbia's individual programs.

Moreover, customers are not clamoring for public disclosure of the information contained in the confidential information at issue. As OCC disclosed in discovery in this case, OCC previously did not receive a single complaint or inquiry about Columbia's Demand Side Management ("DSM") Program through the OCC's e-mail or toll free number.² Nor does OCC make any affirmative declaration in its instant Memorandum Contra that any customer has since asked for the confidential, trade secret information at issue. Columbia respectfully requests the Commission consider this information as it balances the public's access to information with Columbia's interests in keeping this information confidential.

Finally, Columbia was and is defending the confidentiality of information that Columbia did not file with its Application in this case or seek to introduce in this case. OCC's attempted use of confidential information forced Columbia into

² Columbia Gas of Ohio Reply at 1-2, FN 1 (September 27, 2016).

the original fight for confidentiality, and by extension this fight as well. Columbia only provided the confidential information to OCC subject to a protective agreement. These facts alone demonstrate that Columbia met the *State ex rel The Plain Dealer v. the Ohio Dept. of Ins.*³ requirements to take affirmative steps to keep this information confidential. Further, the fact that OCC actually used on the record so little of the information it forced Columbia to defend should also inform the Commission's decision as it considers the instant Motion for Extension.

The Commission should grant Columbia's Motion for Extension for the legal,⁴ policy, and common sense reasons contained herein.

II. ARGUMENT

A. The Commission correctly granted Columbia's Motion for Protective Order the first time and should grant an extension.

OCC first takes aim at the Commission for not yet granting the OCC's Application for Rehearing in this case and not reversing the Commission's December 21, 2016 Order granting Columbia protective treatment of its confidential, trade secret information. OCC cites (and presumably incorporates by reference into the Memorandum Contra) its previous arguments in its Application for Rehearing. Finally, OCC laments the time it has taken the Commission to rule on its Application for Rehearing.

As a threshold matter, OCC's argument is an inappropriate second bite at the apple to re-argue its Application for Rehearing. Consistent with Ohio law and precedent, the Commission correctly granted Columbia protective treatment for the confidential, trade secret information. And Columbia demonstrated in its Motion for Extension that the information still deserves confidential, trade secret status for another 24-month period. OCC does not even try to rebut the arguments Columbia made in its Motion for Extension. The protected information remains as confidential and trade secret as it was in 2016, and Columbia's Motion for Extension should be granted for the reasons explained therein.

³ *State ex rel The Plain Dealer v. the Ohio Dept. of Ins.*, 80 Ohio St. 3d 513 (1997).

⁴ The Commission frequently grants extensions of confidential treatment in its other ongoing dockets, specifically dockets related to certification of competitive suppliers, economic development applications, special contracts, and other dockets (like this one) where competitively-sensitive information is at issue.

B. The Commission retains authority to grant the Motion for Extension.

OCC next argues that, because the Commission has not yet ruled on its Application for Rehearing, the Commission lacks statutory authority to grant Columbia's Motion for Extension. OCC reasons that granting Columbia's Motion for Extension would somehow moot or dismiss the portion of its Application for Rehearing regarding protective treatment.

OCC's argument falls flat. OCC cites no precedent for its position, nor does OCC explain how a pending Application for Rehearing impairs or prejudices its ability to continue pursuing its same line of advocacy at the Commission or the Supreme Court of Ohio. Indeed, Columbia does not object to OCC's Memorandum Contra as somehow improper or otherwise restrained by the current status of this docket.

C. Columbia concedes the limited information identified by OCC has been released publicly. However, the balance of the protected information, including non-public incentives, remains confidential and trade secret.

Columbia reviewed the six bullet point items identified by OCC as publicly released as well as the 2017 program participation numbers and agrees those limited items have been released. Columbia is willing, when the Commission issues its order regarding this Motion for Extension, to re-file the portions of the impacted redacted documents with that limited information unredacted. Columbia respectfully requests 60 days after the order on the Motion for Extension to review all of the redacted documents and re-file the impacted portions of those documents.

Columbia disagrees that just because it released *some* rebate information on its website or *one* year of its past program participation numbers that it has somehow waived the protection for *all* other rebates or program participation numbers that have not been publicly disclosed. Those limited rebate amounts are published for customers and the public to know what rebate amounts are available to be utilized. Columbia seeks to strike a balance as to what information should be available in order to maximize participation rates and benefits to customers and the public, while also appropriately protecting confidential, trade secret information. OCC's simple conclusion greatly oversimplifies the complexity of this issue.

Columbia released the limited amount of information for those specific items for specific purposes. The Motion for Extension demonstrates the remaining information should continue to be protected from disclosure. That Columbia would release such a limited amount of information out of the over 1,500 redacted pages further shows the value of the confidential, trade secret information and that the legal requirements are met to continue to protect this information as confidential and trade secret.

D. The protected information remains a confidential, trade secret.

Finally, OCC avers that the protected information related to Columbia's program participation numbers for 2017 and 2018 is stale and no longer confidential or trade secret. OCC does not provide any Commission precedent to support its position.

While the general public may have access to the 2017 planned program participation rates due to OCC's Memorandum Contra, the 2018 program participation rates in the format shown by OCC are not yet known and therefore Columbia cannot reveal information that is not yet available. The remaining projected program participation numbers remain confidential, trade secret information for the reasons explained in the Motion for Extension and as recognized by the Commission in its December 21, 2016 Opinion and Order in this case.

III. CONCLUSION

For the reasons discussed above, the Commission should grant Columbia's Motion for Extension and protect the confidential and proprietary trade secret information for another 24-month period.

Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.

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CERTIFICATE OF SERVICE

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Summary: Reply Memorandum to the Office of the Ohio Consumers' Counsel's Memorandum Contra to Columbia Gas of Ohio, Inc.'s Motion for Extension of Protective Order electronically filed by Ms. Melissa L. Thompson on behalf of Columbia Gas of Ohio, Inc.